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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 RONALD BLACKWELL, Individually and
13 on Behalf of All Others Similarly Situated,

14 Plaintiff,

15 v.

16 FORESCOUT TECHNOLOGIES INC.,
17 MICHAEL DECESARE, THERESIA
18 GOUW, JAMES BEER, DAVID DEWALT,
19 ELIZABETH HACKENSON, MARK
20 JENSEN, KATHY MCELLIGOTT,
21 ENRIQUE SALEM, and HEZY
22 YESHURUN,

23 Defendants.

Civil Action No. 5:20-cv-5365

COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

1. **VIOLATION OF SECTION 14(e) OF THE SECURITIES EXCHANGE ACT OF 1934**
2. **VIOLATION OF SECTION 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934**
3. **BREACH OF FIDUCIARY DUTIES**

21 Plaintiff Ronald Blackwell (“Plaintiff”), by his undersigned attorneys, alleges upon
22 personal knowledge with respect to himself, and upon information and belief based upon, *inter*
23 *alia*, the investigation of counsel as to all other allegations herein, as follows:

24 **NATURE OF THE ACTION**

25 1. This action is brought by Plaintiff as class action against Forescout Technologies,
26 Inc. (“Forescout” or the “Company”) and the members of the Company’s board of directors
27

1 (collectively referred to as the “Board” or the “Individual Defendants” and, together with
2 Forescout, the “Defendants”) for their violations of Sections 14(e) and 20(a) of the Securities
3 Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78n(e) and 78t(a), respectively. Plaintiff
4 also asserts a claim against the Individual Defendants for breaching their fiduciary duties under
5 state law. Plaintiff’s claims arise in connection with the proposed tender offer (“Tender Offer”) by
6 Ferrari Group Holdings, L.P. (“Parent”) and Ferrari Merger Sub, Inc. (“Merger Sub”), affiliates of
7 Advent International Corporation (together with Parent and Merger Sub “Advent”), to acquire all
8 of the issued and outstanding shares of Forescout (the “Proposed Transaction”).

9 2. On February 6, 2020, Forescout and Advent entered into an agreement and plan of
10 merger (the “Initial Merger Agreement”), pursuant to which Forescout’s shareholders would be
11 entitled to receive \$33.00 per share in cash for each share of Forescout common stock they own
12 (the “Initial Consideration”). On March 3, 2020 Forescout issue a proxy statement soliciting
13 shareholders to vote in favor of the Initial Merger Agreement, and on April 23, 2020, Forescout
14 shareholders approved the Initial Merger Agreement.

15 3. However, three days before the Initial Merger was scheduled to close, Advent
16 informed Forescout that it had concluded that certain closing conditions provided in the Initial
17 Merger Agreement could not be met, and as a result Advent would not consummate the acquisition.

18 4. On July 15, 2020, Forescout entered into a new agreement and plan of merger with
19 Advent and its subsidiaries (the “Merger Agreement”), whereby shareholders of Forescout
20 common stock will receive \$29.00 in cash for each share of Forescout stock they own (the “Offer
21 Price”).

22 5. In renegotiating a deal with Advent, the officers and directors of the Company
23 abandoned the interests of shareholders in pursuit of their own personal benefits. Indeed one of the
24 primary new features present in the Merger Agreement that was absent from the Initial Merger
25 Agreement is the ability for certain shareholders and certain holders of Forescout Stock-Based
26 Awards and/or Forescout Options, including Forescout's executive officers, to roll their equity
27 over into the combined company and continue to share in the future growth of the Company. This
28 rollover comes at the expense of common shareholders, who will now receive four dollars less per

1 share from the Initial Consideration. This unfair sales process represents a breach of the fiduciary
2 duties of the Individual Defendants.

3 6. On July 20, 2020, in order to convince Forescout shareholders to tender their shares,
4 the Board authorized the filing of a materially incomplete and misleading Schedule 14D-9
5 Solicitation/Recommendation Statement (the “Recommendation Statement”) with the Securities
6 and Exchange Commission (“SEC”). In particular, the Recommendation Statement contains
7 materially incomplete and misleading information concerning: (i) the Company’s financial
8 projections; (ii) the valuation analyses performed by the Company’s financial advisor, Morgan
9 Stanley & Co. LLC (“Morgan Stanley”); (iii) the conflicts of interest facing Morgan Stanley; (iv)
10 the conflicts of interest facing the Company’s officers and directors; and (v) the background of the
11 offer. These material misstatements and omissions represent violations of the Exchange Act and
12 breaches of the Individual Defendants’ duty of candor/disclosure.

13 7. The Tender Offer is scheduled to expire at the end of the day, one minute after
14 11:59 p.m., Eastern time on August 20, 2020 (the “Expiration Date”). It is imperative that the
15 material information that has been omitted from the Recommendation Statement is disclosed to
16 the Company’s shareholders prior to the forthcoming Expiration Date so they may make an
17 informed determination on whether to tender their shares.

18 8. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin
19 Defendants from closing the Tender Offer or taking any steps to consummate the Proposed
20 Transaction, unless and until the material information discussed below is disclosed to Forescout
21 shareholders or, in the event the Proposed Transaction is consummated, to recover damages
22 resulting from the Defendants’ violations of the Exchange Act and breaches of fiduciary duty.

23 **JURISDICTION AND VENUE**

24 9. This Court has original jurisdiction over this action pursuant to Section 27 of the
25 Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff
26 alleges violations of Sections 14(e) and 20(a) of the Exchange Act.

27 10. The Court has supplemental jurisdiction over the state law claim for breach of
28 fiduciary duty pursuant to 28 U.S.C. § 1367.

1 11. Personal jurisdiction exists over each Defendant either because the Defendant
2 conducts business in or maintains operations in this District, or is an individual who is either
3 present in this District for jurisdictional purposes or has sufficient minimum contacts with this
4 District as to render the exercise of jurisdiction over the Defendants by this Court permissible
5 under traditional notions of fair play and substantial justice. “Where a federal statute such as
6 Section 27 of the [Exchange] Act confers nationwide service of process, the question becomes
7 whether the party has sufficient contacts with the United States, not any particular state.” *Sec. Inv’r*
8 *Prot. Corp. v. Vigman*, 764 F.2d 1309, 1305 (9th Cir. 1985). “[S]o long as a defendant has
9 minimum contacts with the United States, Section of the Act confers personal jurisdiction over the
10 defendant in any federal district court.” *Id.* At 1316.

11 12. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. §
12 78aa, as well as pursuant to 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had
13 an effect in this District; (ii) Forescout maintains its principal place of business in this District and
14 each of the Individual Defendants, and Company officers or directors, either resides in this District
15 or has extensive contacts within this District; (iii) a substantial portion of the transactions and
16 wrongs complained of herein occurred in this District; (iv) most of the relevant documents
17 pertaining to Plaintiff’s claims are stored (electronically and otherwise), and evidence exists, in
18 this District; and (v) Defendants have received substantial compensation in this District by doing
19 business here and engaging in numerous activities that had an effect in this District.

20 **CLASS ACTION ALLEGATIONS**

21 13. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself
22 and the other public shareholders of Forescout (the “Class”). Excluded from the Class are
23 Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated
24 with any Defendant.

25 14. This action is properly maintainable as a class action because:

26 a. The Class is so numerous that joinder of all members is impracticable. As
27 of July 15, 2020, there were 49,602,911 shares of Forescout common stock outstanding,
28 held by hundreds to thousands of individuals and entities scattered throughout the country.

1 The actual number of public stockholders of Forescout will be ascertained through
2 discovery;

3 b. There are questions of law and fact that are common to the Class that
4 predominate over any questions affecting only individual members, including the
5 following:

6 i) whether Defendants have misrepresented or omitted material
7 information concerning the Proposed Transaction in the
8 Recommendation Statement, in violation of Sections 14(e) of the
9 Exchange Act;

10 ii) whether the Individual Defendants have violated Section 20(a) of
11 the Exchange Act;

12 iii) whether the Individual Defendants have breached their fiduciary
13 duties; and

14 iv) whether Plaintiff and other members of the Class will suffer
15 irreparable harm if compelled to tender their shares based on the
16 materially incomplete and misleading Recommendation Statement;

17 c. Plaintiff is an adequate representative of the Class, has retained competent
18 counsel experienced in litigation of this nature, and will fairly and adequately protect the
19 interests of the Class;

20 d. Plaintiff's claims are typical of the claims of the other members of the Class
21 and Plaintiff does not have any interests adverse to the Class;

22 e. The prosecution of separate actions by individual members of the Class
23 would create a risk of inconsistent or varying adjudications with respect to individual
24 members of the Class, which would establish incompatible standards of conduct for the
25 party opposing the Class;

26 f. Defendants have acted on grounds generally applicable to the Class with
27 respect to the matters complained of herein, thereby making appropriate the relief sought
28 herein with respect to the Class as a whole; and

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