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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 THE VLADIMIR GUSINSKY REV. TRUST,
Individually and On Behalf of All Others
11 Similarly Situated,

12 Plaintiff,

13 v.

14 JIVE SOFTWARE, INC., TONY ZINGALE,
ELISA STEELE, MARGARET BREYA,
15 STEVE DARCY, ROBERT FRANKFURT,
PHIL KOEN, TOM REILLY, CHUCK
16 ROBEL, GABRIELLE TOLEDANO, BALAJI
YELAMANCHILI, AUREA, INC., ESW
17 CAPITAL, LLC, WAVE SYSTEMS CORP.,
and JAZZ MERGERSUB, INC.,

18 Defendants.
19

Case No. 5:17-cv-02836

CLASS ACTION

**COMPLAINT FOR VIOLATION OF
THE SECURITIES EXCHANGE ACT
OF 1934**

JURY TRIAL DEMANDED

20
21 Plaintiff, by and through its attorneys, alleges upon personal knowledge as to itself, and
22 upon information and belief based upon, among other things, the investigation of counsel as to
23 all other allegations herein, as follows:

24 **SUMMARY OF THE ACTION**

25 1. This action stems from a proposed transaction announced on May 1, 2017 (the
26 “Proposed Transaction”), pursuant to which Jive Software, Inc. (“Jive” or the “Company”) will
27 be acquired by affiliates of Aurea, Inc. and ESW Capital, LLC.
28

1 offices at 300 Orchard City Drive, Suite 100, Campbell, California 95008. Jive’s common stock
2 is traded on the Nasdaq GS under the ticker symbol “JIVE.”

3 10. Defendant Tony Zingale (“Zingale”) is a director and Chairman of the Board of
4 Jive.

5 11. Defendant Elisa Steele (“Steele”) is a director of Jive and has served as Chief
6 Executive Officer (“CEO”) since February 2015.

7 12. Defendant Margaret Brea (“Brea”) is a director of Jive. According to the
8 Company’s website, Brea is a member of the Audit Committee.

9 13. Defendant Steve Darcy (“Darcy”) is a director of Jive. According to the
10 Company’s website, Darcy is a member of the Audit Committee.

11 14. Defendant Robert Frankfurt (“Frankfurt”) has served as a director of Jive since
12 March 2017.

13 15. Defendant Phil Koen (“Koen”) is a director of Jive. According to the Company’s
14 website, Koen is a member of the Compensation Committee and the Nominating and
15 Governance Committee.

16 16. Defendant Tom Reilly (“Reilly”) is a director of Jive. According to the
17 Company’s website, Reilly is a member of the Compensation Committee.

18 17. Defendant Chuck Robel (“Robel”) is a director of Jive. According to the
19 Company’s website, Robel is Chair of the Audit Committee and Chair of the Nominating and
20 Governance Committee.

21 18. Defendant Gabrielle Toledano (“Toledano”) has served as a director of Jive since
22 November 2015. According to the Company’s website, Toledano is Chair of the Compensation
23 Committee and a member of the Nominating and Governance Committee.

24 19. Defendant Balaji Yelamanchili (“Yelamanchili”) has served as a director of Jive
25 since August 2016.

26 20. The defendants identified in paragraphs 9 through 18 are collectively referred to
27 herein as the “Individual Defendants.”

28 21. Defendant Aurea, Inc. acquires software companies.

1 22. Defendant ESW Capital, LLC is a Delaware limited liability company and the
2 parent company of Wave Systems Corp.

3 23. Defendant Wave Systems Corp. is a Delaware corporation, an affiliate of ESW
4 Capital, LLC, and a party to the Merger Agreement.

5 24. Defendant Jazz MergerSub, Inc. is a Delaware corporation, a wholly-owned
6 subsidiary of Parent, and a party to the Merger Agreement.

7 **CLASS ACTION ALLEGATIONS**

8 25. Plaintiff brings this action as a class action on behalf of itself and the other public
9 stockholders of Jive (the “Class”). Excluded from the Class are defendants herein and any
10 person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

11 26. This action is properly maintainable as a class action.

12 27. The Class is so numerous that joinder of all members is impracticable. As of
13 April 26, 2017, there were approximately 79,215,615 shares of Jive common stock outstanding,
14 held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

15 28. Questions of law and fact are common to the Class, including, among others,
16 whether defendants will irreparably harm plaintiff and the other members of the Class if
17 defendants’ conduct complained of herein continues.

18 29. Plaintiff is committed to prosecuting this action and has retained competent
19 counsel experienced in litigation of this nature. Plaintiff’s claims are typical of the claims of the
20 other members of the Class and plaintiff has the same interests as the other members of the
21 Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and
22 adequately protect the interests of the Class.

23 30. The prosecution of separate actions by individual members of the Class would
24 create the risk of inconsistent or varying adjudications that would establish incompatible
25 standards of conduct for defendants, or adjudications that would, as a practical matter, be
26 dispositive of the interests of individual members of the Class who are not parties to the
27 adjudications or would substantially impair or impede those non-party Class members’ ability to
28 protect their interests.

1 31. Defendants have acted, or refused to act, on grounds generally applicable to the
2 Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on
3 behalf of the Class is appropriate.

4 **SUBSTANTIVE ALLEGATIONS**

5 ***Background of the Company and the Proposed Transaction***

6 32. Jive is the leader in accelerating workplace digital transformation for
7 organizations.

8 33. The Company provides industry-leading Interactive Intranet and Customer
9 Community solutions that connect people, information, and ideas to help businesses outpace
10 their competitors.

11 34. With more than 30 million users worldwide and customers in virtually every
12 industry, Jive is consistently recognized as a leader by analyst firms, including Gartner Inc.,
13 Ovum, and Aragon Research.

14 35. On February 7, 2017, the Company issued a press release wherein it reported its
15 financial results for its fourth quarter and year ended December 31, 2016.

16 36. For the fourth quarter, the Company reported that total revenue was \$51.7 million,
17 which was an all-time quarterly record and represented an increase of 3% on a year-over-year
18 basis. Within total revenue, product revenue was \$47.6 million for the fourth quarter, an
19 increase of 2% on a year-over-year basis. Professional services revenue for the fourth quarter
20 was \$4.1 million, an increase of 14% on a year-over-year basis. GAAP gross profit for the
21 fourth quarter was \$36.1 million compared to \$31.5 million for the fourth quarter of 2015. Non-
22 GAAP gross profit was \$37.0 million for the fourth quarter, an increase of 12% year-over-
23 year. GAAP income from operations for the fourth quarter was \$0.6 million, compared to a
24 GAAP loss from operations of \$7.6 million for the fourth quarter of 2015. Non-GAAP income
25 from operations was \$5.1 million for the fourth quarter, compared to a non-GAAP loss from
26 operations of \$2.9 million for the fourth quarter of 2015. GAAP net income for the fourth
27 quarter was \$0.9 million, compared to a GAAP net loss of \$8.5 million for the same period last
28 year. GAAP net income per diluted share for the fourth quarter was \$0.01, compared to a GAAP

1 net loss per diluted share of \$0.11 for the same period last year. Non-GAAP net income for the
2 fourth quarter was \$5.4 million, compared to a non-GAAP net loss of \$3.9 million for the same
3 period last year. Non-GAAP net income per diluted share for the fourth quarter was \$0.07,
4 compared to a non-GAAP net loss per diluted share of \$0.05, for the same period last year.

5 37. For the full year 2016, the Company reported that total revenue was
6 \$204.1 million, which was an all-time annual record and an increase of 4% on a year-over-year
7 basis. Product revenue was \$187.3 million for 2016, an increase of 4% on a year-over-year
8 basis. Professional services revenue for 2016 was \$16.8 million, an increase of 7% on a year-
9 over-year basis. GAAP gross profit was \$136.7 million for 2016 compared to \$123.6 million for
10 2015. Non-GAAP gross profit was \$141.2 million for 2016 representing a year-over-year
11 increase of 8%. Non-GAAP income from operations was \$8.5 million for 2016, compared to a
12 non-GAAP loss from operations of \$9.4 million for 2015. Non-GAAP net income for 2016 was
13 \$8.3 million, compared to non-GAAP net loss of \$10.8 million for 2015. Non-GAAP net
14 income per diluted share for 2016 was \$0.10, compared to a non-GAAP net loss per diluted share
15 of \$0.14 for 2015.

16 38. Jive also reported a number of business highlights from 2016 in the February 7,
17 2017 press release. For example, the Company achieved new customer wins with Canadian
18 Imperial Bank of Commerce, Carlson Wagonlit Travel, Dialog Semiconductor, Electric Paper
19 Evaluationssysteme GmbH, Elementis Global, Hospice of The Bluegrass, Inc., Iberley, Massage
20 Envy Franchising, LLC, New Era Cap Company, Pax8, PubMatic, Inc., Seattle Mariners, and
21 State Compensation Insurance Fund, among others. Jive also expanded or renewed customer
22 relationships with Akamai Technologies, Athenahealth, Inc., Cerner Corporation, Ciena
23 Corporation, Comcast, Cypress Semiconductor Corporation, Fidelity Investments, GAP, Harvard
24 Pilgrim Healthcare, Hitachi Data Systems Corp., Humana, Informatica, Inland Empire Health
25 Plan, Intarcia Therapeutics, Intel Security, IQNavigator, KIABI, lululemon athletica inc.,
26 MedAmerica, Mentor Graphics, Nokia Siemens Network, ServiceNow, Skechers U.S.A., Inc.,
27 Spectrum Health, StMicroelectronics, Sunrun, Telus Communications, VeriSign, Inc.,
28 Vimpelcom Eurasia, Virgin Media Limited, and Zebra Technologies, among others.

1 39. The Company also reported that it is transitioning its cloud infrastructure to
2 Amazon Web Services (“AWS”), which will enable the Company to take its cloud capabilities to
3 the next level at a lower cost.

4 40. Further, Jive was ranked as a Leader in The Forrester WaveTM: Enterprise
5 Collaboration, Q4 2016 report, which analyzed the state of the market and evaluated nine of the
6 most significant vendors. One of four Leaders in this evaluation, Jive received the highest
7 possible score in the “innovation and market approach” criterion.

8 41. Moreover, Jive was ranked as a Leader in Ovum’s Employee Engagement,
9 Collaboration and Productivity Report. Ovum, a leading global technology research and
10 advisory firm, evaluated several vendors for the report and recognized the Jive Interactive
11 Intranet solution for its extensive range of business and IT management features, as well as the
12 product’s overall market impact.

13 42. With respect to the results, Individual Defendant Steele commented:

14 Strong execution resulted in another quarter that exceeded our expectations as we
15 achieved record revenue, continued to improve profitability, increased cash flow
16 from operations and gained momentum across the business[.] GAAP income from
17 operations for the fourth quarter was \$0.6 million, an increase of \$8.2 million
18 compared to one year ago. Non-GAAP operating income was \$5.1 million, and
represents the third quarter in a row that we have delivered on our commitment to
operate within a sustainably profitable non-GAAP operating model. In addition,
we generated \$9.8 million in positive cash flow from operations compared to
negative \$4.2 million in the fourth quarter last year.

19 Based on the transformation work we did in 2016 to realign the company, we are
20 strategically poised for success as we enter 2017. We have made great strides in
21 our operational excellence initiatives, and have positioned Jive’s unique value
22 proposition in the market to solve the growing problems of digital fragmentation
23 across the enterprise workplace. We have stabilized the business, and we are
vigorously building the foundation for future growth while maintaining a
disciplined cost structure. We are confident that we are doing all the right things
to generate increased demand for our products, as well as drive long-term value
for both customers and shareholders.

24 43. Nevertheless, the Board caused the Company to enter into the Merger Agreement,
25 pursuant to which Jive will be acquired for inadequate consideration.

26 44. The Individual Defendants have all but ensured that another entity will not
27 emerge with a competing proposal by agreeing to a “no solicitation” provision in the Merger
28 Agreement that prohibits the Individual Defendants from soliciting alternative proposals and

1 severely constrains their ability to communicate and negotiate with potential buyers who wish to
2 submit or have submitted unsolicited alternative proposals. Sections 5.2(a) and (b) of the Merger
3 Agreement state:

4 (a) The Company and its Subsidiaries shall (i) immediately cease any and all
5 existing discussions or negotiations with any Persons conducted heretofore with
6 respect to any Acquisition Proposal, and (ii) request, to the extent permitted by
7 any confidentiality agreement executed in connection with a potential Acquisition
8 Transaction, that any Persons who have received from the Company or any of its
9 Subsidiaries or any of its Representatives any confidential information in
connection with a potential Acquisition Transaction that such Persons promptly
return or destroy any such confidential information in accordance with the terms
of any such confidentiality agreement.

10 (b) Subject to Section 5.2(c), at all times during the period commencing with the
11 execution and delivery of this Agreement and continuing until the earlier to occur
12 of the termination of this Agreement pursuant to Article VII and the Effective
13 Time, the Company and its Subsidiaries shall not, nor shall they authorize or
14 knowingly permit any of their respective directors, officers or other employees,
15 controlled affiliates, or any investment banker, attorney or other authorized agent
16 or representative retained by any of them (collectively, "Representatives") to,
17 directly or indirectly, (i) solicit, initiate or knowingly induce the making,
18 submission or announcement of, or knowingly encourage, facilitate or assist, an
19 Acquisition Proposal, (ii) furnish to any Person (other than Parent, Acquisition
20 Sub or any Representatives or designees of Parent or Acquisition Sub) any non-
21 public information relating to the Company or any of its Subsidiaries, or afford to
22 any Person (other than Parent, Acquisition Sub or any designees of Parent or
23 Acquisition Sub) access to the business, properties, assets, books, records or other
24 non-public information, or to any personnel, of the Company or any of its
25 Subsidiaries, in each such case, with the intent to induce the making, submission
26 or announcement of, or the intent to encourage, facilitate or assist, an Acquisition
27 Proposal or any inquiries or the making of any proposal that would reasonably be
28 expected to lead to an Acquisition Proposal, (iii) participate or engage in
discussions or negotiations with any Person with respect to an Acquisition
Proposal, (iv) enter into any Contract contemplating or otherwise relating to an
Acquisition Transaction (other than an Acceptable Confidentiality Agreement) or
(v) take any action to render any provision of any "fair price," "moratorium,"
control share acquisition," business combination," or other similar anti-takeover
statute (including Section 203 of the DGCL) or any restrictive provision of any
applicable anti-takeover provision in the Company's organizational documents, in
each case inapplicable to any Person (other than Parent, Acquisition Sub or any of
their affiliates) or any Acquisition Proposal (and to the extent permitted
thereunder, the Company shall promptly take all steps necessary to terminate any
waiver that may have been heretofore granted to any Person or Acquisition
Proposal under any such provisions). Any breach of the foregoing provisions of
this Section 5.2 by any of the Subsidiaries of the Company or the Company's or
such Subsidiaries' Representatives shall be deemed to be a breach by the

1 Company.

2 45. Further, the Company must promptly advise Aurea of any proposals or inquiries
3 received from other parties. Section 5.2(e) of the Merger Agreement states:

4 (e) In addition to the obligations of the Company set forth in Section 5.2(b), the
5 Company shall promptly (and in any event within 24 hours) notify Parent if any
6 director or executive officer of the Company becomes aware of any receipt by the
7 Company of (i) of any Acquisition Proposal, (ii) any request for information that
8 would reasonably be expected to lead to an Acquisition Proposal, or (iii) any
9 inquiry with respect to, or which would reasonably be expected to lead to, any
10 Acquisition Proposal, the terms and conditions of such Acquisition Proposal,
11 request or inquiry, and the identity of the Person or group making any such
12 Acquisition Proposal, request or inquiry. The Company shall keep Parent
13 reasonably informed of the status and terms of any such Acquisition Proposal,
14 request or inquiry.

15 46. Moreover, the Merger Agreement contains a highly restrictive “fiduciary out”
16 provision permitting the Board to withdraw its approval of the Proposed Transaction under
17 extremely limited circumstances, and grants Aurea a “matching right” with respect to any
18 “Superior Proposal” made to the Company. Section 6.3(a) of the Merger Agreement provides:

19 (a) Neither the Company Board nor any committee thereof shall (x) withhold,
20 withdraw, amend or modify in a manner adverse to Parent, or publicly propose to
21 withhold, withdraw, amend or modify in a manner adverse to Parent, the
22 Company Board Recommendation or (y) approve, endorse or recommend an
23 Acquisition Proposal (each of clauses (x) and (y), a “Company Board
24 Recommendation Change”); provided, however, that a “stop, look and listen”
25 communication by the Company Board to the Company Stockholders pursuant to
26 Rule 14d-9(f) of the Exchange Act, or any substantially similar communication,
27 shall not be deemed to be a Company Board Recommendation Change.
28 Notwithstanding the foregoing or anything to the contrary set forth in this
Agreement, at any time prior to the Acceptance Time, the Company Board may
effect a Company Board Recommendation Change if the Company Board and/or
any authorized committee thereof shall have determined in good faith (after
consultation with outside legal counsel) that the failure to effect a Company
Board Recommendation Change would reasonably be expected to be inconsistent
with its fiduciary duties; provided, however, that in the event that:

(i) the Company shall have received a Superior Proposal, the Company Board
may effect a Company Board Recommendation Change if and only if: (A) the
Company Board and/or any authorized committee thereof shall have determined
in good faith (after consultation with outside legal counsel) that the failure to
enter into a definitive agreement relating to such Superior Proposal would
reasonably be expected to be inconsistent with its fiduciary duties; (B) the
Company shall have delivered to Parent a Superior Proposal Notice (it being
agreed that the Superior Proposal Notice and any amendment or update to such
notice and the determination to so deliver such notice, or update or amend public
disclosures with respect thereto shall not constitute a Company Board
Recommendation Change for purposes of this Agreement); (C) if requested by
Parent, the Company shall have made its Representatives available to discuss with

1 Parent's Representatives any proposed modifications to the terms and conditions
2 of this Agreement during the period beginning at 5:00 p.m. Pacific Time on the
3 day of delivery by the Company to Parent of such Superior Proposal Notice and
4 ending at 5:00 p.m. Pacific Time on the fourth (4th) Business Day following the
5 day of such delivery so that the Acquisition Proposal that is the subject of the
6 foregoing notice is no longer a Superior Proposal (it being understood and agreed
7 that with respect to any material amendment to any Acquisition Proposal that is
8 the subject of a previously delivered Superior Proposal Notice, the Company shall
9 have delivered to Parent a Proposal Amendment Notice, and shall have made its
10 Representatives available to discuss with Parent's Representatives any proposed
11 modifications to the terms and conditions of this Agreement during the period
12 beginning at 5:00 p.m. Pacific Time on the day of delivery by the Company to
13 Parent of such Proposal Amendment Notice and ending at 5:00 p.m. Pacific Time
14 on the second (2nd) Business Day following the day of such delivery); and (D) if
15 Parent shall have delivered to the Company during such four (4) Business Day
16 period (or two Business Day period with respect to a Proposal Amendment
17 Notice) a written, binding and irrevocable offer to modify the terms of this
18 Agreement (which is set forth in a definitive written amendment to this
19 Agreement executed by Parent and Acquisition Sub and delivered to the
20 Company), the Company Board and/or any authorized committee thereof shall
21 have determined in good faith, after considering the terms of such offer by Parent,
22 that the Superior Proposal giving rise to such Superior Proposal Notice (or
23 Proposal Amendment Notice) continues to be a Superior Proposal[.]

24 47. Further locking up control of the Company in favor of Aurea, the Merger
25 Agreement provides for a "termination fee" of \$10 million, payable by the Company to Aurea if
26 the Individual Defendants cause the Company to terminate the Merger Agreement.

27 48. By agreeing to all of the deal protection devices, the Individual Defendants have
28 locked up the Proposed Transaction and have precluded other bidders from making successful
competing offers for the Company.

49. Additionally, each of the members of the Board and the named executive officers
of the Company entered into support agreements, pursuant to which they have agreed to tender
their Company shares in the tender offer. Accordingly, such shares are already locked up in
favor of the merger.

50. The consideration to be provided to plaintiff and the Class in the Proposed
Transaction is inadequate.

51. Among other things, the intrinsic value of the Company is materially in excess of
the amount offered in the Proposed Transaction.

52. Accordingly, the Proposed Transaction will deny Class members their right to
share proportionately and equitably in the true value of the Company's valuable and profitable

1 business, and future growth in profits and earnings.

2 ***The Solicitation Statement Omits Material Information, Rendering It False and Misleading***

3 53. Defendants filed the Solicitation Statement with the SEC in connection with the
4 Proposed Transaction.

5 54. The Solicitation Statement omits material information regarding the Proposed
6 Transaction, which renders the Solicitation Statement false and misleading.

7 55. First, the Solicitation Statement omits material information regarding the
8 Company's financial projections and the financial analyses performed by the Company's
9 financial advisor, Morgan Stanley & Co. LLC ("Morgan Stanley"), in support of its so-called
10 fairness opinion.

11 56. With respect to Jive's financial projections, the Solicitation Statement fails to
12 disclose: (i) unlevered free cash flow and its constituent line items; and (ii) the timing and nature
13 of the "periodic[]" updates to the projections during the process leading up to the Merger
14 Agreement.

15 57. With respect to Morgan Stanley's *Discounted Cash Flow Analysis*, the
16 Solicitation Statement fails to disclose: (i) the estimated unlevered free cash flows for the
17 Company for the period from the second quarter of 2017 through the fourth quarter of 2017 and
18 each of the calendar years 2018 through 2022, and corresponding definition and line items;
19 (ii) the range of terminal values for the Company; and (iii) the inputs underlying the discount rate
20 range of 8.17% to 10.55%.

21 58. With respect to Morgan Stanley's *Discounted Equity Value Analysis*, the
22 Solicitation Statement fails to disclose: (i) calendar year 2018 net cash estimates; and (ii) the
23 inputs underlying the discount rate of 9.36%.

24 59. With respect to Morgan Stanley's *Precedent Transactions Analysis*, the
25 Solicitation Statement fails to disclose the individual multiples and financial metrics for the
26 transactions observed by Morgan Stanley in the analysis.

27 60. With respect to Morgan Stanley's *Precedent Premia Analysis*, the Solicitation
28 Statement fails to disclose: (i) the transactions observed by Morgan Stanley in the analysis; and

1 (ii) the premiums for such transactions.

2 61. The disclosure of projected financial information is material because it provides
3 stockholders with a basis to project the future financial performance of a company, and allows
4 stockholders to better understand the financial analyses performed by the company's financial
5 advisor in support of its fairness opinion. Moreover, when a banker's endorsement of the
6 fairness of a transaction is touted to stockholders, the valuation methods used to arrive at that
7 opinion as well as the key inputs and range of ultimate values generated by those analyses must
8 also be fairly disclosed.

9 62. The omission of this material information renders the Solicitation Statement false
10 and misleading, including, *inter alia*, the following section of the Solicitation Statement: "Item 4.
11 The Solicitation or Recommendation."

12 63. Second, the Solicitation Statement fails to disclose whether any non-disclosure
13 agreements executed by Jive and the prospective bidders contained standstill and/or "don't ask,
14 don't waive" provisions that are or were preventing those counterparties from submitting
15 superior offers to acquire the Company.

16 64. Without this information, stockholders may have the mistaken belief that, if these
17 potentially interested parties wished to come forward with a superior offer, they are or were
18 permitted to do so, when in fact they are or were contractually prohibited from doing so.

19 65. The omission of this material information renders the Solicitation Statement false
20 and misleading, including, *inter alia*, the following section of the Solicitation Statement: "Item 4.
21 The Solicitation or Recommendation."

22 66. The above-referenced omitted information, if disclosed, would significantly alter
23 the total mix of information available to Jive's stockholders.

24 **COUNT I**

25 **(Claim for Violation of Section 14(e) of the 1934 Act Against Defendants)**

26 67. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

27 68. Section 14(e) of the 1934 Act states, in relevant part, that:
28

1 It shall be unlawful for any person to make any untrue statement of a material fact
2 or omit to state any material fact necessary in order to make the statements made,
3 in the light of the circumstances under which they are made, not misleading . . . in
4 connection with any tender offer or request or invitation for tenders[.]

5 69. Defendants disseminated the misleading Solicitation Statement, which contained
6 statements that, in violation of Section 14(e) of the 1934 Act, in light of the circumstances under
7 which they were made, omitted to state material facts necessary to make the statements therein
8 not misleading.

9 70. The Solicitation Statement was prepared, reviewed, and/or disseminated by
10 defendants.

11 71. The Solicitation Statement misrepresented and/or omitted material facts in
12 connection with the Proposed Transaction as set forth above.

13 72. By virtue of their positions within the Company and/or roles in the process and
14 the preparation of the Solicitation Statement, defendants were aware of this information and their
15 duty to disclose this information in the Solicitation Statement.

16 73. The omissions in the Solicitation Statement are material in that a reasonable
17 stockholder will consider them important in deciding whether to tender their shares in connection
18 with the Proposed Transaction. In addition, a reasonable investor will view a full and accurate
19 disclosure as significantly altering the total mix of information made available.

20 74. Defendants knowingly or with deliberate recklessness omitted the material
21 information identified above in the Solicitation Statement, causing statements therein to be
22 materially incomplete and misleading.

23 75. By reason of the foregoing, defendants violated Section 14(e) of the 1934 Act.

24 76. Because of the false and misleading statements in the Solicitation Statement,
25 plaintiff and the Class are threatened with irreparable harm.

26 77. Plaintiff and the Class have no adequate remedy at law.

COUNT II

(Claim for Violation of 14(d) of the 1934 Act Against Defendants)

78. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

79. Section 14(d)(4) of the 1934 Act states:

Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

80. Rule 14d-9(d) states, in relevant part:

Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof[.]

Item 8 requires that directors must “furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.”

81. The Solicitation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits the material facts set forth above, which renders the Solicitation Statement false and/or misleading.

82. Defendants knowingly or with deliberate recklessness omitted the material information set forth above, causing statements therein to be materially incomplete and misleading.

83. The omissions in the Solicitation Statement are material to plaintiff and the Class, and they will be deprived of their entitlement to make a fully informed decision with respect to the Proposed Transaction if such misrepresentations and omissions are not corrected prior to the expiration of the tender offer.

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

COUNT III

**(Claim for Violation of Section 20(a) of the 1934 Act
Against the Individual Defendants and Aurea)**

85. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

86. The Individual Defendants and Aurea acted as controlling persons of Jive within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of Jive and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Solicitation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

87. Each of the Individual Defendants and Aurea was provided with or had unlimited access to copies of the Solicitation Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

88. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Solicitation Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly connected with and involved in the making of the Solicitation Statement.

89. Aurea also had direct supervisory control over the composition of the Solicitation Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Solicitation Statement.

90. By virtue of the foregoing, the Individual Defendants and Aurea violated Section 20(a) of the 1934 Act.

91. As set forth above, the Individual Defendants and Aurea had the ability to exercise control over and did control a person or persons who have each violated Section 14(e)

1 of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their
2 positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the
3 1934 Act.

4 92. As a direct and proximate result of defendants' conduct, plaintiff and the Class are
5 threatened with irreparable harm.

6 93. Plaintiff and the Class have no adequate remedy at law.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, plaintiff prays for judgment and relief as follows:

9 A. Enjoining defendants and all persons acting in concert with them from proceeding
10 with, consummating, or closing the Proposed Transaction;

11 B. In the event defendants consummate the Proposed Transaction, rescinding it and
12 setting it aside or awarding rescissory damages;

13 C. Directing the Individual Defendants to file a Solicitation Statement that does not
14 contain any untrue statements of material fact and that states all material facts required in it or
15 necessary to make the statements contained therein not misleading;

16 D. Declaring that defendants violated Sections 14(e), 14(d), and 20(a) of the
17 1934 Act, as well as Rule 14a-9 promulgated thereunder;

18 E. Awarding plaintiff the costs of this action, including reasonable allowance for
19 plaintiff's attorneys' and experts' fees; and

20 F. Granting such other and further relief as this Court may deem just and proper.

21 **JURY DEMAND**

22 Plaintiff hereby demands a trial by jury.

23 Dated: May 17, 2017

LEVI & KORSINSKY LLP

24 By: /s/ Rosemary M. Rivas

25 Rosemary M. Rivas
26 44 Montgomery Street, Suite 650
27 San Francisco, CA 94104
28 Telephone: (415) 291-2420
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Attorneys for Plaintiff

1 **OF COUNSEL:**

2 **RIGRODSKY & LONG, P.A.**

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CERTIFICATION OF PLAINTIFF

I, Vladimir Gusinsky, Trustee for The Vladimir Gusinsky Rev. Trust (“Plaintiff”), hereby declare as to the claims asserted under the federal securities laws that:

1. Plaintiff has reviewed the complaint and authorizes its filing.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff’s counsel or in order to participate in any private action.
3. Plaintiff is willing to serve as a representative party on behalf of the class, either individually or as part of a group, and I will testify at deposition or trial, if necessary. I understand that this is not a claim form and that I do not need to execute this Certification to share in any recovery as a member of the class.
4. Plaintiff’s purchase and sale transactions in the Jive Software, Inc. (NasdaqGS: JIVE) security that is the subject of this action during the class period is/are as follows:

PURCHASES

Buy Date	Shares	Price per Share
10/5/12	68	\$15.00

SALES

Sell Date	Shares	Price per Share

Please list additional transactions on separate sheet of paper, if necessary.

5. Plaintiff has complete authority to bring a suit to recover for investment losses on behalf of purchasers of the subject securities described herein (including Plaintiff, any co-owners, any corporations or other entities, and/or any beneficial owners).

6. During the three years prior to the date of this Certification, Plaintiff has not moved to serve as a representative party for a class in an action filed under the federal securities laws.

7. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiffs *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of May, 2017.



Vladimir Gusinsky

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
THE VLADIMIR GUSINSKY REV. TRUST, Individually and On Behalf of All Others Similarly Situated
(b) County of Residence of First Listed Plaintiff Cook County, IL
(c) Attorneys (Firm Name, Address, and Telephone Number)
LEVI & KORSINSKY LLP
44 Montgomery Street, Suite 650, San Francisco, CA 94104
(415) 291-2420

DEFENDANTS
Jive Software, Inc., Tony Zingale, Elisa Steele, Margaret Brea, Steve Darcy, Robert Frankfurt, Phil Koen, Tom Reilly, Chuck Robel, Gabrielle Toledano, Balaji Yelamanchili, Aurea, Inc., ESW Capital, LLC, Wave Systems Corp., and Jazz MergerSub, Inc.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment Of Veteran's Benefits, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice
PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability, 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence, 530 General, 535 Death Penalty; Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee-Conditions of Confinement
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC § 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC § 158, 423 Withdrawal 28 USC § 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS-Third Party 26 USC § 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC § 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1331
Brief description of cause: Violations of Section 14(e), 14(d), and 20(a) of the Securities Exchange Act of 1934

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE JSW DOCKET NUMBER 5:17-cv-02811, 4:17-cv-0281

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only)
SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 05/17/2017 SIGNATURE OF ATTORNEY OF RECORD: /s/ Rosemary M. Rivas

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Stockholder Files Suit over Jive Software Merger](#)
