

1 Matthew G. Berkowitz (SBN 310426)
2 matthew.berkowitz@shearman.com
3 Yue (Joy) Wang (SBN 300594)
4 joy.wang@shearman.com
5 SHEARMAN & STERLING LLP
6 1460 El Camino Real, 2nd Floor
7 Menlo Park, CA 94025
8 Telephone: 650.838.3600
9 Fax: 650.838.3699

7 L. Kieran Kieckhefer (SBN 251978)
8 kieran.kieckhefer@shearman.com
9 SHEARMAN & STERLING LLP
10 535 Mission Street, 25th Floor
11 San Francisco, CA 94105
12 Telephone: 415.616.1100
13 Fax: 415.616.1199

11 *Attorneys for Defendant NetSuite, Inc.*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16 UNILOC 2017 LLC,
17
18 Plaintiff,
19 v.
20 NETSUITE, INC.,
21 Defendant.

Case No. 18-cv-01151-JLS-DFM

**DECLARATION OF MATTHEW G.
BERKOWITZ IN SUPPORT OF
NETSUITE'S MOTION TO
DISMISS**

Judge: Hon. Josephine L. Staton
Date: November 1, 2019
Time: 10:30 AM
Location: Ronald Reagan Federal
Building, Courtroom 10A

1 I, Matthew G. Berkowitz, declare as follows:

2 1. I am a partner at the law firm of Shearman & Sterling LLP and lead
3 counsel for Defendant NetSuite, Inc. I am a member in good standing of the Bar of
4 the State of California. I make this declaration based on personal knowledge and, if
5 called as a witness, I could and would testify competently to the matters set forth
6 herein.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs'
8 Opening Claim Construction Brief, *Uniloc USA, Inc. et al. v. ADP, LLC*, No. 16-cv-
9 00741, D.I. 151 (E.D. Tex. May 18, 2017).

10 3. Attached hereto as Exhibit 2 is a true and correct copy of Judge Robert
11 W. Schroeder III's Memorandum Opinion and Order Adopting the Constructions for
12 the Disputed and Agreed Terms of the Asserted Patents, *Uniloc USA, Inc. et al. v.*
13 *ADP, LLC*, No. 16-cv-00741, D.I. 233 (E.D. Tex. Aug. 16, 2017).

14 4. On August 28, 2017 the parties to *Uniloc USA, Inc. et al. v. NetSuite,*
15 *Inc.*, No. 16-cv-00862 (E.D. Tex.) (Schroeder, J.) ("NetSuite I") filed a Joint Claim
16 Construction and Prehearing Statement.

17 5. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiffs'
18 Opening Claim Construction Brief, *Uniloc USA, Inc. et al. v. NetSuite, Inc.*, No. 16-
19 cv-00862, D.I. 117 (E.D. Tex. Sept. 22, 2017).

20 6. On September 29, 2017, the plaintiffs in NetSuite I voluntarily dismissed
21 the case under Federal Rule of Civil Procedure 41(a)(1)(A)(i). NetSuite's motion to
22 dismiss was pending at the time of the plaintiffs' dismissal. Attached hereto as
23 Exhibit 4 is a true and correct copy of Rule 41(a)(1)(A)(i) Notice of Dismissal
24 Without Prejudice, *Uniloc USA, Inc. et al. v. NetSuite, Inc.*, No. 16-cv-00862, D.I.
25 120 (E.D. Tex. Sept. 29, 2017).


26 7. On September 4, 2019, at approximately 8:00AM, I had a telephonic
27 meet and confer with Mr. James Foster, counsel for Plaintiff Uniloc 2017 LLC, about
28 the subject of NetSuite's motion to dismiss and whether Plaintiff would be interested

1 in amending the complaint. Mr. Foster indicated that Plaintiff was not interested in
2 amending the complaint and that Plaintiff planned to seek reconsideration of Judge
3 Schroeder’s claim construction order in the Eastern District of Texas. We discussed
4 the status of Eastern District of Texas cases, as well as the Federal Circuit’s decision
5 on Judge Schroeder’s Section 101 ruling. It was clear that the parties were at an
6 impasse about whether Judge Schroeder’s existing construction of “application
7 program(s)” / “application(s)” should govern in this case.

8 I declare under penalty of perjury under the laws of the United States that the
9 foregoing is true and correct.

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Executed this 12th day of September in Menlo Park, California.


Matthew G. Berkowitz