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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

\_\_\_\_\_, Individually and on Behalf of  
All Others Similarly Situated,  
  
Plaintiff,  
  
v.  
  
SPLUNK INC., DOUGLAS S. MERRITT, and  
JASON CHILD,  
  
Defendants.

Case No. DRAFT

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

1 Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, by and through his attorneys, alleges the following upon information and belief,  
3 except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge.  
4 Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation,  
5 which includes without limitation: (a) review and analysis of regulatory filings made by Splunk Inc.  
6 (“Splunk” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission  
7 (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by  
8 Splunk; and (c) review of other publicly available information concerning Splunk.

9 **NATURE OF THE ACTION AND OVERVIEW**

10 1. This is a class action on behalf of persons and entities that purchased or otherwise  
11 acquired Splunk securities between August 26, 2020 and December 2, 2020, inclusive (the “Class  
12 Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934  
13 (the “Exchange Act”).

14 2. Splunk is a software company that offers a Data-to-Everything platform that enables  
15 users to investigate, monitor, and analyze data from different sources including systems, devices  
16 and interactions.

17 3. On December 2, 2020, after the market closed, Splunk announced its third quarter  
18 2021 financial results in a press release. Therein, the Company reported total revenue of \$559  
19 million, well below prior guidance expecting between \$600 and \$630 million and an 11% decline  
20 year-over-year. For fourth quarter 2021, Splunk expected revenue between \$650 million and \$700  
21 million.

22 4. On this news, the Company’s stock price fell \$47.88, or 23%, to close at \$158.03 per  
23 share on December 3, 2020, on unusually heavy trading volume.

24 5. Throughout the Class Period, Defendants made materially false and/or misleading  
25 statements, as well as failed to disclose material adverse facts about the Company’s business,  
26 operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Splunk’s  
27 customers, especially those with large-value contracts, were delaying their spending decisions; (2)  
28 that, as a result, the Company was experiencing a lower close rate for its deals; (3) that, as a result

1 of the foregoing, Splunk was experiencing lower sales; and (4) that, as a result of the foregoing,  
2 Defendants' positive statements about the Company's business, operations, and prospects were  
3 materially misleading and/or lacked a reasonable basis.

4 6. As a result of Defendants' wrongful acts and omissions, and the precipitous decline  
5 in the market value of the Company's securities, Plaintiff and other Class members have suffered  
6 significant losses and damages.

7 **JURISDICTION AND VENUE**

8 7. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act  
9 (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §  
10 240.10b-5).

11 8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.  
12 § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

13 9. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section  
14 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud  
15 or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein,  
16 including the dissemination of materially false and/or misleading information, occurred in  
17 substantial part in this Judicial District. In addition, the Company's principal executive offices are  
18 located in this District.

19 10. In connection with the acts, transactions, and conduct alleged herein, Defendants  
20 directly and indirectly used the means and instrumentalities of interstate commerce, including the  
21 United States mail, interstate telephone communications, and the facilities of a national securities  
22 exchange.

23 **PARTIES**

24 11. Plaintiff \_\_\_\_\_, as set forth in the accompanying certification,  
25 incorporated by reference herein, purchased Splunk securities during the Class Period, and suffered  
26 damages as a result of the federal securities law violations and false and/or misleading statements  
27 and/or material omissions alleged herein.



- Total ARR was \$1.93 billion, up 50% year-over-year.
- Cloud revenue was \$126 million, up 79% year-over-year.
- Total revenues were \$492 million, down 5% year-over-year.
- 396 customers with ARR greater than \$1 million.

\* \* \*

### **Financial Outlook**

The company is providing the following guidance for its fiscal third quarter 2021 (ending October 31, 2020):

- Total revenues are expected to be between \$600 million and \$630 million.
- Non-GAAP operating margin is expected to be between 2% and 5%.

18. On September 3, 2020, Splunk filed its quarterly report on Form 10-Q with the SEC for the period ended July 31, 2020 (the “2Q21 10-Q”), affirming the previously reported financial results. Regarding the Company’s business growth, the 2Q21 10-Q stated, in relevant part:

*Our business and growth depend substantially on customers entering into, renewing, upgrading and expanding their term licenses, agreements for cloud services and maintenance and support agreements with us. Any decline in our customer renewals, upgrades or expansions could adversely affect our future operating results.*

We typically enter into term-based agreements for our licensed on-premises offerings, cloud services, and maintenance and support services, which customers have discretion to renew or terminate at the end of the initial term. In order for us to improve our operating results, it is important that new customers enter into renewable agreements, and our existing customers renew, upgrade and expand their term-based agreements when the initial contract term expires. Our customers have no obligation to renew, upgrade or expand their agreements with us after the terms have expired. *Our customers’ renewal, upgrade and expansion rates may decline or fluctuate as a result of a number of factors, including their satisfaction or dissatisfaction with our offerings, our pricing, the effects of general economic conditions, competitive offerings or alterations or reductions in our customers’ spending levels. For example, the impact of the COVID-19 pandemic on the current economic environment has caused, and may in the future cause, customers to request concessions such as extended payment terms or better pricing or be unwilling to commit to long-term contracts.* If our customers do not renew, upgrade or expand their agreements with us or renew on terms less favorable to us, our revenues may decline.

19. Regarding Splunk’s sales cycles, the 2Q21 10-Q stated, in relevant part:

*Our sales cycle is long and unpredictable, particularly with respect to large customers, and our sales efforts require considerable time and expense.*

1 Our operating results may fluctuate, in part, because of the resource intensive nature  
2 of our sales efforts, the length and variability of the sales cycle of our offerings and  
3 the short-term difficulty in adjusting our operating expenses. Our operating results  
4 depend in part on sales to large customers. The length of our sales cycle, from initial  
5 evaluation to delivery of and payment for the software license, varies substantially  
6 from customer to customer. This variation is due to numerous factors, including in  
7 the expansion of our offerings and new pricing models, as well as the potential for  
8 different buying centers for the same offering. In addition, the introduction of Splunk  
9 Cloud has generated interest from our customers who are also considering  
10 purchasing and deploying Splunk Enterprise on-premises. In some cases, our  
11 customers may wish to consider a combination of these offerings, potentially further  
12 slowing our sales cycle. Our sales cycle can extend to more than a year for certain  
13 customers, particularly large customers. It is difficult to predict exactly when, or even  
14 if, an existing customer will convert from a perpetual license to term license or to  
15 cloud services, we will make a sale with a potential customer, or a user of a trial  
16 version of one of our offerings will upgrade to the paid version of that offering. *As a  
17 result, large individual sales have, in some cases, occurred in quarters subsequent  
18 to those we anticipated, or have not occurred at all. The loss or delay of one or  
19 more large transactions in a quarter could impact our operating results for that  
20 quarter and any future quarters for which revenues from that transaction are  
21 delayed.* As a result of these factors, it is difficult for us to forecast our revenues  
22 accurately in any quarter. Because a substantial portion of our expenses are relatively  
23 fixed in the short-term (subject to rising fixed costs in the longer term as discussed  
24 above), our operating results will suffer if revenues fall below our expectations in a  
25 particular quarter, which could cause the price of our common stock to decline.

26 20. The above statements identified in ¶¶ 17-19 were materially false and/or misleading,  
27 and failed to disclose material adverse facts about the Company's business, operations, and  
28 prospects. Specifically, Defendants failed to disclose to investors: (1) that Splunk's customers,  
especially those with large-value contracts, were delaying their spending decisions; (2) that, as a  
result, the Company was experiencing a lower close rate for its deals; (3) that, as a result of the  
foregoing, Splunk was experiencing lower sales; and (4) that, as a result of the foregoing,  
Defendants' positive statements about the Company's business, operations, and prospects were  
materially misleading and/or lacked a reasonable basis.

#### **Disclosures at the End of the Class Period**

29 21. On December 2, 2020, after the market closed, Splunk announced its third quarter  
30 2021 financial results in a press release. Therein, the Company reported total revenue of \$559  
31 million, well below prior guidance expecting between \$600 and \$630 million and an 11% decline  
32 year-over-year. For fourth quarter 2021, Splunk expected revenue between \$650 million and \$700  
33 million.





1 misleading because they failed to disclose material adverse information and/or misrepresented the  
2 truth about Splunk's business, operations, and prospects as alleged herein.

3 32. At all relevant times, the material misrepresentations and omissions particularized in  
4 this Complaint directly or proximately caused or were a substantial contributing cause of the  
5 damages sustained by Plaintiff and other members of the Class. As described herein, during the  
6 Class Period, Defendants made or caused to be made a series of materially false and/or misleading  
7 statements about Splunk's financial well-being and prospects. These material misstatements and/or  
8 omissions had the cause and effect of creating in the market an unrealistically positive assessment  
9 of the Company and its financial well-being and prospects, thus causing the Company's securities  
10 to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or  
11 misleading statements during the Class Period resulted in Plaintiff and other members of the Class  
12 purchasing the Company's securities at artificially inflated prices, thus causing the damages  
13 complained of herein when the truth was revealed.

#### 14 **LOSS CAUSATION**

15 33. Defendants' wrongful conduct, as alleged herein, directly and proximately caused  
16 the economic loss suffered by Plaintiff and the Class.

17 34. During the Class Period, Plaintiff and the Class purchased Splunk's securities at  
18 artificially inflated prices and were damaged thereby. The price of the Company's securities  
19 significantly declined when the misrepresentations made to the market, and/or the information  
20 alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,  
21 causing investors' losses.

#### 22 **SCIENTER ALLEGATIONS**

23 35. As alleged herein, Defendants acted with scienter since Defendants knew that the  
24 public documents and statements issued or disseminated in the name of the Company were  
25 materially false and/or misleading; knew that such statements or documents would be issued or  
26 disseminated to the investing public; and knowingly and substantially participated or acquiesced in  
27 the issuance or dissemination of such statements or documents as primary violations of the federal  
28 securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their

1 receipt of information reflecting the true facts regarding Splunk, their control over, and/or receipt  
2 and/or modification of Splunk's allegedly materially misleading misstatements and/or their  
3 associations with the Company which made them privy to confidential proprietary information  
4 concerning Splunk, participated in the fraudulent scheme alleged herein.

5 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

6 **(FRAUD-ON-THE-MARKET DOCTRINE)**

7 36. The market for Splunk's securities was open, well-developed and efficient at all  
8 relevant times. As a result of the materially false and/or misleading statements and/or failures to  
9 disclose, Splunk's securities traded at artificially inflated prices during the Class Period. On  
10 September 1, 2020, the Company's share price closed at a Class Period high of \$223.59 per share.  
11 Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities  
12 relying upon the integrity of the market price of Splunk's securities and market information relating  
13 to Splunk, and have been damaged thereby.

14 37. During the Class Period, the artificial inflation of Splunk's shares was caused by the  
15 material misrepresentations and/or omissions particularized in this Complaint causing the damages  
16 sustained by Plaintiff and other members of the Class. As described herein, during the Class Period,  
17 Defendants made or caused to be made a series of materially false and/or misleading statements  
18 about Splunk's business, prospects, and operations. These material misstatements and/or omissions  
19 created an unrealistically positive assessment of Splunk and its business, operations, and prospects,  
20 thus causing the price of the Company's securities to be artificially inflated at all relevant times, and  
21 when disclosed, negatively affected the value of the Company shares. Defendants' materially false  
22 and/or misleading statements during the Class Period resulted in Plaintiff and other members of the  
23 Class purchasing the Company's securities at such artificially inflated prices, and each of them has  
24 been damaged as a result.

25 38. At all relevant times, the market for Splunk's securities was an efficient market for  
26 the following reasons, among others:

27 (a) Splunk shares met the requirements for listing, and was listed and actively  
28 traded on the NASDAQ, a highly efficient and automated market;

1 (b) As a regulated issuer, Splunk filed periodic public reports with the SEC  
2 and/or the NASDAQ;

3 (c) Splunk regularly communicated with public investors via established market  
4 communication mechanisms, including through regular dissemination of press releases on the  
5 national circuits of major newswire services and through other wide-ranging public disclosures,  
6 such as communications with the financial press and other similar reporting services; and/or

7 (d) Splunk was followed by securities analysts employed by brokerage firms who  
8 wrote reports about the Company, and these reports were distributed to the sales force and certain  
9 customers of their respective brokerage firms. Each of these reports was publicly available and  
10 entered the public marketplace.

11 39. As a result of the foregoing, the market for Splunk's securities promptly digested  
12 current information regarding Splunk from all publicly available sources and reflected such  
13 information in Splunk's share price. Under these circumstances, all purchasers of Splunk's securities  
14 during the Class Period suffered similar injury through their purchase of Splunk's securities at  
15 artificially inflated prices and a presumption of reliance applies.

16 40. A Class-wide presumption of reliance is also appropriate in this action under the  
17 Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),  
18 because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or  
19 omissions. Because this action involves Defendants' failure to disclose material adverse  
20 information regarding the Company's business operations and financial prospects—information that  
21 Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery.  
22 All that is necessary is that the facts withheld be material in the sense that a reasonable investor  
23 might have considered them important in making investment decisions. Given the importance of  
24 the Class Period material misstatements and omissions set forth above, that requirement is satisfied  
25 here.

26 **NO SAFE HARBOR**

27 41. The statutory safe harbor provided for forward-looking statements under certain  
28 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The

1 statements alleged to be false and misleading herein all relate to then-existing facts and conditions.  
2 In addition, to the extent certain of the statements alleged to be false may be characterized as forward  
3 looking, they were not identified as “forward-looking statements” when made and there were no  
4 meaningful cautionary statements identifying important factors that could cause actual results to  
5 differ materially from those in the purportedly forward-looking statements. In the alternative, to the  
6 extent that the statutory safe harbor is determined to apply to any forward-looking statements  
7 pleaded herein, Defendants are liable for those false forward-looking statements because at the time  
8 each of those forward-looking statements was made, the speaker had actual knowledge that the  
9 forward-looking statement was materially false or misleading, and/or the forward-looking statement  
10 was authorized or approved by an executive officer of Splunk who knew that the statement was false  
11 when made.

12 **FIRST CLAIM**

13 **Violation of Section 10(b) of The Exchange Act and**

14 **Rule 10b-5 Promulgated Thereunder**

15 **Against All Defendants**

16 42. Plaintiff repeats and re-alleges each and every allegation contained above as if fully  
17 set forth herein.

18 43. During the Class Period, Defendants carried out a plan, scheme and course of conduct  
19 which was intended to and, throughout the Class Period, did: (i) deceive the investing public,  
20 including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other  
21 members of the Class to purchase Splunk’s securities at artificially inflated prices. In furtherance  
22 of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the  
23 actions set forth herein.

24 44. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue  
25 statements of material fact and/or omitted to state material facts necessary to make the statements  
26 not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a  
27 fraud and deceit upon the purchasers of the Company’s securities in an effort to maintain artificially  
28 high market prices for Splunk’s securities in violation of Section 10(b) of the Exchange Act and

1 Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal  
2 conduct charged herein or as controlling persons as alleged below.

3 45. Defendants, individually and in concert, directly and indirectly, by the use, means or  
4 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a  
5 continuous course of conduct to conceal adverse material information about Splunk's financial well-  
6 being and prospects, as specified herein.

7 46. Defendants employed devices, schemes and artifices to defraud, while in possession  
8 of material adverse non-public information and engaged in acts, practices, and a course of conduct  
9 as alleged herein in an effort to assure investors of Splunk's value and performance and continued  
10 substantial growth, which included the making of, or the participation in the making of, untrue  
11 statements of material facts and/or omitting to state material facts necessary in order to make the  
12 statements made about Splunk and its business operations and future prospects in light of the  
13 circumstances under which they were made, not misleading, as set forth more particularly herein,  
14 and engaged in transactions, practices and a course of business which operated as a fraud and deceit  
15 upon the purchasers of the Company's securities during the Class Period.

16 47. Each of the Individual Defendants' primary liability and controlling person liability  
17 arises from the following facts: (i) the Individual Defendants were high-level executives and/or  
18 directors at the Company during the Class Period and members of the Company's management team  
19 or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities  
20 as a senior officer and/or director of the Company, was privy to and participated in the creation,  
21 development and reporting of the Company's internal budgets, plans, projections and/or reports;  
22 (iii) each of these defendants enjoyed significant personal contact and familiarity with the other  
23 defendants and was advised of, and had access to, other members of the Company's management  
24 team, internal reports and other data and information about the Company's finances, operations, and  
25 sales at all relevant times; and (iv) each of these defendants was aware of the Company's  
26 dissemination of information to the investing public which they knew and/or recklessly disregarded  
27 was materially false and misleading.

28

1           48. Defendants had actual knowledge of the misrepresentations and/or omissions of  
2 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to  
3 ascertain and to disclose such facts, even though such facts were available to them. Such defendants'  
4 material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose  
5 and effect of concealing Splunk's financial well-being and prospects from the investing public and  
6 supporting the artificially inflated price of its securities. As demonstrated by Defendants'  
7 overstatements and/or misstatements of the Company's business, operations, financial well-being,  
8 and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the  
9 misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by  
10 deliberately refraining from taking those steps necessary to discover whether those statements were  
11 false or misleading.

12           49. As a result of the dissemination of the materially false and/or misleading information  
13 and/or failure to disclose material facts, as set forth above, the market price of Splunk's securities  
14 was artificially inflated during the Class Period. In ignorance of the fact that market prices of the  
15 Company's securities were artificially inflated, and relying directly or indirectly on the false and  
16 misleading statements made by Defendants, or upon the integrity of the market in which the  
17 securities trades, and/or in the absence of material adverse information that was known to or  
18 recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during  
19 the Class Period, Plaintiff and the other members of the Class acquired Splunk's securities during  
20 the Class Period at artificially high prices and were damaged thereby.

21           50. At the time of said misrepresentations and/or omissions, Plaintiff and other members  
22 of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other  
23 members of the Class and the marketplace known the truth regarding the problems that Splunk was  
24 experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class  
25 would not have purchased or otherwise acquired their Splunk securities, or, if they had acquired  
26 such securities during the Class Period, they would not have done so at the artificially inflated prices  
27 which they paid.

28



1 Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members  
2 of the Class suffered damages in connection with their purchases of the Company's securities during  
3 the Class Period.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

6 (a) Determining that this action is a proper class action under Rule 23 of the Federal  
7 Rules of Civil Procedure;

8 (b) Awarding compensatory damages in favor of Plaintiff and the other Class members  
9 against all defendants, jointly and severally, for all damages sustained as a result of Defendants'  
10 wrongdoing, in an amount to be proven at trial, including interest thereon;

11 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this  
12 action, including counsel fees and expert fees; and

13 (d) Such other and further relief as the Court may deem just and proper.

14 **JURY TRIAL DEMANDED**

15 Plaintiff hereby demands a trial by jury.

16 DATED: \_\_\_\_\_, 2020

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