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20 UNITED STATES DISTRICT COURT
21 DISTRICT OF ARIZONA

22 _____, INDIVIDUALLY AND ON
23 BEHALF OF ALL OTHERS
24 SIMILARLY SITUATED,

25 Plaintiff,

26 v.

27 AUDIOEYE, INC., NATHANIEL T.
28 BRADLEY, AND EDWARD
O'DONNELL,

Defendants.

Case No:

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

JURY TRIAL DEMANDED

1 Plaintiff _____ (“Plaintiff”), by Plaintiff’s undersigned attorneys,
2 individually and on behalf of all other persons similarly situated, alleges the
3 following based upon personal knowledge as to Plaintiff’s own acts, and
4 information and belief as to all other matters, based upon, *inter alia*, the
5 investigation conducted by and through Plaintiff’s attorneys, which included,
6 among other things, a review of Defendants’ public documents, conference calls
7 and announcements made by Defendants, United States Securities and Exchange
8 Commission (“SEC”) filings, wire and press releases published by and regarding
9 AudioEye, Inc. (“AudioEye” or the “Company”), analysts’ reports and
10 advisories about the Company, and information readily obtainable on the
11 Internet. Plaintiff believes that substantial evidentiary support will exist for the
12 allegations set forth herein after a reasonable opportunity for discovery.

13 **NATURE OF THE ACTION**

14 1. This is a securities class action brought on behalf of a class
15 consisting of all persons and entities, other than Defendants and their affiliates,
16 who purchased or otherwise acquired AudioEye securities from May 14, 2014 to
17 April 1, 2015, inclusive (the “Class Period”), seeking to recover compensable
18 damages caused by Defendants’ violations of violation of the Sections 10(b) and
19 20(a), and Rule 10b-5 thereunder, of the Securities Exchange Act of 1934 and
20 for violation of A.R.S. §44-2003(A) and §44-1999 caused by Defendants’
21 violation of A.R.S. § 44-1991(A)(3) (the “Class”).

22 **JURISDICTION AND VENUE**

23 2. The federal claims herein arise under Section 10(b) and 20(a) of the
24 Exchange Act (15 U.S.C. §78j(b) and §78t(a)) and Rule 10-b5 promulgated
25 thereunder (17 C.F.R. §240.10b-5). The Arizona securities claims arise under
26 A.R.S. § 44-1991(A)(3), §44-2003(A) and §44-1999.

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

1 Q was accurate and disclosed any material changes to the Company’s internal
2 control over financial reporting.

3 16. On August 11, 2014, the Company filed a Form 10-Q for the
4 quarter ending June 30, 2014 (the “2Q14 10-Q”) with the SEC. The 2Q14 10-Q
5 provided the Company’s quarter end financial results and position and stated
6 that the Company’s internal control over financial reporting was effective as of
7 June 30, 2014. The 2Q14 10-Q was signed by Defendants Bradley and
8 O’Donnell. The 2Q14 10-Q contained signed SOX certifications by Defendants
9 Bradley and O’Donnell, which stated that the financial information contained in
10 the 2Q14 10-Q was accurate and disclosed any material changes to the
11 Company’s internal control over financial reporting.

12 17. On November 7, 2014, the Company filed a Form 10-Q for the
13 quarter ending September 30, 2014 (the “3Q14 10-Q”) with the SEC. The 3Q14
14 10-Q provided the Company’s quarter end financial results and position and
15 stated that the Company’s internal control over financial reporting was effective
16 as of September 30, 2014. The 3Q14 10-Q was signed by Defendants Bradley
17 and O’Donnell. The 3Q14 10-Q contained signed SOX certifications by
18 Defendants Bradley and O’Donnell, which stated that the financial information
19 contained in the 3Q14 10-Q was accurate and disclosed any material changes to
20 the Company’s internal control over financial reporting.

21 18. On January 12, 2015, the Company issued a press release entitled
22 “*AudioEye to Report Profitable 2014 and Fourth Quarter Revenues of \$3.25*
23 *Million; Company Anticipates Becoming Operating Cash Flow Positive in the*
24 *First Quarter of 2015*” reporting the Company’s preliminary financial results for
25 the fourth quarter of 2014 and issuing guidance for the first quarter of 2015.. The
26 press release, which was attached an exhibit to a Form 8-K filed with the SEC,
27 states in relevant part:

28

1 TUCSON, Arizona — (January 12, 2015) - AudioEye®, Inc.
2 (OTCQB: AEYE) (“AudioEye”) (“the Company”) today announced
3 that the Company expects to report results for the fourth quarter and
4 year ended December 31, 2014 on or before March 31, 2015. The
5 preliminary highlights of AudioEye’s fourth quarter are reviewed
6 below:

- 7 • Bookings for the third and fourth quarters of 2014
8 approximated \$5.3 million and \$4.7 million, respectively.
9 Approximately \$1.0 million, or 19% of total third quarter
10 bookings represented cash contracts, and \$2.46 million, or
11 52% of total fourth quarter bookings consisted of cash
12 contracts, an increase of 146%.
- 13 • AudioEye recently closed on a private placement of equity
14 consisting of 6,687,500 units, which generated gross
15 proceeds to the Company of approximately \$2.675 million.
- 16 • ***The Company expects to report at least \$3.25 million in
17 revenue for the three months ended December 31, 2014.
18 This compares with approximately \$0.75 million in the
19 prior-year quarter, representing a year-over-year increase
20 of more than 332%. Revenue for the twelve months ended
21 2014 and 2013 approximated \$12 million and \$1.56
22 million, respectively, representing a year-over-year
23 increase of more than 665%. Based on information
24 currently available, the Company expects to be profitable
25 for the year ended December 31, 2014.***
- 26 • ***Over \$4.7 million in aggregate contracts were booked
27 during the fourth quarter of 2014. As of December 31,
28 2014, the Company had unbilled contracts totaling over
\$1.8 million that will become recognized revenues in 2015.***
- ***Monetary contracts executed as a result of the Company’s
intellectual property licensing strategy increased more
than 140%, from \$1 million in the third quarter of 2014 to
over \$2.4 million in the fourth quarter of 2014.***
- ***Recognized cash revenue for the three months ended
December 31, 2014 totaled over \$1 million, representing an
increase of more than 81% relative to cash revenue of \$0.56
million for the quarter ended September 30, 2014.***

- The annualized bookings “run rate” for the most recent quarter exceeded \$18 million.
- ***Anticipated operating receipts of cash payments of over \$2 million at the beginning of the first quarter of 2015 should result in cash on hand in excess of \$4 million***, the strongest cash position to begin any year in the Company’s history.
- Projected and budgeted expenses for the first quarter of 2015 should be exceeded by cash inflows from operations. As a result, management believes that ***AudioEye will become operating cash flow positive during the quarter ending March 31, 2015.***

* * *

“We are very excited that we have access to more capital than at any time in our history and look forward to becoming operating cash flow positive in the first quarter of 2015, which is a triumph for our team,” stated Nathaniel Bradley, Chief Executive Officer of AudioEye, Inc. ***“We are also pleased to announce the completion of a \$2.675 million private placement and express our gratitude to all of our shareholders, without which AudioEye’s opportunities would not be so robust and scalable. The proceeds from the equity raise and our cash revenue from sales will be reinvested into supporting our team’s initiative of becoming the global leader in web accessibility. We are focused intently on growth and leveraging our accomplishments in 2014 with even greater success in 2015.*** As a team, we are looking forward to an exciting 2015, which marks the 25th anniversary of the Americans with Disabilities Act.”

(Emphasis added).

19. The statements referenced in ¶¶ 15 – 18 above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operations, and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) AudioEye’s financial statements contained errors concerning the classification of revenues and expenses; (2) the Company lacked adequate internal controls over its financial reporting; and (3) as a result of the foregoing,

1 the Company's financial statements were materially false and misleading at all
2 relevant times.

3 The Truth Emerges

4 20. On April 1, 2015, the Company issued a press release announcing
5 that its previously issued financial results for the first three quarters of 2014 and
6 the guidance for the fourth quarter of 2014 and the full year of 2014 could no
7 longer be relied upon. In the same press release, the Company revealed that
8 Defendant O'Donnell resigned as CFO. The press release states in relevant part:

9 **TUCSON, Arizona** — (April 1, 2015) — (OTCQB: AEYE)
10 (“AudioEye” or the “Company”) today announced that on March 26,
11 2015, the Audit Committee of the Company's Board of Directors,
12 based in part on the recommendation of the Company's management
13 and in consultation with the Company's auditors and advisors,
14 concluded that *because of errors identified in the Company's*
15 *previously issued financial statements, the Company will restate its*
16 *previously issued financial statements for the quarters ended*
17 *March 31, June 30 and September 30, 2014.*

18 *The Audit Committee also authorized an internal review of controls*
19 *and policies. Accordingly, investors should no longer rely upon the*
20 *Company's previously released financial statements or other*
21 *financial data for these periods, including any interim period*
22 *financial statements, and any earnings releases relating to these*
23 *periods. In addition, investors should no longer rely on the*
24 *preliminary earnings release issued by the Company on January 12,*
25 *2015 relating to the quarter and year ended December 31, 2014.*

26 The Company also announced that it will host an investor conference
27 call at 2:30 p.m. Eastern Time today, Wednesday, April 1, 2015 (see
28 details below).

29 **FINANCIAL STATEMENT ISSUES**

30 *Based on the review to date, the Company anticipates removing all*
31 *revenue derived from non-cash exchanges of a license of the*

1 *Company for the license of the Company's customer and all revenue*
2 *from non-cash exchanges of a license of the Company for services*
3 *of the Company's customer, and reducing by a material amount*
4 *previously reported license cash revenue.* The aggregate amount of
5 revenue reported for the first nine months of 2014 for non-cash
6 transactions was approximately \$8,100,000. The reversal of revenue
7 from the non-cash exchange transactions will also impact additional
8 accounts, including reductions in Prepaid Assets, Intangible Assets
9 and Amortization Expense. *The Company also expects that certain*
10 *expenses will be reclassified. Additional adjustments may be*
11 *identified pursuant to the outcome of the ongoing review and*
12 *analysis.* The Company has also begun a review of calendar year
2013 activity to determine whether there are any adjustments that may
13 impact previously issued financial statements. There are no known
14 adjustments to 2013 financials at this time. The cash balance is not
15 impacted by these changes.

16 * * *

17 In accordance with Section 404 of the Sarbanes-Oxley Act of 2002,
18 the Company's management has been assessing the effectiveness of
19 the Company's internal controls involving financial reporting and
20 disclosure. *Based on this assessment, the Company expects to*
21 *report material weaknesses in the Company's internal controls*
22 *and therefore conclude that internal controls over financial*
23 *reporting and disclosure are not effective.*

24 The Audit Committee and management have discussed the matters
25 described herein, which will also be disclosed a Current Report on
26 Form 8-K to be filed with the SEC today, with MaloneBailey, LLP,
27 the Company's independent registered public accounting firm.

28 * * *

Also, effective March 29, 2015, Edward O'Donnell resigned his
position as the Company's Chief Financial Officer.

(Emphasis added).

21. On that same day, the Company filed a Form 8-K with the SEC
stating that its internal controls over financial reporting and disclosure controls
were not effective and further detailing the restatement of its previously issued
financial statements for its quarters ended March 31, June 30 and September 30,

1 2014 and non-reliance on its preliminary earnings release. The Form 8-K states
2 in relevant part:

3
4 **Item 4.02 Non-Reliance on Previously Issued Financial**
5 **Statements or a Related Audit Report or Completed Interim**
6 **Review.**

7 On March 26, 2015, the Audit Committee of the Board of Directors
8 of AudioEye, Inc. (the “Company”), based in part on the
9 recommendation of the Company’s management and in
10 consultation with the Company’s auditors and advisors, concluded
11 that *because of errors identified in the Company’s previously*
12 *issued financial statements, the Company will restate its*
13 *previously issued financial statements for its quarters ended*
14 *March 31, June 30 and September 30, 2014.* The Audit
15 Committee also authorized an internal review of controls and
16 policies. Accordingly, investors should no longer rely upon the
17 Company’s previously released financial statements or other
18 financial data for these periods, including any interim period
19 financial statements, and any earnings releases relating to these
20 periods. *In addition, investors should no longer rely on the*
21 *preliminary earnings release issued by the Company on January*
22 *12, 2015 relating to the quarter and year ended December 31,*
23 *2014.*

24 Based on the review to date, the Company anticipates removing all
25 revenue derived from non-cash exchanges of a license of the
26 Company for the license of the Company’s customer and all
27 revenue from non-cash exchanges of a license of the Company for
28 services of the Company’s customer, and reducing by a material
amount previously reported license cash revenue. The aggregate
amount of revenue reported for the first nine months of 2014 for
non-cash transactions was approximately \$8,100,000. The reversal
of revenue on the non-cash exchange transactions will also impact
additional accounts including reductions in Prepaid Assets,
Intangible Assets and Amortization Expense. The Company also
expects that certain expenses will be reclassified. Additional
adjustments may be identified pursuant to the ongoing review and
analysis. The Company has also begun a review of calendar year

1 2013 activity to determine whether there are any adjustment that
2 may impact previously issued financial statements. There are no
3 known adjustments to 2013 financials at this time. The cash
4 balance is not impacted by these changes.

5 The Company, along with its advisors and outside accountants,
6 continues to perform its review in order to conclude and quantify
7 the impact. The Company expects to complete this process and file
8 its restated financial statements over the course of the next several
9 weeks. The Company does not expect to timely file its Form 10-K
10 for calendar year 2014 or its Form 10-Q for the quarter ended
11 March 31, 2015. Subject to the completion of the audit and the
12 restatement of previously issued financial statements, the Company
13 expects to be timely with its filings for the Form 10-Q for the
14 quarter ended June 30, 2015.

15 In accordance with Section 404 of the Sarbanes-Oxley Act of 2002,
16 the Company's management has been assessing the effectiveness of
17 the Company's internal controls over financial reporting and
18 disclosure controls. Based on this assessment, *the Company*
19 *expects to report material weaknesses in the Company's internal*
20 *controls and therefore conclude that internal controls over*
21 *financial reporting and disclosure controls are not effective.*

22 The Audit Committee and management have discussed the matters
23 disclosed in this Current Report on Form 8-K with MaloneBailey,
24 LLP, the Company's independent registered public accounting firm.

25 (Emphasis added).

26 22. On this news, the Company's shares fell \$0.10 per share or over
27 24% to close at \$0.31 per share on April 1, 2015, damaging investors.

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

PLAINTIFF'S CLASS ACTION ALLEGATIONS

1 24. Plaintiff brings this action as a class action pursuant to Federal Rule
2 of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those
3 who purchased or otherwise acquired AudioEye securities during the Class
4 Period that suffered compensable damages related to the securities violations
5 alleged herein (the “Class”); and were damaged upon the revelation of the
6 alleged corrective disclosures. Excluded from the Class are Defendants herein,
7 the officers and directors of the Company, at all relevant times, members of their
8 immediate families and their legal representatives, heirs, successors or assigns
9 and any entity in which Defendants have or had a controlling interest.

10 25. The members of the Class are so numerous that joinder of all
11 members is impracticable. Throughout the Class Period, AudioEye securities
12 were actively traded on the OTC. While the exact number of Class members is
13 unknown to Plaintiff at this time and can be ascertained only through appropriate
14 discovery, Plaintiff believes that there are hundreds or thousands of members in
15 the proposed Class. Record owners and other members of the Class may be
16 identified from records maintained by AudioEye or its transfer agent and may be
17 notified of the pendency of this action by mail, using the form of notice similar
18 to that customarily used in securities class actions.

19 26. Plaintiff’s claims are typical of the claims of the members of the
20 Class as all members of the Class are similarly affected by Defendants’ wrongful
21 conduct in violation of federal law that is complained of herein.

22 27. Plaintiff will fairly and adequately protect the interests of the
23 members of the Class and has retained counsel competent and experienced in
24 class and securities litigation. Plaintiff has no interests antagonistic to or in
25 conflict with those of the Class.

26 28. Common questions of law and fact exist as to all members of the
27 Class and predominate over any questions solely affecting individual members
28 of the Class. Among the questions of law and fact common to the Class are:

- 1 • whether the federal securities laws and Arizona state securities laws
2 were violated by Defendants' acts as alleged herein;
- 3 • whether statements made by Defendants to the investing public
4 during the Class Period misrepresented material facts about the
5 business, operations and management of AudioEye;
- 6 • whether the Individual Defendants caused AudioEye to issue false
7 and misleading financial statements during the Class Period;
- 8 • whether Defendants acted knowingly or recklessly in issuing false
9 and misleading financial statements;
- 10 • whether the prices of AudioEye securities during the Class Period
11 were artificially inflated because of the Defendants' conduct
12 complained of herein; and
- 13 • whether the members of the Class have sustained damages and, if
14 so, what is the proper measure of damages.

15 29. A class action is superior to all other available methods for the fair
16 and efficient adjudication of this controversy since joinder of all members is
17 impracticable. Furthermore, as the damages suffered by individual Class
18 members may be relatively small, the expense and burden of individual litigation
19 make it impossible for members of the Class to individually redress the wrongs
20 done to them. There will be no difficulty in the management of this action as a
21 class action.

22 **ADDITIONAL SCIENTER ALLEGATIONS**

23 30. As alleged herein, AudioEye and the Individual Defendants acted
24 with scienter in that they knew that the public documents and statements issued
25 or disseminated in the name of the Company were materially false and
26 misleading; knew that such statements or documents would be issued or
27 disseminated to the investing public; and knowingly and substantially
28 participated or acquiesced in the issuance or dissemination of such statements or

1 documents as primary violations of the securities laws. As set forth elsewhere
2 herein in detail, these Defendants, by virtue of their receipt of information
3 reflecting the true facts regarding AudioEye, their control over, and/or receipt
4 and/or modification of AudioEye’s allegedly materially misleading statements
5 and/or their associations with the Company which made them privy to
6 confidential proprietary information concerning AudioEye, participated in the
7 fraudulent scheme alleged herein.

8 **NO SAFE HARBOR**

9 31. AudioEye’s “Safe Harbor” warnings accompanying its reportedly
10 forward looking statements (“FLS”) issued during the Class Period were
11 ineffective to shield those statements from liability. To the extent that projected
12 revenues and earnings were included in the Company’s financial reports
13 prepared in accordance with GAAP, including those filed with the SEC on Form
14 8-K, they are excluded from the protection of the statutory Safe Harbor. *See* 15
15 U.S.C. §78u-5(b)(2)(A).

16 32. Defendants are also liable for any false or misleading FLS pleaded
17 because, at the time each FLS was made, the speaker knew the FLS was false or
18 misleading and the FLS was authorized and/or approved by an executive officer
19 of AudioEye who knew that the FLS was false. None of the historic or present
20 tense statements made by Defendants were assumptions underlying or relating to
21 any plan, projection or statement of future economic performance, as they were
22 not stated to be such assumptions underlying or relating to any projection or
23 statement of future economic performance when made, nor were any of the
24 projections or forecasts made by Defendants expressly related to or stated to be
25 dependent on those historic or present tense statements when made.

26 **APPLICABILITY OF PRESUMPTION OF RELIANCE:**
27 **FRAUD-ON-THE-MARKET**

28

1 33. Plaintiff will rely, in part, upon the presumption of reliance
2 established by the fraud-on-the-market doctrine in that:

- 3 • Defendants made public misrepresentations or failed to disclose
4 material facts during the Class Period;
- 5 • the omissions and misrepresentations were material;
- 6 • AudioEye securities are traded in an efficient market;
- 7 • the Company's shares were liquid and traded with moderate to
8 heavy volume during the Class Period;
- 9 • the Company traded on the OTC and was covered by multiple
10 analysts;
- 11 • the misrepresentations and omissions alleged would tend to induce
12 a reasonable investor to misjudge the value of the Company's
13 securities; and
- 14 • Plaintiff and members of the Class purchased, acquired and/or sold
15 AudioEye securities between the time the Defendants failed to
16 disclose or misrepresented material facts and the time the true facts
17 were disclosed, without knowledge of the omitted or
18 misrepresented facts.

19 34. Based upon the foregoing, Plaintiff and the members of the Class
20 are entitled to a presumption of reliance upon the integrity of the market.

21 **APPLICABILITY OF PRESUMPTION OF RELIANCE:**
22 **AFFILIATED UTE**

23 35. Neither Plaintiff nor the Class (defined herein) need prove reliance
24 – either individually or as a class – because under the circumstances of this case,
25 which involve omissions of material fact as described above, positive proof of
26 reliance is not a prerequisite to recovery, pursuant to the ruling of the United
27 States Supreme Court in *Affiliated Ute Citizens of Utah v. United States*, 406
28 U.S. 128, 92 S. Ct. 1456, 31 L. Ed. 2d 741 (1972). All that is necessary is that

1 the facts withheld be material in the sense that a reasonable investor might have
2 considered the omitted information important in deciding whether to buy or sell
3 the subject security.

4 **LOSS CAUSATION/ECONOMIC LOSS**

5 36. The market for AudioEye securities was open, well-developed and
6 efficient at all relevant times. As a result of these materially false and misleading
7 statements and omissions as set forth above, AudioEye securities traded at
8 artificially inflated prices during the Class Period Plaintiff and other members of
9 the Class purchased or otherwise acquired AudioEye securities relying upon the
10 integrity of the market price of AudioEye securities and market information
11 relating to AudioEye, and have been damaged thereby.

12 37. During the Class Period, as detailed herein, Defendants made false
13 and misleading statements and engaged in a scheme to deceive the market and a
14 course of conduct that artificially inflated the price of AudioEye securities and
15 operated as a fraud or deceit on Class Period purchasers of AudioEye securities
16 by misrepresenting the value of the Company's business and prospects. As
17 Defendants' misrepresentations and fraudulent conduct became apparent to the
18 market, the price of AudioEye securities fell precipitously, as the prior artificial
19 inflation came out of the price. As a result of their purchases of AudioEye
20 securities during the Class Period, Plaintiff and other members of the Class
21 suffered economic loss, *i.e.*, damages, under the federal securities laws.

22 38. At all relevant times, the material misrepresentations and omissions
23 particularized in this Complaint directly or proximately caused, or were a
24 substantial contributing cause of, the damages sustained by Plaintiff and other
25 members of the Class. As described herein, during the Class Period, Defendants
26 made or caused to be made a series of materially false or misleading statements
27 about AudioEye's business and operations. These material misstatements and
28 omissions had the cause and effect of creating, in the market, an unrealistically

1 positive assessment of AudioEye and its business and operations, thus causing
2 the Company's securities to be overvalued and artificially inflated at all relevant
3 times. Defendants' materially false and misleading statements during the Class
4 Period resulted in Plaintiff and other members of the Class purchasing AudioEye
5 securities at artificially inflated prices, thus causing the damages complained of
6 herein. When the true facts about the Company were revealed to the market, the
7 inflation in the price of AudioEye securities was removed and the price of
8 AudioEye securities declined dramatically, causing losses to Plaintiff and the
9 other members of the Class.

10 **COUNT I**

11 **Violations of Section 10(b) of The Exchange Act and Rule 10b-5**
12 **Against All Defendants**

13 39. Plaintiff repeats and realleges each and every allegation contained
14 above as if fully set forth herein.

15 40. This Count is asserted against Defendants and is based upon
16 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
17 promulgated thereunder by the SEC.

18 41. During the Class Period, Defendants engaged in a plan, scheme,
19 conspiracy and course of conduct, pursuant to which they knowingly or
20 recklessly engaged in acts, transactions, practices and courses of business which
21 operated as a fraud and deceit upon Plaintiff and the other members of the Class;
22 made various untrue statements of material facts and omitted to state material
23 facts necessary in order to make the statements made, in light of the
24 circumstances under which they were made, not misleading; and employed
25 devices, schemes and artifices to defraud in connection with the purchase and
26 sale of securities. Such scheme was intended to, and, throughout the Class
27 Period, did: (i) deceive the investing public, including Plaintiff and other Class
28 members, as alleged herein; (ii) artificially inflate and maintain the market price

1 of AudioEye securities; and (iii) cause Plaintiff and other members of the Class
2 to purchase or otherwise acquire AudioEye securities at artificially inflated
3 prices. In furtherance of this unlawful scheme, plan and course of conduct,
4 Defendants, and each of them, took the actions set forth herein.

5 42. Pursuant to the above plan, scheme, conspiracy and course of
6 conduct, each of the Defendants participated directly or indirectly in the
7 preparation and/or issuance of the quarterly and annual reports, SEC filings,
8 press releases and other statements and documents described above, including
9 statements made to securities analysts and the media that were designed to
10 influence the market for AudioEye securities. Such reports, filings, releases and
11 statements were materially false and misleading in that they failed to disclose
12 material adverse information and misrepresented the truth about AudioEye's
13 finances and business prospects.

14 43. By virtue of their positions at AudioEye, Defendants had actual
15 knowledge of the materially false and misleading statements and material
16 omissions alleged herein and intended thereby to deceive Plaintiff and the other
17 members of the Class, or, in the alternative, Defendants acted with reckless
18 disregard for the truth in that they failed or refused to ascertain and disclose such
19 facts as would reveal the materially false and misleading nature of the statements
20 made, although such facts were readily available to Defendants. Said acts and
21 omissions of Defendants were committed willfully or with reckless disregard for
22 the truth. In addition, each defendant knew or recklessly disregarded that
23 material facts were being misrepresented or omitted as described above.

24 44. Defendants were personally motivated to make false statements and
25 omit material information necessary to make the statements not misleading in
26 order to personally benefit from the sale of AudioEye securities from their
27 personal portfolios.

28

1 45. Information showing that Defendants acted knowingly or with
2 reckless disregard for the truth is peculiarly within Defendants' knowledge and
3 control. As the senior managers and/or directors of AudioEye, the Individual
4 Defendants had knowledge of the details of AudioEye's internal affairs.

5 46. The Individual Defendants are liable both directly and indirectly for
6 the wrongs complained of herein. Because of their positions of control and
7 authority, the Individual Defendants were able to and did, directly or indirectly,
8 control the content of the statements of AudioEye. As officers and/or directors
9 of a publicly-held company, the Individual Defendants had a duty to disseminate
10 timely, accurate, and truthful information with respect to AudioEye's businesses,
11 operations, future financial condition and future prospects. As a result of the
12 dissemination of the aforementioned false and misleading reports, releases and
13 public statements, the market price of AudioEye securities was artificially
14 inflated throughout the Class Period. In ignorance of the adverse facts
15 concerning AudioEye's business and financial condition which were concealed
16 by Defendants, Plaintiff and the other members of the Class purchased or
17 otherwise acquired AudioEye securities at artificially inflated prices and relied
18 upon the price of the securities, the integrity of the market for the securities
19 and/or upon statements disseminated by Defendants, and were damaged thereby.

20 47. During the Class Period, AudioEye securities were traded on an
21 active and efficient market. Plaintiff and the other members of the Class, relying
22 on the materially false and misleading statements described herein, which the
23 Defendants made, issued or caused to be disseminated, or relying upon the
24 integrity of the market, purchased or otherwise acquired shares of AudioEye
25 securities at prices artificially inflated by Defendants' wrongful conduct. Had
26 Plaintiff and the other members of the Class known the truth, they would not
27 have purchased or otherwise acquired said securities, or would not have
28 purchased or otherwise acquired them at the inflated prices that were paid. At

1 the time of the purchases and/or acquisitions by Plaintiff and the Class, the true
2 value of AudioEye securities was substantially lower than the prices paid by
3 Plaintiff and the other members of the Class. The market price of AudioEye
4 securities declined sharply upon public disclosure of the facts alleged herein to
5 the injury of Plaintiff and Class members.

6 48. By reason of the conduct alleged herein, Defendants knowingly or
7 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange
8 Act and Rule 10b-5 promulgated thereunder.

9 49. As a direct and proximate result of Defendants' wrongful conduct,
10 Plaintiff and the other members of the Class suffered damages in connection
11 with their respective purchases, acquisitions and sales of the Company's
12 common stock during the Class Period, upon the disclosure that the Company
13 had been disseminating misrepresented financial statements to the investing
14 public.

15 **COUNT II**

16 **Violations of Section 20(a) of The Exchange Act** 17 **Against The Individual Defendants**

18 50. Plaintiff repeats and realleges each and every allegation contained
19 in the foregoing paragraphs as if fully set forth herein.

20 51. During the Class Period, the Individual Defendants participated in
21 the operation and management of AudioEye, and conducted and participated,
22 directly and indirectly, in the conduct of AudioEye's business affairs. Because
23 of their senior positions, they knew the adverse non-public information about
24 AudioEye's current financial position and future business prospects.

25 52. As officers and/or directors of a publicly owned company, the
26 Individual Defendants had a duty to disseminate accurate and truthful
27 information with respect to AudioEye's business practices, and to correct
28

1 promptly any public statements issued by AudioEye which had become
2 materially false or misleading.

3 53. Because of their positions of control and authority as senior
4 officers, the Individual Defendants were able to, and did, control the contents of
5 the various reports, press releases and public filings which AudioEye
6 disseminated in the marketplace during the Class Period concerning the
7 Company's business, operational and accounting policies. Throughout the Class
8 Period, the Individual Defendants exercised their power and authority to cause
9 AudioEye to engage in the wrongful acts complained of herein. The Individual
10 Defendants therefore, were "controlling persons" of AudioEye within the
11 meaning of Section 20(a) of the Exchange Act. In this capacity, they participated
12 in the unlawful conduct alleged which artificially inflated the market price of
13 AudioEye securities.

14 54. Each of the Individual Defendants, therefore, acted as a controlling
15 person of AudioEye. By reason of their senior management positions and/or
16 being directors of AudioEye, each of the Individual Defendants had the power to
17 direct the actions of, and exercised the same to cause, AudioEye to engage in the
18 unlawful acts and conduct complained of herein. Each of the Individual
19 Defendants exercised control over the general operations of AudioEye and
20 possessed the power to control the specific activities which comprise the
21 primary violations about which Plaintiff and the other members of the Class
22 complain.

23 55. By reason of the above conduct, the Individual Defendants are
24 liable pursuant to Section 20(a) of the Exchange Act for the violations
25 committed by AudioEye.

26 **COUNT III**

27 **Violation of A.R.S. § 44-1991(A)(3) & 44-2003(A)**
28 **Against All Defendants**

1 56. Plaintiffs repeat and reallege each and every allegation contained
2 above as if fully set forth herein.

3 57. This claim is brought against all Defendants for civil liability
4 pursuant to A.R.S. §44-2003(A) for their violation of A.R.S. § 44-1991(A)(3).

5 58. Defendants, individually and in concert, directly and indirectly,
6 engaged and participated in a continuous course of business under which they
7 hid adverse information concerning AudioEye's actual revenue, net income, and
8 assets. Defendants knew or recklessly ignored that disclosure of AudioEye's
9 fraud would reduce the value of AudioEye securities.

10 59. The course of business through which Defendants disclosed
11 information about AudioEye and marketed AudioEye securities without
12 disclosing the misstatements alleged herein violated A.R.S. § 44-1991(A)(3).

13 60. Individual Defendants aided, abetted, and culpably made and
14 participated in AudioEye's violations of A.R.S. § 44-1991(A)(3). Under A.R.S.
15 § 44-2003(A), Defendants are liable for their own and for AudioEye's violations
16 of § 44-1991(A)(3).

17 61. Because of the securities violations described in this Claim,
18 Plaintiffs and the Class are entitled to, and by this complaint demand, statutory
19 rescission under A.R.S. § 44-2001(A).

20 62. This action was filed within two years after the discovery of the
21 facts on which liability is based, or after the discovery should have been made
22 by exercise of reasonable diligence.

23 **COUNT IV**

24 **Violation of A.R.S. § 44-1999(B)**
25 **Against Individual Defendants**

26 63. Plaintiffs repeat and reallege each and every allegation contained
27 above as if fully set forth herein.

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Respectfully submitted,

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