



IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

POLICE & FIRE RETIREMENT SYSTEM OF
THE CITY OF DETROIT, on behalf of itself
and all other similarly situated shareholders of
Data Domain, Inc.,

Plaintiff,

v.

C.A. No.

RONALD D. BERNAL, ANEEL BHUSRI,
RONALD E.F. CODD, REED E. HUNDT, KAI
LI, JEFFREY A. MILLER, SCOTT SANDELL,
FRANK SLOOTMAN, NETAPP INC.,
KENTUCKY MERGER SUB ONE
CORPORATION, and DERBY MERGER SUB
TWO LLC,

Defendants.

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Police & Fire Retirement System of the City of Detroit (“Detroit P&F” or “Plaintiff”), on behalf of itself and all other similarly situated public shareholders (the “Class”) of Data Domain, Inc. (hereafter, “Data Domain” or “the Company”), brings the following Class Action Complaint (“Complaint”) against the members of the board of directors of Data Domain (the “Data Domain Board” or “Board”), and against NetApp Inc., Kentucky Merger Sub One Corporation and Derby Merger Sub Two LLC (collectively “NetApp”). The allegations of the Complaint are based on the knowledge of Plaintiff as to itself, and on information and belief (including the investigation of counsel and review of publicly available information as to all other matters.

NATURE AND SUMMARY OF THE ACTION

1. This action arises from the actions of Data Domain's board of directors (the "Board") in agreeing to a merger agreement with NetApp, Inc. ("NetApp") without even trying to secure the best possible deal for Data Domain's shareholders. They agreed to the NetApp merger without following even the most basic process for informing themselves of the best available transaction. Soon thereafter, the Board compounded this breach by agreeing to restructure the deal to increase the cash-out component so much that it is undoubtedly a change of control transaction due to its cashing out a significant portion of the shareholders' equity. They agreed to this restructuring without pursuing any steps to maximize the price paid to shareholders.

2. Long-standing Delaware law required the Board to take reasonable measures to maximize shareholder value. Rather than comply with their duties, the Board approved the original and the restructured deals with NetApp, both of which were locked up with preclusive defensive measures, including a termination fee, a no-shop/no-talk provision and matching rights. The Board granted each of these deal protections *before* any price-maximizing process took place, in a blatant effort to ensure that their favored merger partner – which is providing the Board with jobs and other benefits that the unwanted bidder may not – is Data Domain's ultimate acquirer. In doing so, the Board has deliberately ignored what a third party suitor, EMC Corporation ("EMC"), has offered for Data Domain and what it would offer in an open and balanced sale process.

3. The transaction started with an Agreement and Plan of Merger (the "Merger Agreement") between Data Domain and NetApp dated May 20, 2009. Pursuant

to the Merger Agreement, Data Domain shareholders would receive \$25 per share, comprised of a mix of cash and stock (the “Initial Transaction”). Even though \$25 offered a modest premium to Data Domain’s then-current trading price, most analysts felt that Data Domain could fetch \$35 per share in a transaction. The Board embraced the NetApp offer despite their knowledge that EMC was anxiously pursuing Data Domain at the time and giving every indication that it was willing to pay a significant premium to Data Domain’s trading price, *i.e.*, a deal price approaching the higher consideration the analysts felt was more in keeping with Data Domain’s worth. Despite the fact that a significant amount of the consideration NetApp offered was cash – and therefore a significant portion of the Data Domain shareholders’ current equity investment was being cashed out – the Board approved a variety of deal protections that impaired the possibility of a fair and balanced process that maximized share value. In particular, the Initial Transaction included “matching rights” that deter competing bids because they force bidders to bid against themselves while putting minimal pressure on NetApp to put its best offer on the table.

4. Not only did the Data Domain Board decide to sell the Company for inadequate consideration, but they had a motive to avoid an open bidding process. Indeed, both the Data Domain Board and the NetApp board had mutual interests that had nothing to do with providing Data Domain shareholders with the best deal. The Data Domain Board was negotiating in the shadow of EMC’s overtures, and NetApp – widely rumored to be a likely takeover candidate itself – appears to be using the Data Domain acquisition as a defense mechanism of its own. The deal protections the Board and

NetApp used to lock up the deal have served their intended purpose, as EMC has been prevented from negotiating with Data Domain despite offering Data Domain shareholders a much higher price for their shares.

5. The Initial Transaction placed certain Defendants' interests ahead of the interests of the Company's shareholders. NetApp agreed to provide Data Domain's CEO, Defendant Frank Sloodman, and Board Chairman, Defendant Aneel Bhusri, with lucrative positions at the combined company. Indeed, Defendant Sloodman is expected to succeed Dan Warmenhoven as CEO of NetApp. Sloodman, Bhusri and other Defendants will also receive immediate compensation for their restricted stock and options.

6. Despite being frozen out by the Data Domain Board, EMC announced a tender offer on June 1, 2009 to acquire Data Domain in an all-cash deal that values the Company at \$30 per share (the "EMC Bid") – a 20% premium to the price in the NetApp Initial Transaction. EMC's public bid showed beyond doubt that NetApp was getting Data Domain on the cheap, as many analysts noted. Although the matching rights provision in the Merger Agreement gave NetApp five business days to respond to EMC's offer, it took all of a day for NetApp to increase the price it was willing to pay by matching EMC's Bid. Even though NetApp moved quickly, it structured its bid knowing that it did not need to "top" EMC's bid to preserve its option on Data Domain. Instead, as allowed by the matching rights in the original Merger Agreement, NetApp matched the overall value of the EMC Bid by increasing the cash component of its offer to reach a \$30 per share offer. Had the Board not already bound its hands with the Merger

Agreement lock-ups, it could have leveraged the EMC Bid to demand a meaningful increase above EMC's Bid from NetApp.

7. EMC's Bid nevertheless presented the Board with a second chance to try to do the best they could for their shareholders. They squandered that opportunity, however, and within hours of receiving NetApp's matching bid, the Board again embraced NetApp, accepting its revised offer. The Board decided without the benefit of time or analysis to reject the EMC Bid and to re-approve the NetApp Merger Agreement at the revised price (the "Revised Transaction").

8. Defendants immediately accepted NetApp's revised bid despite the fact that analysts viewed NetApp's cash-and-stock proposal as inferior to the certainty provided by EMC's all-cash deal and expected EMC to significantly increase its offer if given the chance to do so. Motivated by their own self interest, the Board violated their fiduciary duties to secure the best possible deal for Data Domain's shareholders by refusing to negotiate with EMC or bargain for better terms from either suitor.

9. Whatever doubt existed about the Board's duty to employ a reasoned process to maximize the price paid to shareholders was eliminated with the restructured NetApp deal. The Initial Transaction would cash out a significant portion of the Data Domain shareholders' holdings. The Revised Transaction, however, is indisputably a change in control because the majority of the consideration to be paid to shareholders is now cash. By agreeing to a transaction which results in the "cashing out" of a majority of the shareholders' prior equity positions, the Board took on the obligation to maximize the price being paid. Instead of making decisions with that sole concern, however, the Data

Domain Board acted as if they were free to agree to the NetApp deal even if it does not offer the best immediate price.

10. The Board is required to seek out the absolute best transaction for its shareholders by improving the terms of the Revised Transaction and the EMC Bid. The Board's negotiations with NetApp and their refusal to negotiate with EMC in May 2009 demonstrate that they failed to consider the shareholders' interests in good faith and committed to the original deal with NetApp for personal gain. Defendants' refusal to negotiate with EMC after its public topping bid – or at least use the EMC Bid to require NetApp to actually bargain and top EMC's Bid – constitutes a further abdication of the Board's duties.

11. Termination fees, no-shop/no-talk clauses and matching rights are not consistent with a corporate sale process that has just begun. Thus, this action seeks to enjoin the provisions of the Merger Agreement that are unlawfully preventing the Data Domain Board from fulfilling their fiduciary duties and to compel the Board to act for the sole benefit of its shareholders, and not for any personal benefit or for the protection of the Board's incumbency or management's self-interest and personal profit.

JURISDICTION

12. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

PARTIES

13. Plaintiff Police & Fire Retirement System of the City of Detroit is a retirement system maintained for the benefit of current and former policemen, firemen and their families. Detroit P&F is a stockholder of Data Domain, has been a stockholder

of Data Domain at all material times alleged in this Complaint, and will continue to be a stockholder of Data Domain through the conclusion of this litigation.

14. Defendant NetApp is a proprietary computer storage and data management company incorporated in Delaware and headquartered in California. It is a member of the NASDAQ-100, and trades under the ticker symbol NTAP.

15. Defendants Kentucky Merger Sub One Corporation, (a Delaware corporation) and Derby Merger Sub Two LLC (a Delaware limited liability company) (together with Merger Sub One, the “Merger Subs”) are direct, wholly-owned subsidiaries of NetApp created for the purposes of the merger.

16. Defendant Ronald D. Bernal is a Director of the Company and has been since 2003. As of May 29, 2009, Bernal owned over 266,000 shares of the outstanding Data Domain common stock

17. Defendant Aneel Bhusri is a Director of the Company and has been since 2002. As of May 29, 2009, Bhusri owned almost 4% of all of the outstanding Data Domain common stock.

18. Defendant Ronald E.F. Codd is a Director of the Company and has been since 2006. As of May 29, 2009, Codd owned 225,000 shares of the outstanding Data Domain common stock.

19. Defendant Reed E. Hundt is a Director of the Company and has been since 2007. As of May 29, 2009, Hundt owned over 225,000 shares of the outstanding Data Domain common stock.

20. Defendant Kai Li, Ph.D. is a co-founder of the Company and a Director. He has served as a Director since 2001. As of May 29, 2009, Li owned over 2% of all of the outstanding Data Domain common stock.

21. Defendant Jeffrey A. Miller is a Director of the Company and has been since 2006. As of May 29, 2009, Miller owned over 245,000 shares of the outstanding Data Domain common stock.

22. Defendant Scott Sandell is a Director of the Company and has been since 2002. As of May 29, 2009, Sandell owned almost 14% of all of the outstanding Data Domain common stock, through personal ownership and limited partnership interests.

23. Defendant Frank Sloodman is President, Chief Executive Officer and Director of the Company. He has served as a Director since 2003. As of May 29, 2009, Sloodman owned over 2.5% of all of the outstanding Data Domain common stock.

24. The individual defendants named above in paragraphs 15 through 22 are collectively referred to as the "Data Domain Directors" or "Individual Defendants."

25. By reason of their positions, the Data Domain Directors owed fiduciary duties to Data Domain and its shareholders, including the obligations of loyalty, good faith, fair dealing, and due care. They were required to discharge their duties in a manner they reasonably believed to be in the best interests of Data Domain and all its shareholders, and not in furtherance of other interests.

RELEVANT THIRD PARTIES

26. Data Domain, a Delaware corporation headquartered in California, is an electronic data storage company that has helped customers reduce or eliminate the use of tape infrastructures with a very efficient disk- and network-based data protection alternative. Data Domain is the leading provider of deduplication storage systems for disk backup and network-based disaster recovery. Thousands of companies worldwide have purchased Data Domain storage systems to reduce costs and simplify data management. Data Domain went public in 2007, and trades on the NASDAQ under the ticker symbol DDUP.

27. EMC is a Fortune 500 information management company headquartered in Massachusetts. It is the largest provider of data storage platforms in the world, competing in a market against IBM and NetApp, among others. It trades on the NYSE under the ticker symbol EMC.

FACTUAL ALLEGATIONS

Data Domain Enters Into The Initial Transaction for Inadequate Consideration In Advance of a Scheduled Meeting with EMC

28. Data Domain is a coveted acquisition target. Despite the recent downturn in the US economy, Data Domain has performed relatively well. It has recently enjoyed a number of industry accolades and business milestones, and is extremely well positioned in the data storage market. Data Domain Director and CEO Frank Sloatman stated to Reuters after announcement of the Initial Transaction, “Competitively, we’re stronger than we’ve ever been. Our competitive advantage has been increasing. People find it more difficult to compete with us.” Sloatman also stated to Reuters in April 2009 that Data

Domain would touch the \$1 billion annual revenue mark in three years, a more than 300% increase over last year's \$274 million. For 2009, the Company has forecast \$365 million to \$385 million in revenue.

29. Conversely, NetApp has suffered a series of disappointing financial results, including a May 20 announcement (which was overshadowed by the Initial Transaction) that its fiscal fourth-quarter earnings fell 16% on a sharp drop in product sales. For the period ended April 24, 2009, NetApp reported net income of \$75.1 million, or 23 cents a share, compared to earnings of \$89.8 million, or 26 cents a share, for the same period last year. NetApp revenue fell 6%, and product revenue – the largest portion of the company's total revenue base – declined 20%. NetApp declined to provide a revenue forecast for the current quarter, citing “the reduced visibility caused by the recent changes in the macroeconomic environment.”

30. In an effort to capture the benefits of Data Domain’s competitive business model and market presence, the ailing NetApp sought to purchase Data Domain. According to the Form S-4 filed on June 4, 2009, discussions began between Data Domain and NetApp on or around March 17, 2009. On May 11, 2009, the Data Domain Board met to continue to discuss a business combination with NetApp. At this meeting, Data Domain CEO Sloodman “informed the Data Domain board of directors that the Chief Executive Officer of EMC had contacted him to schedule a meeting and, based upon the availability of the Chief Executive Officer of EMC, the meeting had been scheduled for May 27, 2009.”

31. Despite EMC's clear interest, the Data Domain Directors and NetApp conspired to exclude EMC from the merger process and limit Data Domain's exploration of strategic alternatives. They hastily arranged the Initial Transaction, which offered wholly inadequate consideration to Data Domain's shareholders and prevented the Data Domain Directors from exploring alternative transactions. The S-4 clearly confirms this fact: "[The Data Domain] *directors determined that Data Domain should move forward with the potential business combination with NetApp without contacting other companies that might be candidates for a strategic transaction with Data Domain.*"

32. On May 20, 2009 – just seven days before Sloodman was to meet with EMC's CEO – Data Domain and NetApp entered into the Merger Agreement. Upon the closing of the Initial Transaction, each outstanding share of Data Domain common stock (other than those shares with respect to which appraisal rights are properly exercised and not withdrawn) would have been converted into the right to receive \$11.45 per share in cash plus a number shares of NetApp common stock equal to a prescribed exchange ratio. Under this formulation, the effective offering price for each Data Domain share was roughly \$25. The implied enterprise value under the Initial Transaction was approximately \$1.5 billion for Data Domain. Because a significant percentage of the consideration being paid to Data Domain shareholders was cash, the Initial Transaction implicated the Board's duty to seek the highest available price, in addition to the always-applicable duty to act in the best interests of shareholders.

33. The Data Domain Directors ignored their obligation to obtain the best possible price for the Data Domain shareholders. Rather, they chose to enhance their own financial position and that of Data Domain's senior management.

34. Specifically, NetApp agreed that the Company's Officers and Directors would receive benefits separate and apart from those that would be received by Data Domain shareholders. NetApp's Form S-4 filed on June 4, 2009 concerning the Revised Transaction (the "S-4") states: "***Data Domain's executive officers and directors have financial interests in the merger that are different from, or in addition to, those of Data Domain's stockholders.***" Among other things, the S-4 outlines the favorable treatment that the Merger Agreement provides Data Domain Directors' and officers' compensation awards, noting:

The merger agreement provides that, upon completion of the merger, each Data Domain option will be assumed and converted, based on the option exchange ratio, ***into an option to purchase NetApp common stock subject to the same vesting restrictions and other terms and conditions of such Data Domain option. The merger agreement also provides that, upon completion of the merger, each then outstanding restricted stock unit or share of restricted stock of Data Domain will be assumed and converted into the right to receive the merger consideration,*** but will otherwise be subject to the same vesting restrictions and other terms and conditions of the Data Domain awards. (emphasis added)

35. NetApp has also agreed to indemnify and hold harmless each present and former director and officer of Data Domain from liability for matters arising from the completion of the merger. These considerations, among other aspects of the Initial Transaction, caused the Data Domain Board to abandon their fiduciary duties to the Company's public shareholders and ignore other suitors, including EMC.

36. In agreeing to the partial stock Initial Transaction, the Data Domain Directors are subjecting the shareholders to significant risk that is not presented by a full cash-out transaction. Data Domain and NetApp assert that Data Domain shareholders will receive long-term value through their partial ownership of a combined company, but the shareholders may not want to bear that risk. While Data Domain's business is expected to grow by a healthy measure in the next few years, the very nature of its product will likely cut into NetApp's sales because Data Domain's product functions to reduce a user's need for archival media, *i.e.*, NetApp's main business.

37. Even if the optimism of Data Domain's Directors and NetApp were well-placed and significant growth occurs, the Data Domain shareholders will participate in only a small fraction of that growth as the merger consideration is to be paid only partially in stock. Thus, the Data Domain Directors agreed to a deal that puts their shareholders in the worst of all possible positions – an inadequate cash payment and an inadequate stake in the future enterprise.

Data Domain's Board Locks Up the Initial Transaction

38. The Merger Agreement contains various deal protections, including a matching right which gives NetApp a permanent bidding advantage and effectively causes EMC or any other third party bidder to bid against themselves. Indeed, Data Domain and NetApp both knew of EMC's interest in Data Domain, and therefore they executed the matching rights agreement for the purpose of making a bidding war impossible.

39. Specifically, the “Matching Right” provides NetApp with five business days to revise its proposal or persuade the Data Domain Board not to change its recommendation on the merger. The Merger Agreement states:

ii) the Company Board shall have given Parent at least five (5) Business Days prior written notice that the Company Board intends to effect such Company Board Recommendation Change and the opportunity to meet with the Company Board and the Company’s financial advisors and outside legal counsel at such times as Parent may reasonably request for the purpose of enabling Parent and the Company to discuss in good faith (A) the Company Board’s basis and rationale for proposing to effect such Company Board Recommendation Change, and/or (B) possible modifications of the terms and conditions of this Agreement in such a manner that would obviate the need for the Company Board to effect such Company Board Recommendation Change....

40. Thus, the Matching Right serves to lock up the deal between Data Domain and NetApp at any cost to shareholders because it dissuades interested parties from making an offer for the Company by providing NetApp a “last-look.” The Matching Right also restricts the Board’s free exercise of their fiduciary duties by limiting the alternatives the Board can reasonably consider and ultimately favors NetApp over all other potential bidders.

41. As a result of the Matching Right, Data Domain’s Directors could not actually terminate the Merger Agreement to evaluate the EMC Bid, which is discussed below, even if they considered the EMC Bid to be a superior proposal, unless and until NetApp decided not to revise its offer. The presence of the matching right creates a significant disincentive to third parties to make superior proposals and ensures that NetApp, the favored merger partner, will never have to make a counteroffer that is actually “superior” to whatever a competing bidder has put on the table.

42. The Merger Agreement also includes a draconian *termination fee equivalent to 3.8 % of the value of the Initial Transaction* value (the “Termination Fee”) as another deal protection measure. The Termination Fee is payable even in the event the Data Domain Board terminates the Merger Agreement pursuant to the lawful exercise of its fiduciary duty, making clear that the fee is an improper deterrent to the Board’s seeking the best possible price for Data Domain’s shares.

43. Section 8.1(g) of the Merger Agreement states that if Data Domain does not reaffirm its recommendation of the Proposed Transaction within ten days of a tender offer by a third party for the Company, then NetApp can terminate the agreement. As stated in 8.3(b)(iii) above, this would require Data Domain to pay the Termination Fee to Net App. Due to the language of the Merger Agreement, the Board is rendered itself incapable of fairly considering the EMC offer without having to pay the substantial Termination Fee. In essence, the Board erected a barrier to the exercise of their fiduciary duties.

44. In addition to the Matching Right and Termination Fee, the Merger Agreement also contains a restrictive “No Solicitation” clause that prevents Data Domain from soliciting or even knowingly encouraging the submission or announcement of another offer. Specifically, the relevant portion of Section 6.1 of the Merger Agreement provides that:

(b) At all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, ***the Company shall not, the Company shall cause its Subsidiaries not to, and the Company shall not authorize or permit any of its, any of its Subsidiaries or any of their respective Representatives to, directly or indirectly:***

(i) ***solicit, initiate or knowingly encourage or facilitate or knowingly induce any inquiry with respect to, or the making, submission or announcement of, an Acquisition Proposal*** or an Acquisition Transaction;

(ii) subject to Section 6.1(c), furnish to any Person (other than Parent, Merger Sub One, Merger Sub Two or any designees of Parent or the Merger Subs) any non-public information relating to the Company or any of its Subsidiaries, or afford access to the business, properties, assets, books or records of the Company or any of its Subsidiaries to any Person (other than Parent, Merger Sub One, Merger Sub Two or any designees of Parent or the Merger Subs), or take any other action, in each case in a manner that is intended or would be reasonably expected to assist or facilitate any inquiries or the making of any proposal that constitutes or could lead to an Acquisition Proposal or an Acquisition Transaction;

(iii) subject to Section 6.1(c), ***participate or engage in discussions or negotiations with any Person with respect to an Acquisition Proposal or an Acquisition Transaction***;

* * * *

(viii) ***agree with a third party to do any of the foregoing, or propose to third parties (including Company stockholders) to do any of the foregoing*** other than pursuant to Section 6.1(c), Section 6.7(b) or Section 8.1(h) in accordance with the terms thereof. (emphasis added)

45. No good faith reason exists for the Data Domain Board to agree to such a restrictive covenant. NetApp desperately needs the Company's business operations, and nothing suggests that NetApp would not have agreed to the deal without this lock up protection (or any of the other deal protection measures).

46. Furthermore, despite the Data Domain Board's awareness of EMC's interest in a possible strategic combination with the Company, as well as other potential strategic alternatives, the Board agreed to Section 6.1(a) of the Merger Agreement which states: "The Company and its Subsidiaries shall, and shall cause each of their respective Representatives to, immediately ***cease any and all existing activities, discussions or***

negotiations with any Persons conducted heretofore with respect to any Acquisition Proposal or Acquisition Transaction.” (emphasis added).

47. The Merger Agreement provides a limited exception under which the Data Domain Directors may consider only an “unsolicited written offer or proposal...for a transaction or a series of related transactions providing for the acquisition of all of the outstanding voting securities of the Company which the Company Board shall have determined in good faith...is more favorable to the Company’s stockholders (in their capacity as such) than the Merger,” taking into consideration various factors including probability of closing and timing (a “Superior Proposal”).

48. Not only did the Data Domain Directors agree to the above-mentioned deal protections, they also, along with officers and certain of their affiliates, entered into voting agreements pursuant to which they agreed to, among other things, vote their shares of Data Domain common stock in favor of the adoption of the Merger Agreement. The parties to the voting agreements hold and/or control approximately 25% of the Company’s outstanding common stock as of May 29, 2009. Thus, under the voting agreement, the Data Domain Directors and executives are bound to vote for the NetApp transaction even if they were to determine that there was a proposal superior to the NetApp merger. Given that these individuals control almost 25% of the voting power of the outstanding stock, the voting agreement makes it exceedingly difficult for any other suitor to compete with NetApp.

49. Not only do the voting agreements put other suitors at a disadvantage to NetApp, they also serve to increase the likelihood that the Revised Transaction is

consummated, as only a minority of publicly held shares need to vote in favor of a NetApp deal in order for it to receive the support of a majority of outstanding shares. Further, all current directors and executive officers of Data Domain as a group hold roughly 25% of the Company's outstanding shares as of May 29, 2009. With their support of the Revised Transaction, only one quarter of Data Domain's public shareholders will decide the outcome of any vote on the transaction. Artis Capital Management, which owns several million shares of Data Domain, could well secure the approval.

EMC Presents a Far Superior Offer and NetApp is Forced to Revise Its Proposal

50. On June 1, 2009, EMC, the world's largest maker of storage systems and software, made an all-cash offer to acquire Data Domain for \$30 a share, ***a 20% premium over the Initial Transaction.*** The EMC Bid has a total enterprise value of \$1.8 billion, \$300 million more than the Initial Transaction, and is structured as a tender offer followed by a merger of all untendered shares. The tender offer is set to expire on June 29, 2009.

51. As an all-cash offer, EMC's proposal offers certainty of value for Data Domain shareholders. Data Domain shareholders, and not the Data Domain Board, should be entitled to choose between the alternatives of continuing a partial and diluted investment with NetApp or maximizing the cash value of Data Domain now. Data Domain's Board, however, is acting to prevent their shareholders from deciding how they want to manage their Data Domain investment.

52. The EMC Bid is clearly a bona fide, financially superior offer that should be treated as such by the Data Domain Board. Despite the Merger Agreement, the Data Domain Board still owes the Class the fiduciary duties of loyalty, care and good faith, and should take steps to minimize the harm to the Class under the NetApp deal.

53. As noted above, the EMC Bid was not a surprise to Data Domain. According to the S-4, on May 7, 2009, a member of the board of directors of EMC contacted Defendant Sloodman and sought to arrange a meeting between Sloodman and the CEO of EMC so that EMC could share its vision for the future of the two companies. Again the next day, EMC contacted Data Domain and attempted set up a meeting with Sloodman. On May 8 the CEO of EMC contacted Sloodman via email to request a meeting and Sloodman agreed via email, conveniently scheduling a meeting for May 27. Sloodman had no intention of ever holding that meeting, as the Merger Agreement was entered into a week before the meeting was set to take place. With knowledge of that meeting and EMC's expression of interest, the Data Domain Directors approved the Initial Transaction. The Data Domain Board, therefore, did not even take reasonable steps to assess competing proposals for the Company.

54. Moreover, when the Initial Transaction was publicly disclosed, Data Domain's public filings did not disclose EMC's expression of interest, surely in the hope that EMC would take a hint and stay away.

55. EMC CEO Joe Tucci, in a letter to Sloodman dated June 1, expressed disappointment at Data Domain's failure to engage EMC in substantive discussions about a possible business combination prior to Data Domain's entering the Merger Agreement.

As Tucci stated on behalf of the EMC Board, “We are disappointed that we were not given an opportunity to explore a business combination prior to the announcement of your proposed transaction with NetApp, particularly since I believe you should have been aware of our interest.”

56. Significantly, that letter went on to note that EMC’s proposal was not subject to any financing or due diligence contingency, and would use EMC’s existing cash balances to finance the transaction. The EMC Bid would be effectuated with a first step tender offer, followed by a second step merger for any outstanding shares. The legitimacy of the EMC Bid was further established by the inclusion of a form agreement, and EMC’s assurance that “We are prepared to execute this agreement immediately upon your Board of Directors’ determination that EMC has made a Superior Proposal as provided in the merger agreement with NetApp.”

57. On June 3, NetApp revised its offer in response to the EMC Bid, proposing roughly \$30 a share for Data Domain by increasing the cash component of the merger consideration in the Initial Transaction to \$16.45 per share. The Revised Transaction amounts to about \$30 a share, with \$16.45 in cash and \$13.55 in NetApp stock.

58. Despite obvious leverage provided by the EMC Bid, the Data Domain Board did nothing to alter the terms of the deal protections found in the Initial Transaction, much less to force EMC and NetApp to compete in a bidding process. Even though the EMC Bid made clear that there was good reason for the Data Domain Board to consider options outside of those proposed by NetApp, the Board nonetheless

preserved all of the substantive terms of the Merger Agreement that served to lock-up a deal with NetApp.

59. The Revised Transaction, with approximately equivalent consideration as the EMC Bid, is still nonetheless plagued by many of the same shortcomings as the Initial Transaction. In particular, a substantial portion (though less than half) of the consideration for Data Domain shareholders contemplated by the Revised Transaction comes in the form of stock in the new combined company.

60. Moreover, since about 55% of the consideration under the Revised Transaction is cash, the deal with NetApp represents the economic “end of the road” in a meaningful way, and there can be no doubt the Board should be maximizing value for the shareholders and not picking deals based on personal benefits or preferences. However, the deal protections, including in particular the matching rights, prevent a fair, balanced process to maximize value because the matching rights were adopted *before* any process took place. Now they impede a process from emerging at a time when there is no doubt the Board has not gained any reasonable comfort that the deal they favor is in fact the best price reasonably available.

CLASS ACTION ALLEGATIONS

61. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Data Domain’s common stock (except defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or will be

threatened with injury arising from defendants' wrongful actions, as more fully described herein.

62. Simply put, the Revised Transaction is in furtherance of an unfair plan by defendants to combine NetApp and Data Domain, and if consummated will result in the improper elimination of the Class from ever receiving maximum value for their controlling interest in the Company. The Revised Transaction is unfair to the Class and is the product of the defendants' conflicts of interest and breaches of fiduciary duties, as described herein. More particularly, the Revised Transaction is in violation of the Individual Defendants' fiduciary duties and was structured unfairly in that:

- The Revised Transaction is designed and intended to eliminate from consideration all other acquisition proposals for the Company, and consummate the merger with NetApp which the Individual Defendants know or should know is unfair and inadequate to the Class;
- The Individual Defendants have unique knowledge of the Company and its strategic alternatives, and have access to information denied or unavailable to the Class. Without all material information as to the Board's consideration of the EMC Bid and any other acquisition proposals, the Class members are unable to determine whether the price offered in the Revised Transaction is fair; and
- The Individual Defendants have violated their fiduciary duties by manipulating the timing of the Revised Transaction to preclude consideration of the EMC Bid and to benefit themselves and/or other Company officers and directors at the expense of Plaintiff and the Class.

63. This action is properly maintainable as a class action for the following reasons:

a. The Class is so numerous that joinder of all members is impractical. As of April 15, 2009, and at all relevant times herein, Data Domain had outstanding over 61 million shares of its common stock, held by individuals and entities too numerous to bring separate actions. It is reasonable to assume that holders of the Data Domain common stock are geographically dispersed throughout the United States.

b. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual class member. The common questions include, inter alia,

- whether the Data Domain Directors breached their fiduciary duties and other common law duties by failing to review all strategic alternatives in good faith and failing to engage in any good faith negotiation with other potential strategic partners;
- whether the Data Domain Directors breached their fiduciary duties by “locking up” the Initial Transaction to the detriment of the Class;
- whether the Data Domain Directors breached their fiduciary duties by refusing to extract the highest value possible from NetApp in exchange for Data Domain’s shares; and
- whether NetApp aided and abetted the Data Domain Directors’ breaches of fiduciary duty.

67. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff is a member of the Class, and Plaintiff's claims are typical of the claims of the other members of the Class. Accordingly, Plaintiff is an adequate representative and will adequately protect the interests of the Class.

68. Plaintiff anticipates that there will be no difficulty in the management of this litigation as a class action.

a. The Data Domain Directors have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

b. Plaintiff has suffered damages and will continue to suffer additional damages as a result of the acts and conduct of the Data Domain Directors alleged herein, including but not limited to (a) damages representing the negative market reaction to the Initial Transaction and Revised Transaction, (b) the lost opportunity to receive a more significant control premium for their shares, (c) the lost opportunity to leverage the Initial Transaction and EMC Bid to improve the terms of any alternative offer and (d) damages representing any fees and costs resulting from the deal protections the Data Domain Directors permitted in the Merger Agreement, the payment of which would lower the per share consideration received by the shareholders.

- c. The prosecution of separate actions would create the risk of:
- inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendants, and/or

- adjudications which would as a practical matter be dispositive of the interests of other members of the Class.

CLAIMS FOR RELIEF

COUNT I

(Class Action Claim For Breach of Fiduciary Duty Against the Data Domain Directors)

55. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

56. The Data Domain Directors owe the Class the utmost fiduciary duties of due care, good faith, and loyalty. The Data Domain Directors failed to fulfill their fiduciary duties in connection with the Revised Transaction.

57. They failed to fully inform themselves about the other competing proposals and instead chose to avoid considering whether an alternative transaction provided greater value to the Data Domain shareholders than the NetApp merger.

58. Defendants' refusal to use the Initial Transaction or the Revised Transaction to seek out or improve the terms of alternative proposals is a breach of their fiduciary duty, as is their refusal to use alternate proposals to improve the terms of the Revised Transaction. Even if the Board believed the Revised Transaction is more valuable to the Class than alternative offers, the Board is not excused from taking all possible steps to maximize shareholder value by improving the terms of the Revised Transaction.

59. The Director Defendants also breached their fiduciary duties of good faith, due care, and loyalty by favoring their own interests over those of the Data Domain shareholders. They caused the Company to enter into the Merger Agreement in order to

perpetuate their own personal interests, and those of Data Domain's senior management.

60. As a result of the Data Domain Directors' breaches of fiduciary duty in agreeing to the Revised Transaction in bad faith and with limited information, the Class will be harmed by receiving the inferior consideration of the Revised Transaction – consideration which includes questionable value mired by long-term risk. Further, the deal protections adopted by the Defendants and improperly still contained in the Revised Transaction impose an excessive and disproportionate impediment to the Board's ability to entertain any other potentially superior alternative offer.

61. Plaintiff and the Class have been harmed by these breaches of fiduciary duty, as this transaction is their only chance to capture a control premium. The Data Domain Directors have squandered that chance.

62. Plaintiff and the Class have no adequate remedy at law.

COUNT II

(Claim for Aiding and Abetting Breaches of Fiduciary Duty Against NetApp (which includes Merger Subs))

63. Plaintiffs repeat and reallege each allegation set forth herein.

64. The Data Domain Directors owed to Plaintiff and the members of the Class the utmost loyalty, good faith and due care. As set forth above, the Data Domain Directors breached their fiduciary duties.

65. NetApp aided and abetted the Data Domain Directors in breaching their fiduciary duties owed to the public shareholders of Data Domain, including Plaintiff and the members of the Class.

66. NetApp knew that the Data Domain Directors owed fiduciary duties to Plaintiff and the Class, and was an active and knowing participant in the Data Domain Directors' breaches of those duties. NetApp induced those breaches by offering the Data Domain Directors benefits to the exclusion of Data Domain's public shareholders, such as immediate compensation for restricted stock and options, indemnity and, for certain of the key Data Domain Directors, lucrative positions in the new company.

67. NetApp also knew that when it offered a majority of cash – in effect “cashing out” the majority of Data Domain's shareholders' pre-existing equity, the Data Domain directors would be obligated by their fiduciary duties to maximize the value paid to their shareholders in any deal. NetApp further knew that insisting on matching rights and other deal protections would undermine and impede any effort by the Data Domain directors to comply with their fiduciary duties.

68. NetApp participated in the breach of the fiduciary duties by the Data Domain Directors for the purpose of advancing its own interests. NetApp obtained both direct and indirect benefits from colluding in or aiding and abetting the Data Domain Directors' breaches. NetApp will benefit, *inter alia*, from the acquisition of the Company at a grossly inadequate and unfair price if the Revised Transaction is consummated.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment that provides the following relief:

(a) Preliminarily and permanently enjoining Data Domain and any of the Data Domain Directors and any and all other employees, agents, or representatives of the Company and persons acting in concert with any one or more of any of the foregoing,

during the pendency of this action, from taking any action to consummate the Revised Transaction until such time as the Data Domain Directors have fully complied with their fiduciary duties and taken all readily available steps to maximize shareholder value;

(b) Finding the Data Domain Directors liable for breaching their fiduciary duties to the Class;

(c) Finding NetApp (including the Merger Subs) liable for aiding and abetting breaches of fiduciary duty by the Data Domain Directors;

(d) Awarding the Class compensatory damages, together with pre- and post-judgment interest;

(e) Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

(f) Awarding such other and further relief as is just and equitable.

Dated: June 12, 2009

Mark Lebovitch
Amy Miller
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1285 Avenue of the Americas
New York, New York 10019
(212) 554-1400

/s/ Jay W. Eisenhofer
Jay W. Eisenhofer (Del. I.D. No. 2864)
Cynthia A. Calder (Del. I.D. No. 2978)
GRANT & EISENHOFER P.A.
1201 N. Market St.
Wilmington, DE 19801
(302) 622-7000
(302) 622-7100 (facsimile)

Counsel for Police & Fire Retirement System of the City of Detroit Delaware Counsel for Plaintiff

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

POLICE & FIRE RETIREMENT SYSTEM OF
THE CITY OF DETROIT, on behalf of itself
and all other similarly situated shareholders of
Data Domain, Inc.,

Plaintiff,

v.

RONALD D. BERNAL, ANEEL BHUSRI,
RONALD E.F. CODD, REED E. HUNDT, KAI
LI, JEFFREY A. MILLER, SCOTT SANDELL,
and FRANK SLOOTMAN,

Defendants.

C.A. No.

VERIFICATION

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

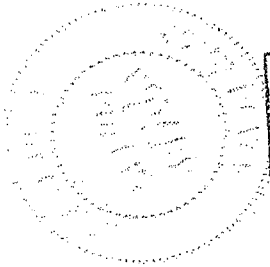
I, Ronald Zajac, General Counsel for Plaintiff the Police and Fire Retirement System of the City of Detroit ("Detroit P&F"), being duly sworn, depose and say that I am authorized to make this verification on behalf of Detroit P&F, that I have read the foregoing Verified Class Action Complaint, and that the factual statements

contained therein are true to the best of my knowledge, information and belief.


RONALD ZAJAC

Sworn to and subscribed before me
this 12 day of June, 2009.


Notary Public



JOHN REYES
NOTARY PUBLIC - MICHIGAN
OAKLAND COUNTY
ACTING IN THE COUNTY OF Wayne
MY COMMISSION EXPIRES OCT. 9, 2013

IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

POLICE & FIRE RETIREMENT SYSTEM OF
THE CITY OF DETROIT, on behalf of itself
and all other similarly situated shareholders of
Data Domain, Inc.,

Plaintiff,

C.A. No. _____

v.

RONALD D. BERNAL, ANEEL BHUSRI,
RONALD E.F. CODD, REED E. HUNDT, KAI
LI, JEFFREY A. MILLER, SCOTT SANDELL,
and FRANK SLOOTMAN,

Defendants.

**AFFIDAVIT OF RONALD ZAJAC IN SUPPORT OF VERIFIED CLASS
ACTION COMPLAINT OF THE POLICE AND FIRE RETIREMENT SYSTEM
OF THE CITY OF DETROIT**

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Ronald Zajac, being duly sworn, does hereby state as follows:

1. My name is Ronald Zajac. I am General Counsel for the Police and Fire Retirement System of the City of Detroit ("Detroit P&F"), plaintiff in the above-captioned class action. I am a resident of Michigan, and am of full legal age. My address is 39436 Village Run, Northville, MI 48168. I make this affidavit in support of the Verified Class Action Complaint Detroit P&F filed in the above-captioned case.

2. I make this affidavit under penalty of perjury.

3. Detroit P&F and I have not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in the above-captioned case, except for (i) such damages or other relief as the Court may award such person or entity as a member of the class, (ii) such fees, costs or other payments as the Court expressly approves to be paid to or on our behalf, or (iii) reimbursement, paid by the Detroit P&F's attorneys, of actual and reasonable out-of-pocket expenditures incurred by Detroit P&F and me directly in connection with the prosecution of the action.



RONALD ZAJAC

SWORN TO AND SUBSCRIBED
BEFORE ME this 12 day of June, 2009.



Notary Public

JOHN REYES
NOTARY PUBLIC - MICHIGAN
OAKLAND COUNTY
ACTING IN THE COUNTY OF Wayne
MY COMMISSION EXPIRES OCT. 9, 2013