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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

\_\_\_\_\_, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

VMWARE, INC., PATRICK P.  
GELSINGER, and ZANE ROWE,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

1 Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all other persons  
2 similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against  
3 Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s  
4 own acts, and information and belief as to all other matters, based upon, *inter alia*, the  
5 investigation conducted by and through Plaintiff’s attorneys, which included, among other things,  
6 a review of the Defendants’ public documents, conference calls and announcements made by  
7 Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and  
8 press releases published by and regarding VMware, Inc. (“VMware” or the “Company”),  
9 analysts’ reports and advisories about the Company, and information readily obtainable on  
10 the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations  
11 set forth herein after a reasonable opportunity for discovery.  
12

13  
14 **NATURE OF THE ACTION**

15 1. This is a federal securities class action on behalf of a class consisting of all persons  
16 other than Defendants who purchased or otherwise acquired VMware securities between March  
17 30, 2019 and February 27, 2020, both dates inclusive (the “Class Period”), seeking to recover  
18 damages caused by Defendants’ violations of the federal securities laws and to pursue remedies  
19 under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and  
20 Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.  
21

22 2. VMware was incorporated in 1998 and is headquartered in Palo Alto, California.  
23 The Company provides software in the areas of hybrid cloud, multi-cloud, modern applications,  
24 networking and security, and digital workspaces in the United States and internationally, and sells  
25 its products through distributors, resellers, system vendors, and systems integrators.

26 3. Throughout the Class Period, Defendants made materially false and misleading  
27 statements regarding the Company’s business, operations and compliance policies. Specifically,  
28

1 Defendants made false and/or misleading statements and/or failed to disclose that: (i) VMware’s  
2 reporting with respect to its backlog of unfilled orders was not in compliance with all relevant  
3 accounting and disclosure requirements; (ii) the foregoing subjected the Company to a foreseeable  
4 risk of heightened regulatory scrutiny and/or investigation; and (iii) as a result, the Company’s  
5 public statements were materially false and misleading at all relevant times.

6  
7 4. On February 27, 2020, during after-market hours, and the same day that VMware  
8 announced its fourth quarter and fiscal year 2020 financial results, Defendants filed a Current  
9 Report on Form 8-K with the SEC, disclosing an SEC investigation into the Company’s backlog  
10 of unfilled orders. Specifically, that Form 8-K advised investors that, “[i]n December 2019, the  
11 staff of the Enforcement Division of the [SEC] requested documents and information related to  
12 VMware’s backlog and associated accounting and disclosures.” The Form 8-K also advised  
13 investors that, although “VMware is fully cooperating with the SEC’s investigation,” it was  
14 “unable to predict the outcome of this matter at this time.”  
15

16 5. On this news, VMware’s stock price fell \$15.11 per share, or 11.14%, to close at  
17 \$120.52 per share on February 28, 2020.

18 6. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline  
19 in the market value of the Company’s securities, Plaintiff and other Class members have suffered  
20 significant losses and damages.  
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## 22 **JURISDICTION AND VENUE**

23 7. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of  
24 the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the  
25 SEC (17 C.F.R. § 240.10b-5).

26 8. This Court has jurisdiction over the subject matter of this action pursuant to 28  
27 U.S.C. § 1331 and Section 27 of the Exchange Act.  
28

1 9. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act  
2 (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). VMware is headquartered in this Judicial District,  
3 Defendants conduct business in this Judicial District, and a significant portion of Defendants’  
4 activities took place within this Judicial District.

5 10. In connection with the acts alleged in this complaint, Defendants, directly or  
6 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited  
7 to, the mails, interstate telephone communications, and the facilities of the national securities  
8 markets.

9  
10 **PARTIES**

11 11. Plaintiff, as set forth in the attached Certification, acquired VMware securities at  
12 artificially inflated prices during the Class Period and was damaged upon the revelation of the  
13 alleged corrective disclosures.

14 12. Defendant VMware is a Delaware corporation with principal executive offices  
15 located at 3401 Hillview Avenue, Palo Alto, California 94304. VMware’s securities trade in an  
16 efficient market on New York Stock Exchange (“NYSE”) under the ticker symbol “VMW.”

17 13. Defendant Patrick P. Gelsinger (“Gelsinger”) has served as VMware’s Chief  
18 Executive Officer at all relevant times.

19 14. Defendant Zane Rowe (“Rowe”) has served as VMware’s Chief Financial Officer  
20 and Executive Vice President at all relevant times.

21 15. Defendants Gelsinger and Rowe are sometimes referred to herein as the “Individual  
22 Defendants.”

23 16. The Individual Defendants possessed the power and authority to control the  
24 contents of VMware’s SEC filings, press releases, and other market communications. The  
25 Individual Defendants were provided with copies of VMware’s SEC filings and press releases  
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1 alleged herein to be misleading prior to or shortly after their issuance and had the ability and  
2 opportunity to prevent their issuance or to cause them to be corrected. Because of their positions  
3 with VMware, and their access to material information available to them but not to the public, the  
4 Individual Defendants knew that the adverse facts specified herein had not been disclosed to and  
5 were being concealed from the public, and that the positive representations being made were then  
6 materially false and misleading. The Individual Defendants are liable for the false statements and  
7 omissions pleaded herein.  
8

9 17. VMware and the Individual Defendants are sometimes collectively referred to  
10 herein as “Defendants.”

## 11 **SUBSTANTIVE ALLEGATIONS**

### 12 **Background**

13 18. VMware was incorporated in 1998 and is headquartered in Palo Alto, California.  
14 The Company provides software in the areas of hybrid cloud, multi-cloud, modern applications,  
15 networking and security, and digital workspaces in the United States and internationally, and sells  
16 its products through distributors, resellers, system vendors, and systems integrators.  
17

### 18 **Materially False and Misleading Statements Issued During the Class Period**

19 19. The Class Period begins on March 30, 2019. On March 29, 2019, during after-  
20 market hours, VMware filed an Annual Report on Form 10-K with the SEC, reporting the  
21 Company’s financial and operating results for the quarter and fiscal year ended February 1, 2019  
22 (the “2019 10-K”). With respect to the Company’s backlog, the 2019 10-K reported that “[a]s of  
23 February 1, 2019, our total backlog was \$449 million”; that “backlog related to licenses was \$147  
24 million, which we generally expect to deliver and recognize as revenue during the following  
25 quarter”; that “[b]acklog totaling \$34 million as of February 1, 2019 is excluded from the  
26 remaining performance obligations because such contracts are subject to cancellation until  
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1 fulfillment of the performance obligation occurs”; and that, “[a]s of February 2, 2018, our total  
2 backlog was approximately \$285 million and our backlog related to licenses was approximately  
3 \$99 million.”

4           20. With respect to VMware’s methodology for, and description of, its backlog, the  
5 2019 10-K represented that “[b]acklog is comprised of unfulfilled purchase orders or unfulfilled  
6 executed agreements at the end of a given period and is net of related estimated rebates and  
7 marketing development funds”; that “[b]acklog primarily consists of licenses, maintenance and  
8 services”; that “[t]he amount and composition of backlog will fluctuate period to period, and  
9 backlog is managed based upon multiple considerations, including product and geography”; and  
10 that Defendants “do not believe the amount of backlog is indicative of future sales or revenue or  
11 that the mix of backlog at the end of any given period correlates with actual sales performance of  
12 a particular geography or particular products and services.”

13           21. With respect to VMware’s disclosure controls and procedures and internal control  
14 over financial reporting, the 2019 10-K represented that “as of the end of the period covered by  
15 this report, our disclosure controls and procedures were effective”; that, “as of February 1, 2019,  
16 our internal control over financial reporting was effective in providing reasonable assurance  
17 regarding the reliability of financial reporting and the preparation of financial statements for  
18 external purposes in accordance with generally accepted accounting principles”; and that “[t]here  
19 were no changes in our internal control over financial reporting during the most recent fiscal  
20 quarter ended February 1, 2019 that materially affected, or are reasonably likely to materially  
21 affect, our internal control over financial reporting.”

22           22. In addition to these assertions regarding the effectiveness of VMware’s controls  
23 and procedures and internal control over financial reporting, the 2019 10-K also contained generic,  
24 boilerplate representations that “[m]anagement does not expect . . . that our disclosure controls and  
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1 procedures or our internal control over financial reporting will prevent or detect all errors and  
2 fraud”; that “[a]ny control system, no matter how well designed and operated, is based upon certain  
3 assumptions and can provide only reasonable, not absolute, assurance that its objectives will be  
4 met”; and that “no evaluation of controls can provide absolute assurance that misstatements due  
5 to error or fraud will not occur or that all control issues and instances of fraud, if any, within the  
6 Company have been detected.” Plainly, these risk warnings were generic “catch-all” provisions  
7 that were not tailored to VMware’s actual known risks of noncompliance with its backlog reporting  
8 requirements.  
9

10 23. Appended as exhibits to the 2019 10-K were signed certifications pursuant to the  
11 Sarbanes-Oxley Act of 2002 (“SOX”), wherein the Individual Defendants certified that the 2019  
12 10-K “fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange  
13 Act of 1934 and the information contained in such [2019 10-K] fairly presents, in all material  
14 respects, the financial condition and results of operations of VMware, Inc.”  
15

16 24. On June 10, 2019, VMware filed a Quarterly Report on Form 10-Q with the SEC,  
17 reporting the Company’s financial and operating results for the quarter ended May 3, 2019 (the  
18 “1Q20 10-Q”). With respect to VMware’s backlog, the 1Q20 10-Q reported that “[a]s of May 3,  
19 2019, our total backlog was \$180 million”; that “backlog related to licenses was \$48 million, which  
20 we generally expect to deliver and recognize as revenue during the following quarter”; that  
21 “[b]acklog totaling \$17 million as of May 3, 2019 was excluded from the remaining performance  
22 obligations because such contracts are subject to cancellation until fulfillment of the performance  
23 obligation occurs”; that “[a]s of February 1, 2019, our total backlog was approximately \$449  
24 million and our backlog related to licenses was approximately \$147 million”; and that “[b]acklog  
25 totaling \$34 million as of February 1, 2019 was excluded from the remaining performance  
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1 obligations because such contracts are subject to cancellation until fulfillment of the performance  
2 obligation occurs.”

3 25. Additionally, the 1Q20 10-Q contained representations substantively identical to  
4 those referenced in ¶¶ 20-23, *supra*, concerning VMware’s methodology for, and description of,  
5 its backlog; the effectiveness of VMware’s disclosure controls and procedures; generic risk  
6 warnings about the Company’s disclosure controls and procedures and internal control over  
7 financial reporting; and SOX certifications signed by the Individual Defendants.

8 26. Finally, although the 1Q20 10-Q acknowledged that “[d]uring the first quarter of  
9 fiscal 2020, we completed the implementation of a new lease accounting software and related  
10 controls to enable us to adopt Topic 842, Leases,” the 1Q20 10-Q nonetheless assured investors  
11 that “[t]here were no other changes in our internal control over financial reporting during the most  
12 recent fiscal quarter ended May 3, 2019 that materially affected, or are reasonably likely to  
13 materially affect, our internal control over financial reporting.”

14 27. On September 9, 2019, VMware filed a Quarterly Report on Form 10-Q with the  
15 SEC, reporting the Company’s financial and operating results for the quarter ended August 2, 2019  
16 (the “2Q20 10-Q”). With respect to VMware’s backlog, the 2Q20 10-Q reported that, “[a]s of  
17 August 2, 2019, our total backlog was \$117 million”; that “backlog related to licenses was \$13  
18 million, which we generally expect to deliver and recognize as revenue during the following  
19 quarter”; that “[b]acklog totaling \$9 million as of August 2, 2019 was excluded from the remaining  
20 performance obligations because such contracts are subject to cancellation until fulfillment of the  
21 performance obligation occurs”; that, “[a]s of February 1, 2019, our total backlog was  
22 approximately \$449 million and our backlog related to licenses was approximately \$147 million”;  
23 and that “[b]acklog totaling \$34 million as of February 1, 2019 was excluded from the remaining  
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1 performance obligations because such contracts are subject to cancellation until fulfillment of the  
2 performance obligation occurs.”

3 28. Additionally, the 2Q20 10-Q contained representations substantively identical to  
4 those referenced in ¶¶ 20-23, *supra*, concerning VMware’s methodology for, and description of,  
5 its backlog; the effectiveness of VMware’s disclosure controls and procedures, and the lack of any  
6 changes in its internal control over financial reporting that materially affected, or are reasonably  
7 likely to materially affect, such reporting; generic risk warnings about the Company’s disclosure  
8 controls and procedures and internal control over financial reporting; and SOX certifications  
9 signed by the Individual Defendants.  
10

11 29. On December 6, 2019, VMware filed a Quarterly Report on Form 10-Q with the  
12 SEC, reporting the Company’s financial and operating results for the quarter ended November 1,  
13 2019 (the “3Q20 10-Q”). With respect to VMware’s backlog, the 3Q20 10-Q reported that “[a]s  
14 of November 1, 2019, our total backlog was \$71 million”; that “backlog related to licenses was  
15 \$33 million, which we generally expect to deliver and recognize as revenue during the following  
16 quarter”; that “[b]acklog totaling \$10 million as of November 1, 2019 was excluded from the  
17 remaining performance obligations because such contracts are subject to cancellation until  
18 fulfillment of the performance obligation occurs”; that “[a]s of February 1, 2019, our total backlog  
19 was approximately \$449 million and our backlog related to licenses was approximately \$147  
20 million”; and that “[b]acklog totaling \$34 million as of February 1, 2019 was excluded from the  
21 remaining performance obligations because such contracts are subject to cancellation until  
22 fulfillment of the performance obligation occurs.”  
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25 30. Additionally, the 3Q20 10-Q contained representations substantively identical to  
26 those referenced in ¶¶ 20-23, *supra*, concerning VMware’s methodology for, and description of,  
27 its backlog; the effectiveness of VMware’s disclosure controls and procedures, and the lack of any  
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1 changes in its internal control over financial reporting that materially affected, or are reasonably  
2 likely to materially affect, such reporting; generic risk warnings about the Company's disclosure  
3 controls and procedures and internal control over financial reporting; and SOX certifications  
4 signed by the Individual Defendants.

5  
6 31. The statements referenced in ¶¶ 19-30 were materially false and misleading because  
7 Defendants made false and/or misleading statements, as well as failed to disclose material adverse  
8 facts about the Company's business, operational and compliance policies. Specifically,  
9 Defendants made false and/or misleading statements and/or failed to disclose that: (i) VMware's  
10 reporting with respect to its backlog of unfilled orders was not in compliance with all relevant  
11 accounting and disclosure requirements; (ii) the foregoing subjected the Company to a foreseeable  
12 risk of heightened regulatory scrutiny and/or investigation; and (iii) as a result, the Company's  
13 public statements were materially false and misleading at all relevant times.  
14

### 15 **The Truth Begins to Emerge**

16 32. On February 27, 2020, during after-market hours, VMWare filed a Current Report  
17 on Form 8-K with the SEC, disclosing an SEC investigation into the Company's backlog of  
18 unfilled orders. Specifically, that Form 8-K advised investors that "[i]n December 2019, the staff  
19 of the Enforcement Division of the [SEC] requested documents and information related to  
20 VMware's backlog and associated accounting and disclosures." The Form 8-K also advised  
21 investors that, although "VMware is fully cooperating with the SEC's investigation," it was  
22 "unable to predict the outcome of this matter at this time."  
23

24 33. On this news, VMware's stock price fell \$15.11 per share, or 11.14%, to close at  
25 \$120.52 per share on February 28, 2020.  
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1           34.     As a result of Defendants' wrongful acts and omissions, and the precipitous decline  
2 in the market value of the Company's securities, Plaintiff and other Class members have suffered  
3 significant losses and damages.

4                                 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

5           35.     Plaintiff brings this action as a class action pursuant to Federal Rule of Civil  
6 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise  
7 acquired VMware securities during the Class Period (the "Class"); and were damaged upon the  
8 revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein,  
9 the officers and directors of the Company, at all relevant times, members of their immediate  
10 families and their legal representatives, heirs, successors or assigns and any entity in which  
11 Defendants have or had a controlling interest.

12           36.     The members of the Class are so numerous that joinder of all members is  
13 impracticable. Throughout the Class Period, VMware securities were actively traded on the  
14 NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be  
15 ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or  
16 thousands of members in the proposed Class. Record owners and other members of the Class may  
17 be identified from records maintained by VMware or its transfer agent and may be notified of the  
18 pendency of this action by mail, using the form of notice similar to that customarily used in  
19 securities class actions.

20           37.     Plaintiff's claims are typical of the claims of the members of the Class as all  
21 members of the Class are similarly affected by Defendants' wrongful conduct in violation of  
22 federal law that is complained of herein.

1           38. Plaintiff will fairly and adequately protect the interests of the members of the Class  
2 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has  
3 no interests antagonistic to or in conflict with those of the Class.

4           39. Common questions of law and fact exist as to all members of the Class and  
5 predominate over any questions solely affecting individual members of the Class. Among the  
6 questions of law and fact common to the Class are:  
7

- 8           • whether the federal securities laws were violated by Defendants' acts as alleged  
9 herein;
- 10           • whether statements made by Defendants to the investing public during the Class  
11 Period misrepresented material facts about the business, operations and  
12 management of VMware;
- 13           • whether the Individual Defendants caused VMware to issue false and misleading  
14 financial statements during the Class Period;
- 15           • whether Defendants acted knowingly or recklessly in issuing false and misleading  
16 financial statements;
- 17           • whether the prices of VMware securities during the Class Period were artificially  
18 inflated because of the Defendants' conduct complained of herein; and
- 19           • whether the members of the Class have sustained damages and, if so, what is the  
20 proper measure of damages.

21           40. A class action is superior to all other available methods for the fair and efficient  
22 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
23 damages suffered by individual Class members may be relatively small, the expense and burden  
24 of individual litigation make it impossible for members of the Class to individually redress the  
25 wrongs done to them. There will be no difficulty in the management of this action as a class action.

26           41. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-  
27 on-the-market doctrine in that:  
28

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

- 1 • the omissions and misrepresentations were material;
- 2 • VMware securities are traded in an efficient market;
- 3 • the Company's shares were liquid and traded with moderate to heavy volume
- 4 during the Class Period;
- 5 • the Company traded on the NYSE and was covered by multiple analysts;
- 6 • the misrepresentations and omissions alleged would tend to induce a reasonable
- 7 investor to misjudge the value of the Company's securities; and
- 8 • Plaintiff and members of the Class purchased, acquired and/or sold VMware
- 9 securities between the time the Defendants failed to disclose or misrepresented
- 10 material facts and the time the true facts were disclosed, without knowledge of
- the omitted or misrepresented facts.

11 42. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a  
12 presumption of reliance upon the integrity of the market.

13 43. Alternatively, Plaintiff and the members of the Class are entitled to the presumption  
14 of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v.*  
15 *United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in  
16 their Class Period statements in violation of a duty to disclose such information, as detailed above.  
17

### 18 **COUNT I**

#### 19 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder** 20 **Against All Defendants)**

21 44. Plaintiff repeats and re-alleges each and every allegation contained above as if fully  
22 set forth herein.

23 45. This Count is asserted against Defendants and is based upon Section 10(b) of the  
24 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

25 46. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and  
26 course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions,  
27 practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other  
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1 members of the Class; made various untrue statements of material facts and omitted to state  
2 material facts necessary in order to make the statements made, in light of the circumstances under  
3 which they were made, not misleading; and employed devices, schemes and artifices to defraud in  
4 connection with the purchase and sale of securities. Such scheme was intended to, and, throughout  
5 the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members,  
6 as alleged herein; (ii) artificially inflate and maintain the market price of VMware securities; and  
7 (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire VMware  
8 securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan  
9 and course of conduct, Defendants, and each of them, took the actions set forth herein.

11           47. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the  
12 Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly  
13 and annual reports, SEC filings, press releases and other statements and documents described  
14 above, including statements made to securities analysts and the media that were designed to  
15 influence the market for VMware securities. Such reports, filings, releases and statements were  
16 materially false and misleading in that they failed to disclose material adverse information and  
17 misrepresented the truth about VMware's finances and business prospects.

19           48. By virtue of their positions at VMware, Defendants had actual knowledge of the  
20 materially false and misleading statements and material omissions alleged herein and intended  
21 thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants  
22 acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose  
23 such facts as would reveal the materially false and misleading nature of the statements made,  
24 although such facts were readily available to Defendants. Said acts and omissions of Defendants  
25 were committed willfully or with reckless disregard for the truth. In addition, each Defendant  
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1 knew or recklessly disregarded that material facts were being misrepresented or omitted as  
2 described above.

3 49. Information showing that Defendants acted knowingly or with reckless disregard  
4 for the truth is peculiarly within Defendants' knowledge and control. As the senior managers  
5 and/or directors of VMware, the Individual Defendants had knowledge of the details of VMware's  
6 internal affairs.  
7

8 50. The Individual Defendants are liable both directly and indirectly for the wrongs  
9 complained of herein. Because of their positions of control and authority, the Individual  
10 Defendants were able to and did, directly or indirectly, control the content of the statements of  
11 VMware. As officers and/or directors of a publicly-held company, the Individual Defendants had  
12 a duty to disseminate timely, accurate, and truthful information with respect to VMware's  
13 businesses, operations, future financial condition and future prospects. As a result of the  
14 dissemination of the aforementioned false and misleading reports, releases and public statements,  
15 the market price of VMware securities was artificially inflated throughout the Class Period. In  
16 ignorance of the adverse facts concerning VMware's business and financial condition which were  
17 concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise  
18 acquired VMware securities at artificially inflated prices and relied upon the price of the securities,  
19 the integrity of the market for the securities and/or upon statements disseminated by Defendants,  
20 and were damaged thereby.  
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22

23 51. During the Class Period, VMware securities were traded on an active and efficient  
24 market. Plaintiff and the other members of the Class, relying on the materially false and misleading  
25 statements described herein, which the Defendants made, issued or caused to be disseminated, or  
26 relying upon the integrity of the market, purchased or otherwise acquired shares of VMware  
27 securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the  
28

1 other members of the Class known the truth, they would not have purchased or otherwise acquired  
2 said securities, or would not have purchased or otherwise acquired them at the inflated prices that  
3 were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true  
4 value of VMware securities was substantially lower than the prices paid by Plaintiff and the other  
5 members of the Class. The market price of VMware securities declined sharply upon public  
6 disclosure of the facts alleged herein to the injury of Plaintiff and Class members.  
7

8 52. By reason of the conduct alleged herein, Defendants knowingly or recklessly,  
9 directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5  
10 promulgated thereunder.

11 53. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the  
12 other members of the Class suffered damages in connection with their respective purchases,  
13 acquisitions and sales of the Company's securities during the Class Period, upon the disclosure  
14 that the Company had been disseminating misrepresented financial statements to the investing  
15 public.  
16

## 17 **COUNT II**

### 18 **(Violations of Section 20(a) of the Exchange Act Against The Individual Defendants**

19 54. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing  
20 paragraphs as if fully set forth herein.  
21

22 55. During the Class Period, the Individual Defendants participated in the operation  
23 and management of VMware, and conducted and participated, directly and indirectly, in the  
24 conduct of VMware's business affairs. Because of their senior positions, they knew the adverse  
25 non-public information about VMware's misstatement of income and expenses and false financial  
26 statements.  
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1 56. As officers and/or directors of a publicly owned company, the Individual  
2 Defendants had a duty to disseminate accurate and truthful information with respect to VMware's  
3 financial condition and results of operations, and to correct promptly any public statements issued  
4 by VMware which had become materially false or misleading.

5 57. Because of their positions of control and authority as senior officers, the Individual  
6 Defendants were able to, and did, control the contents of the various reports, press releases and  
7 public filings which VMware disseminated in the marketplace during the Class Period concerning  
8 VMware's results of operations. Throughout the Class Period, the Individual Defendants  
9 exercised their power and authority to cause VMware to engage in the wrongful acts complained  
10 of herein. The Individual Defendants therefore, were "controlling persons" of VMware within the  
11 meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful  
12 conduct alleged which artificially inflated the market price of VMware securities.

13 58. Each of the Individual Defendants, therefore, acted as a controlling person of  
14 VMware. By reason of their senior management positions and/or being directors of VMware, each  
15 of the Individual Defendants had the power to direct the actions of, and exercised the same to  
16 cause, VMware to engage in the unlawful acts and conduct complained of herein. Each of the  
17 Individual Defendants exercised control over the general operations of VMware and possessed the  
18 power to control the specific activities which comprise the primary violations about which Plaintiff  
19 and the other members of the Class complain.

20 59. By reason of the above conduct, the Individual Defendants are liable pursuant to  
21 Section 20(a) of the Exchange Act for the violations committed by VMware.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:  
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1 A. Determining that the instant action may be maintained as a class action under Rule  
2 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

3 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason  
4 of the acts and transactions alleged herein;

5 C. Awarding Plaintiff and the other members of the Class prejudgment and post-  
6 judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and  
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8 D. Awarding such other and further relief as this Court may deem just and proper.

9 **DEMAND FOR TRIAL BY JURY**

10 Plaintiff hereby demands a trial by jury.  
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