

BRODSKY SMITH

Evan J. Smith, Esquire (SBN 242352)
esmith@brodskysmith.com
Ryan P. Cardona, Esquire (SBN 302113)
rcardona@brodskysmith.com
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA 90212
Phone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHELLE GRAFF,
Plaintiff,

vs.

HASHICORP, INC., DAVE MCJANNET,
ARMON DADGAR, GLENN
SOLOMON, SUSAN ST. LEDGER,
TODD FORD, SIGAL ZARMI, and
DAVID HENSHALL,

Defendants.

Case No.: 3:24-cv-3468

Complaint For:

- (1) Violation of § 14(a) of the Securities Exchange Act of 1934
- (2) Violation of § 20(a) of the Securities Exchange Act of 1934

JURY TRIAL DEMANDED

Plaintiff, Michelle Graff (“Plaintiff”), by and through her attorneys, alleges upon information and belief, except for those allegations that pertain to her, which are alleged upon personal knowledge, as follows:

SUMMARY OF THE ACTION

1. Plaintiff brings this stockholder action against HashiCorp, Inc. (“HashiCorp” or the “Company”) and the Company’s Board of Directors (the “Board” or the “Individual Defendants,” collectively with the Company, the “Defendants”), for violations of Sections 14(a) and 20(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”) as a result of Defendants’ efforts

1 to sell the Company to International Business Machines Corporation (“Parent”), through merger
2 vehicle McCloud Merger Sub, Inc. (“Merger Sub” and together with Parent, “IBM”), as a result
3 of an unfair process, and to enjoin an upcoming stockholder vote on a proposed all cash transaction
4 (the “Proposed Transaction”).

5 2. The terms of the Proposed Transaction were memorialized in an April 25, 2024,
6 filing with the Securities and Exchange Commission (“SEC”) on Form 8-K attaching the definitive
7 Agreement and Plan of Merger (the “Merger Agreement”). Under the terms of the Merger
8 Agreement, IBM will acquire all outstanding shares of HashiCorp common stock for \$35.00 per
9 share in cash, for an enterprise value of \$6.4 billion.

10 3. Thereafter, on June 3, 2024, the Company filed a Preliminary Proxy Statement on
11 Form PREM14A with the SEC in support of the Proposed Transaction (the “Proxy Statement”).

12 4. The Proposed Transaction is unfair for a number of reasons. Significantly, it
13 appears as though the Board has entered into the Proposed Transaction to procure for themselves
14 and senior management of the Company significant and immediate benefits. For example: (a)
15 Company insiders own large illiquid blocks of Company stock which will be converted into merger
16 consideration; (b) Company insiders own vested and unvested RSU awards, and other equity
17 awards, all of which are subject to accelerated vesting and conversion into merger consideration;
18 and (c) certain Company executives are entitled to severance packages, often referred to as “golden
19 parachute” packages, entitling same to millions of dollars not shared by Plaintiff and other
20 Company common stockholders.

21 5. The Proxy Statement is materially deficient, deprives Plaintiff of the information
22 necessary to make an intelligent, informed, and rational decision of whether to vote in favor of the
23 Proposed Transaction and is thus in violation of the Exchange Act. As detailed below, the Proxy
24 Statement omits and/or misrepresents material information concerning, among other things: (a)
25 the sales process and in particular certain conflicts of interest for management; (b) the financial
26 projections for HashiCorp, provided by HashiCorp management to the Company Board, the
27 committee of the HashiCorp Board (the “M&A Committee”), and the Board’s financial advisor,
28

1 Qatalyst Partners LP (“Qatalyst”); and (c) the data and inputs underlying the financial valuation
2 analyses, if any, that purport to support the fairness opinion created by Qatalyst if any, and
3 provided to the Company and the M&A Committee.

4 6. Absent judicial intervention, the Proposed Transaction will be consummated,
5 resulting in irreparable injury to Plaintiff.

6 **PARTIES**

7 7. Plaintiff is a citizen of California, and at all times relevant hereto, has been a
8 HashiCorp stockholder.

9 8. Defendant HashiCorp engages in the provision of multi-cloud infrastructure
10 automation solutions worldwide. The Company is incorporated in Delaware and has its principal
11 place of business at 101 Second Street, Suite 700, San Francisco, CA 94105. Shares of HashiCorp
12 common stock are traded on the NASDAQ Stock Market under the symbol “HCP.”

13 9. Defendant Dave McJannet (“McJannet”) has been a Director of the Company at all
14 relevant times. In addition, Defendant McJannet serves as the Company’s Chief Executive Officer
15 (“CEO”).

16 10. Defendant Armon Dadgar (“Dadgar”) has been a director of the Company at all
17 relevant times. In addition, Defendant Dadgar is a Co-founder of the Company and serves as its
18 Chief Technology Officer (“CTO”).

19 11. Defendant Glenn Solomon (“Solomon”) has been a director of the Company at
20 all relevant times. In addition, Defendant Solomon was appointed to the Company M&A
21 Committee.

22 12. Defendant Susan St. Ledger (“St. Ledger”) has been a director of the Company
23 at all relevant times. In addition, Defendant St. Ledger serves as the Company’s President,
24 Worldwide Field Operations.

25 13. Defendant Todd Ford (“Ford”) has been a director of the Company at all relevant
26 times. In addition, Defendant Ford was appointed to the Company’s M&A Committee.

1 14. Defendant Sigal Zarmi (“Zarmi”) has been a director of the Company at all
2 relevant times.

3 15. Defendant David Henshall (“Henshall”) has been a director of the Company at
4 all relevant times. In addition, Defendant Henshall was appointed to the Company M&A
5 Committee.

6 16. Defendants identified in ¶¶ 9 - 15 are collectively referred to as the “Individual
7 Defendants.”

8 17. Non-Party IBM together with its subsidiaries, provides integrated solutions and
9 services worldwide.

10 **JURISDICTION AND VENUE**

11 18. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange
12 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges
13 violations of Sections 14(a) and 20(a) of the Exchange Act. This action is not a collusive one to
14 confer jurisdiction on a court of the United States, which it would not otherwise have. The Court
15 has supplemental jurisdiction over any claims arising under state law pursuant to 28 U.S.C. § 1367.

16 19. Personal jurisdiction exists over each defendant either because the defendant
17 conducts business in or maintains operations in this District or is an individual who is either present
18 in this District for jurisdictional purposes or has sufficient minimum contacts with this District as
19 to render the exercise of jurisdiction over defendant by this Court permissible under traditional
20 notions of fair play and substantial justice.

21 20. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because each of the
22 Individual Defendants, as Company officers or directors, has extensive contacts within this
23 District; for example, the Company maintains its headquarters in this District.

24 **SUBSTANTIVE ALLEGATIONS**

25 ***Company Background***

26 21. HashiCorp engages in the provision of multi-cloud infrastructure automation
27 solutions worldwide.

1 22. In a press release on March 5, 2024, for the Fourth Quarter and Fiscal Year
2 2024 Financial Results, the Company highlighted its performance results and financial
3 success. For example: Fourth quarter revenue totaled \$155.8 million, representing an
4 increase of 15% year-over-year; fiscal 2024 revenue totaled \$583.1 million, representing
5 an increase of 23% year-over-year; fourth quarter total GAAP RPO totaled \$775.8 million,
6 representing an increase of 20% year-over-year; and fourth quarter total non-GAAP RPO
7 totaled \$801.4 million, representing an increase of 19% year-over-year; fourth quarter
8 current non-GAAP RPO totaled \$483.1 million, representing an increase of 21% year-over-
9 year.

10 23. Speaking on the results, Defendant CEO McJannet stated, “The HashiCorp team
11 closed fiscal 2024 strong in Q4, with results that exceeded expectations.”

12 24. Defendant McJannet further stated, “In fiscal 2025, we are doubling down on
13 initiatives to simplify our go-to-market, improve our product monetization, and focus our business
14 on the HashiCorp Cloud Platform. These efforts will help us reaccelerate our revenue growth in
15 the new fiscal year.”

16 25. These financial results are not an anomaly, but rather, are indicative of a trend of
17 continued success by HashiCorp. Based upon these positive results and outlook, the Company is
18 likely to have future success.

19 26. Despite this upward trajectory, the Individual Defendants have caused HashiCorp
20 to enter into the Proposed Transaction without providing requisite information to HashiCorp
21 stockholders such as Plaintiff.

22 ***The Flawed Sales Process***

23 27. As detailed in the Proxy Statement, the process deployed by the Individual
24 Defendants was flawed and inadequate, was conducted out of the self-interest of the Individual
25 Defendants and was designed with only one concern in mind – to effectuate a sale of the Company.

26 28. The Proxy Statement is silent as to the nature of the confidentiality agreement
27 entered into between the Company and IBM, whether this agreement differed from any other
28

1 agreement with potentially interested third parties not specifically mentioned by the Proxy
2 Statement, if so, in all specific manners.

3 29. Further, the Proxy Statement fails to adequately disclose any and all of the
4 communications regarding post-transaction employment during the negotiation of the underlying
5 transaction which must be disclosed to stockholders.

6 30. It is not surprising, given this background to the overall sales process, that it was
7 conducted in an inappropriate and misleading manner.

8 ***The Proposed Transaction***

9 31. On April 24, 2024, HashiCorp and IBM issued a joint press release announcing the
10 Proposed Transaction. The press release stated, in relevant part:

11 ARMONK, N.Y. and SAN FRANCISCO, April 24, 2024 /PRNewswire/ -
12 - IBM (NYSE: IBM) and HashiCorp Inc. (NASDAQ: HCP), a leading multi-cloud
13 infrastructure automation company, today announced they have entered into a
14 definitive agreement under which IBM will acquire HashiCorp for \$35 per share in
15 cash, representing an enterprise value of \$6.4 billion. HashiCorp's suite of products
16 provides enterprises with extensive Infrastructure Lifecycle Management and
17 Security Lifecycle Management capabilities to enable organizations to automate
18 their hybrid and multi-cloud environments. Today's announcement is a continuation
19 of IBM's deep focus and investment in hybrid cloud and AI, the two most
20 transformational technologies for clients today.

17 "Enterprise clients are wrestling with an unprecedented expansion in infrastructure
18 and applications across public and private clouds, as well as on-prem environments.
19 The global excitement surrounding generative AI has exacerbated these challenges
20 and CIOs and developers are up against dramatic complexity in their tech
21 strategies," said Arvind Krishna, IBM chairman and chief executive officer.
22 "HashiCorp has a proven track record of enabling clients to manage the complexity
23 of today's infrastructure and application sprawl. Combining IBM's portfolio and
24 expertise with HashiCorp's capabilities and talent will create a comprehensive
25 hybrid cloud platform designed for the AI era."

23 The rise of cloud-native workloads and associated applications is driving a radical
24 expansion in the number of cloud workloads enterprises are managing. In addition,
25 generative AI deployment continues to grow alongside traditional workloads. As a
26 result, developers are working with increasingly heterogeneous, dynamic, and
27 complex infrastructure strategies. This represents a massive challenge for
28 technology professionals.

1 HashiCorp's capabilities enable enterprises to use automation to deliver lifecycle
2 management for infrastructure and security, providing a system of record for the
3 critical workflows needed for hybrid and multi-cloud environments. HashiCorp's
4 Terraform is the industry standard for infrastructure provisioning in these
5 environments. HashiCorp's offerings help clients take a cloud-agnostic, and highly
6 interoperable approach to multi-cloud management, and complement IBM's
7 commitment to industry collaboration (including deep and expanding partnerships
8 with hyperscale cloud service providers), developer communities, and open-source
9 hybrid cloud and AI innovation.

10 "Our strategy at its core is about enabling companies to innovate in the cloud, while
11 providing a consistent approach to managing cloud at scale. The need for effective
12 management and automation is critical with the rise of multi-cloud and hybrid
13 cloud, which is being accelerated by today's AI revolution," said Armon
14 Dadgar, HashiCorp co-founder and chief technology officer. "I'm incredibly
15 excited by today's news and to be joining IBM to accelerate HashiCorp's mission
16 and expand access to our products to an even broader set of developers and
17 enterprises."

18 "Today is an exciting day for our dedicated teams across the world as well as the
19 developer communities we serve," said Dave McJannet, HashiCorp chief executive
20 officer. "IBM's leadership in hybrid cloud along with its rich history of innovation,
21 make it the ideal home for HashiCorp as we enter the next phase of our growth
22 journey. I'm proud of the work we've done as a standalone company, I am excited
23 to be able to help our customers further, and I look forward to the future
24 of HashiCorp as part of IBM."

25 **Transaction Rationale**

- 26 • **Strong Strategic Fit** – The acquisition of HashiCorp by IBM creates a
27 comprehensive end-to-end hybrid cloud platform built for AI-driven
28 complexity. The combination of each company's portfolio and talent will
deliver clients extensive application, infrastructure and security lifecycle
management capabilities
- **Accelerates growth in key focus areas** – Upon close, HashiCorp is expected
to drive significant synergies for IBM, including across multiple strategic
growth areas like Red Hat, watsonx, data security, IT automation and
Consulting. For example, the powerful combination of Red Hat's Ansible
Automation Platform's configuration management and Terraform's automation
will simplify provisioning and configuration of applications across hybrid cloud
environments. The two companies also anticipate an acceleration
of HashiCorp's growth initiatives by leveraging IBM's world-class go-to-
market strategy, scale, and reach, operating in more than 175 countries across
the globe

- 1 • **Expands Total Addressable Market (TAM)** – The acquisition will create the
2 opportunity to deliver more comprehensive hybrid and multi-cloud offerings to
3 enterprise clients. HashiCorp's offerings, combined with IBM and Red Hat,
4 will give clients a platform to automate the deployment and orchestration of
5 workloads across evolving infrastructure including hyperscale cloud service
6 providers, private clouds and on-prem environments. This will
7 enhance IBM's ability to address the total cloud opportunity, which according
8 to IDC had a TAM of \$1.1 trillion in 2023, with a compound annual growth
9 rate in the high teens through 2027.
- 10 • **Attractive Financial Opportunity** – The transaction will
11 accelerate IBM's growth profile over time driven by go-to-market and product
12 synergies. This growth combined with operating efficiencies, is expected to
13 achieve substantial near-term margin expansion for the acquired business. It is
14 anticipated that the transaction will be accretive to Adjusted EBITDA within
15 the first full year, post close, and free cash flow in year two.

16 HashiCorp boasts a roster of more than 4,400 clients, including Bloomberg,
17 Comcast, Deutsche Bank, GitHub, J.P Morgan Chase, Starbucks and
18 Vodafone. HashiCorp's offerings have widescale adoption in the developer
19 community and are used by 85% of the Fortune 500. Their community products
20 across infrastructure and security were downloaded more than 500 million times
21 in HashiCorp's FY2024 and include:

- 22 • **Terraform** – provides organizations with a single workflow to provision their
23 cloud, private datacenter, and SaaS infrastructure and continuously manage
24 infrastructure throughout its lifecycle
- 25 • **Vault** – provides organizations with identity-based security to automatically
26 authenticate and authorize access to secrets and other sensitive data
- 27 • **Additional products** – *Boundary* for secure remote access; *Consul* for service-
28 based networking; *Nomad* for workload orchestration; *Packer* for building and
managing images as code; and *Waypoint* internal developer platform

21 **Transaction Details**

22 Under the terms of the agreement, IBM will acquire HashiCorp for \$35 per share
23 in cash, or \$6.4 billion enterprise value, net of cash. HashiCorp will be acquired
24 with available cash on hand.

25 The boards of directors of IBM and HashiCorp have both approved the transaction.
26 The acquisition is subject to approval by HashiCorp shareholders, regulatory
27 approvals and other customary closing conditions.

1 The Company's largest shareholders and investors, who collectively hold
 2 approximately 43% of the voting power of HashiCorp's outstanding common stock,
 3 entered into a voting agreement with IBM pursuant to which each has agreed to
 4 vote all of their common shares in favor of the transaction and against any
 5 alternative transactions.

6 The transaction is expected to close by the end of 2024.

7 *Potential Conflicts of Interest*

8 32. The breakdown of the benefits of the deal indicates that HashiCorp insiders are the
 9 primary beneficiaries of the Proposed Transaction, not the Company's public stockholders such as
 10 Plaintiff. The Board and the Company's executive officers are conflicted because they will have
 11 secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff as
 12 a public stockholder of HashiCorp.

13 33. Company insiders, currently own large, illiquid portions of Company stock,
 14 Company options, and Company Restricted Stock Units, all of which will be exchanged for the
 15 merger consideration upon the consummation of the Proposed Transaction, not shared amongst
 16 Plaintiff and other public stockholders of the Company as follows:

17 Name	18 Shares of Common Stock Held Directly ⁽¹⁾		19 HashiCorp Options ⁽²⁾		20 HashiCorp Restricted Stock Units ⁽³⁾		21 Total (\$)
	22 Number of Shares (#)	23 Value of Shares (\$)	24 Number of Shares (#)	25 Value of Shares (\$)	26 Number of Shares (#)	27 Value of Shares (\$)	
28 David McJannet	3,341,819	116,963,665	3,433,638	120,177,330	931,289	32,595,115	269,736,110
Armon Dadgar.	17,749,373	621,228,055	315,084	11,027,940	406,861	14,240,135	646,496,130
Navam Welihinda	189,681	6,638,835	182,539	6,388,865	377,761	13,221,635	26,249,335
Susan St. Ledger	278,672	9,753,520	—	—	356,331	12,471,585	22,225,105
Marc Holmes	30,022	1,050,770	289,682	10,138,870	284,025	9,940,875	21,130,515
Michael Weingartner	—	—	—	—	—	—	—
Brandon Sweeney ⁽⁴⁾	361,983	12,669,405	—	—	—	—	12,669,405
Todd Ford	117,655	4,117,925	—	—	8,113	283,955	4,401,880
David Henshall	22,944	803,040	—	—	15,177	531,195	1,334,235
Glenn Solomon	415,808	14,553,280	—	—	7,406	259,210	14,812,490
Sigal Zarmi	52,430	1,835,050	—	—	16,870	590,450	2,425,500

34. Moreover, certain employment agreements with certain HashiCorp executives

entitle such executives to severance packages, should their employment be terminated under certain circumstances. These ‘golden parachute’ packages are significant, and will grant several directors or officers entitled to them millions of dollars, compensation not shared by Plaintiff and will be paid out as follows:

Name	Cash (\$) ⁽¹⁾	Equity (\$) ⁽²⁾	Perquisites/ Benefits (\$) ⁽³⁾	Total (\$) ⁽⁴⁾
David McJannet	706,284	32,595,115	35,298	33,336,697
Navam Welihinda	560,627	13,221,635	35,298	13,817,560
Armon Dadgar	524,734	14,240,135	24,076	14,788,945
Susan St. Ledger	670,970	12,471,585	10,438	13,152,993
Marc Holmes	506,639	9,940,875	35,298	10,482,812
Brandon Sweeney ⁽⁵⁾	—	—	—	—

Named Executive Officer	Base Salary Severance (\$)	Target Annual Bonus Severance (\$)	Transition Payment (\$)	Total (\$)
David McJannet	500,000	206,284	—	706,284
Navam Welihinda	435,000	125,627	—	560,627
Armon Dadgar	435,000	89,734	—	524,734
Susan St. Ledger	475,000	195,970	—	670,970
Marc Holmes	420,000	86,639	300,000	806,639

35. The Proxy Statement fails to adequately all communications regarding post-transaction employment during the negotiation of the underlying transaction. Communications regarding post-transaction employment during the negotiation of the underlying transaction must be disclosed to stockholders. This information is necessary for Plaintiff to understand potential conflicts of interest of management and the Board, as that information provides illumination concerning motivations that would prevent fiduciaries from acting solely in the best interests of the Company’s stockholders.

36. Thus, while the Proposed Transaction is not in the best interests of HashiCorp, Plaintiff, or Company stockholders, it will produce lucrative benefits for the Company’s officers and directors.

1 ***The Materially Misleading and/or Incomplete Proxy Statement***

2 37. The HashiCorp Board caused to be filed with the SEC a materially misleading and
3 incomplete Proxy Statement that, in violation the Exchange Act, fails to provide Plaintiff in her
4 capacity as a Company stockholder with material information and/or provides materially
5 misleading information critical to the total mix of information available to Plaintiff concerning the
6 financial and procedural fairness of the Proposed Transaction.

7 *Omissions and/or Material Misrepresentations Concerning the Sales Process leading up*
8 *to the Proposed Transaction*

9 38. The Proxy Statement fails to disclose material information concerning the process
10 conducted by the Company and the events leading up to the Proposed Transaction. In particular,
11 the Proxy Statement fails to disclose:

- 12 a. Whether the confidentiality agreements entered into by the Company with
13 IBM differed from any other unnamed confidentiality agreement entered
14 into between the Company and an interested third parties; and
15 b. Adequately disclose any and all of the communications regarding post-
16 transaction employment during the negotiation of the underlying
17 transaction which must be disclosed to stockholders.

18 *Omissions and/or Material Misrepresentations Concerning HashiCorp Financial*
19 *Projections*

20 39. The Proxy Statement fails to provide material information concerning financial
21 projections for HashiCorp provided by HashiCorp management to the Company Board and
22 Qatalyst and relied upon by Qatalyst in its analyses. The Proxy Statement discloses management-
23 prepared financial projections for the Company which are materially misleading.

24 40. Notably, the Proxy Statement reveals that as part of its analyses, Qatalyst reviewed:
25 “The Financial Projections.”

26 41. The Proxy Statement should have, but fails to provide, certain information in the
27 projections that HashiCorp management provided to the Company Board and Qatalyst. Courts
28

1 have uniformly stated that “projections ... are probably among the most highly-prized disclosures
2 by investors. Investors can come up with their own estimates of discount rates or [] market
3 multiples. What they cannot hope to do is replicate management’s inside view of the company’s
4 prospects.” *In re Netsmart Techs., Inc. S’holders Litig.*, 924 A.2d 171, 201-203 (Del. Ch. 2007).

5 42. With regard to the *HashiCorp Long-Term Plan*, for the Fiscal Years 2025 through
6 2029, the Proxy Statement fails to disclose:

- 7 a. Revenue, including the underlying inputs, metrics, and assumptions used to
8 determine same;
- 9 b. Non-GAAP Operating Income (Loss), including the underlying inputs, metrics,
10 and assumptions used to determine same; and
- 11 c. Unlevered Free Cash Flow, including the underlying inputs, metrics, and
12 assumptions used to determine same.

13 43. With regard to the *Draft HashiCorp Long-Term Plan*, for the Fiscal Years 2024
14 through 2026, the Proxy Statement fails to disclose:

- 15 a. Revenue, including the underlying inputs, metrics, and assumptions used to
16 determine same;
- 17 b. Non-GAAP Operating Income (Loss), including the underlying inputs, metrics,
18 and assumptions used to determine same; and
- 19 c. Free Cash Flow, including the underlying inputs, metrics, and assumptions used
20 to determine same.

21 44. The Proxy Statement also fails to disclose a reconciliation of all non-GAAP to
22 GAAP metrics utilized in the projections.

23 45. This information is necessary to provide Plaintiff, in her capacity as a Company
24 stockholder, with a complete and accurate picture of the sales process and its fairness. Without this
25 information, Plaintiff is not fully informed as to Defendants’ actions, including those that may
26 have been taken in bad faith, and cannot fairly assess the process.

1 46. Without accurate projection data presented in the Proxy Statement, Plaintiff is
2 unable to properly evaluate the Company's true worth, the accuracy of the Qatalyst' financial
3 analyses, or make an informed decision whether to vote her shares in favor of the Proposed
4 Transaction. As such, the Board has violated the Exchange Act by failing to include such
5 information in the Proxy Statement.

6 Omissions and/or Material Misrepresentations Concerning the Financial Analyses by
7 Qatalyst

8 47. In the Proxy Statement, Qatalyst describes its fairness opinion and the various
9 valuation analyses performed to render such opinion. However, the descriptions fail to include
10 necessary underlying data, support for conclusions, or the existence of, or basis for, underlying
11 assumptions. Without this information, one cannot replicate the analyses, confirm the valuations
12 or evaluate the fairness opinions.

13 48. With respect to the *Discounted Cash Flow Analysis*, the Proxy Statement fails to
14 disclose:

- 15 a. The Company's weighted average cost of capital utilized;
- 16 b. The inputs, metrics, and assumptions used to determine the discount rates of 13.0%
17 to 16.5% utilized;
- 18 c. The inputs, metrics, and assumptions used to determine the EV/ NTM estimated
19 UFCF multiples range of 30.0x to 40.0x utilized;
- 20 d. The Company's net cash as of January 31, 2024, utilized; and
- 21 e. The number of fully diluted shares of Company common stock outstanding,
22 including restricted stock units, performance-based restricted stock units, and in-
23 the-money stock options as of April 22, 2024, utilized.

24 49. With respect to the *Selected Companies Analysis*, the Proxy Statement fails to
25 disclose:

- 26 a. The enterprise value ("EV") for each of the selected companies;

- 1 b. The inputs, metrics, and assumptions used to determine the CY2024E Revenue
- 2 multiple for each of the selected companies;
- 3 c. The specific inputs, metrics, and assumptions used to determine the CY2024E
- 4 Revenue multiples range of 5.0x to 8.0x utilized; and
- 5 d. The number of fully diluted shares of Company common stock outstanding,
- 6 including restricted stock units, performance-based restricted stock units, and in-
- 7 the-money stock options as of April 22, 2024, utilized.

8 50. With respect to the *Selected Transactions Analysis*, the Proxy Statement fails to
9 disclose:

- 10 a. The date upon which each of the selected transactions closed;
- 11 b. The EV of the target companies utilized;
- 12 c. The inputs, metrics, and assumptions used to determine the LTM Revenue Multiple
- 13 for each of the selected transactions;
- 14 d. The inputs, metrics, and assumptions used to determine the NTM Revenue Multiple
- 15 for each of the selected transactions;
- 16 e. The specific inputs, metrics, and assumptions used to determine the LTM Revenue
- 17 multiples range of 5.0x to 11.0x utilized;
- 18 f. The specific inputs, metrics, and assumptions used to determine the NTM Revenue
- 19 multiples range of 5.0x to 9.5x utilized; and
- 20 g. The number of fully diluted shares of Company common stock outstanding,
- 21 including restricted stock units, performance-based restricted stock units, and in-
- 22 the-money stock options as of April 22, 2024, utilized.

23 51. These disclosures are critical for Plaintiff to be able to make an informed decision
24 on whether to vote in favor of the Proposed Transaction.

25 52. Without the omitted information identified above, Plaintiff is missing critical
26 information necessary to evaluate whether the proposed consideration truly maximizes her value
27 and serves her interest as a stockholder. Moreover, without the key financial information and
28

1 related disclosures, Plaintiff cannot gauge the reliability of the fairness opinion and the Board's
2 determination that the Proposed Transaction is in her best interests as a public HashiCorp
3 stockholder. As such, the Board has violated the Exchange Act by failing to include such
4 information in the Proxy Statement.

5
6 **FIRST COUNT**

7 **Violations of Section 14(a) of the Exchange Act**

8 **(Against All Defendants)**

9 53. Plaintiff repeats all previous allegations as if set forth in full herein.

10 54. Defendants have disseminated the Proxy Statement with the intention of soliciting
11 stockholders, including Plaintiff, to vote in favor of the Proposed Transaction.

12 55. Section 14(a) of the Exchange Act requires full and fair disclosure in connection
13 with the Proposed Transaction. Specifically, Section 14(a) provides that:

14 It shall be unlawful for any person, by the use of the mails or by any means or
15 instrumentality of interstate commerce or of any facility of a national securities
16 exchange or otherwise, in contravention of such rules and regulations as the [SEC]
17 may prescribe as necessary or appropriate in the public interest or for the protection
18 of investors, to solicit or to permit the use of her name to solicit any proxy or
19 consent or authorization in respect of any security (other than an exempted security)
20 registered pursuant to section 78l of this title.

21 56. As such, SEC Rule 14a-9, 17 C.F.R. 240.14a-9, states the following:

22 No solicitation subject to this regulation shall be made by means of any proxy
23 statement, form of proxy, notice of meeting or other communication, written or
24 oral, containing any statement which, at the time and in the light of the
25 circumstances under which it is made, is false or misleading with respect to any
26 material fact, or which omits to state any material fact necessary in order to make
27 the statements therein not false or misleading or necessary to correct any statement
28

1 in any earlier communication with respect to the solicitation of a proxy for the same
2 meeting or subject matter which has become false or misleading.

3 57. The Proxy Statement was prepared in violation of Section 14(a) because it is
4 materially misleading in numerous respects and omits material facts, including those set forth
5 above. Moreover, in the exercise of reasonable care, Defendants knew or should have known that
6 the Proxy Statement is materially misleading and omits material facts that are necessary to render
7 them non-misleading.

8 58. The Individual Defendants had actual knowledge or should have known of the
9 misrepresentations and omissions of material facts set forth herein.

10 59. The Individual Defendants were at least negligent in filing a Proxy Statement that
11 was materially misleading and/or omitted material facts necessary to make the Proxy Statement
12 not misleading.

13 60. The misrepresentations and omissions in the Proxy Statement are material to
14 Plaintiff, and Plaintiff will be deprived of her entitlement to decide whether to vote her shares in
15 favor of the Proposed Transaction on the basis of complete information if such misrepresentations
16 and omissions are not corrected prior to the stockholder vote regarding the Proposed Transaction.

17 **SECOND COUNT**

18 **Violations of Section 20(a) of the Exchange Act**

19 **(Against all Individual Defendants)**

20 61. Plaintiff repeats all previous allegations as if set forth in full herein.

21 62. The Individual Defendants were privy to non-public information concerning the
22 Company and its business and operations via access to internal corporate documents, conversations
23 and connections with other corporate officers and employees, attendance at management and
24 Board meetings and committees thereof and via reports and other information provided to them in
25 connection therewith. Because of their possession of such information, the Individual Defendants
26 knew or should have known that the Proxy Statement was materially misleading to Plaintiff in her
27 capacity as a Company stockholder.

1 63. The Individual Defendants were involved in drafting, producing, reviewing and/or
2 disseminating the materially false and misleading statements complained of herein. The Individual
3 Defendants were aware or should have been aware that materially false and misleading statements
4 were being issued by the Company in the Proxy Statement and nevertheless approved, ratified
5 and/or failed to correct those statements, in violation of federal securities laws. The Individual
6 Defendants were able to, and did, control the contents of the Proxy Statement. The Individual
7 Defendants were provided with copies of, reviewed and approved, and/or signed the Proxy
8 Statement before its issuance and had the ability or opportunity to prevent its issuance or to cause
9 it to be corrected.

10 64. The Individual Defendants also were able to, and did, directly or indirectly, control
11 the conduct of HashiCorp's business, the information contained in its filings with the SEC, and its
12 public statements. Because of their positions and access to material non-public information
13 available to them but not the public, the Individual Defendants knew or should have known that
14 the misrepresentations specified herein had not been properly disclosed to and were being
15 concealed from Plaintiff and Company, and that the Proxy Statement was misleading. As a result,
16 the Individual Defendants are responsible for the accuracy of the Proxy Statement and are therefore
17 responsible and liable for the misrepresentations contained herein.

18 65. The Individual Defendants acted as controlling persons of HashiCorp within the
19 meaning of Section 20(a) of the Exchange Act. By reason of their position with the Company, the
20 Individual Defendants had the power and authority to cause HashiCorp to engage in the wrongful
21 conduct complained of herein. The Individual Defendants controlled HashiCorp and all of its
22 employees. As alleged above, HashiCorp is a primary violator of Section 14 of the Exchange Act
23 and SEC Rule 14a-9. By reason of their conduct, the Individual Defendants are liable pursuant to
24 section 20(a) of the Exchange Act.

25 WHEREFORE, Plaintiff demands injunctive relief, in her favor and against the
26 Defendants, as follows:

27 A. Enjoining the Proposed Transaction;

1 B. In the event Defendants consummate the Proposed Transaction, rescinding it and
2 setting it aside or awarding rescissory damages to Plaintiff;

3 C. Directing the Individual Defendants to exercise their fiduciary duties to disseminate
4 a Proxy Statement that does not contain any untrue statements of material fact and that
5 states all material facts required in it or necessary to make the statements contained therein
6 not misleading;

7 D. Awarding Plaintiff the costs of this action, including reasonable allowance for
8 Plaintiff's attorneys' and experts' fees; and

9 E. Granting such other and further relief as this Court may deem just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury on all issues which can be heard by a jury.

12
13 Dated: June 10, 2024

BRODSKY SMITH

14 By: *Evan J. Smith*

Evan J. Smith, Esquire (SBN 242352)

esmith@brodskysmith.com

15 Ryan P. Cardona, Esquire (SBN 302113)

16 rcardona@brodskysmith.com

17 9595 Wilshire Blvd., Ste. 900

18 Phone: (877) 534-2590

19 Facsimile (310) 247-0160

20 *Attorneys for Plaintiff*