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8 *Counsel for Plaintiff* \_\_\_\_\_

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 \_\_\_\_\_, Individually and on behalf  
12 of all others similarly situated,

13 Plaintiff,

14 v.

15 INVESTMENT TECHNOLOGY  
16 GROUP, INC., ROBERT C. GASSER,  
17 and STEVEN R. VIGLIOTTI,

18 Defendants.

Case No:

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

JURY TRIAL DEMANDED

19  
20 Plaintiff \_\_\_\_\_ (“Plaintiff”), by Plaintiff’s undersigned attorneys,  
21 individually and on behalf of all other persons similarly situated, alleges the  
22 following based upon personal knowledge as to Plaintiff’s own acts, and information  
23 and belief as to all other matters, based upon, *inter alia*, the investigation conducted  
24 by and through Plaintiff’s attorneys, which included, among other things, a review of  
25 Defendants’ public documents, conference calls and announcements made by  
26 Defendants, United States Securities and Exchange Commission (“SEC”) filings,  
27 wire and press releases published by and regarding Investment Technology Group,  
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1 Inc. (“ITG” or the “Company”), and information readily obtainable on the Internet.  
2 Plaintiff believes that substantial evidentiary support will exist for the allegations set  
3 forth herein after a reasonable opportunity for discovery.

#### 4 **NATURE OF THE ACTION**

5 1. This is a federal securities class action brought on behalf of a class  
6 consisting of all persons and entities, other than Defendants (defined below) and their  
7 affiliates, who purchased or otherwise acquired the securities of ITG from February  
8 28, 2011 to July 29, 2015, inclusive (the “Class Period”), seeking to recover  
9 compensable damages caused by Defendants’ violations of federal securities laws  
10 (the “Class”).

11 2. ITG is an independent execution and research broker in the United  
12 States, Canada, Europe, and the Asia Pacific regions. One of its principal  
13 subsidiaries, AlterNet Securities, Inc. ("AlterNet"), is a U.S. broker-dealer registered  
14 with the SEC, FINRA, NASDAQ, EDGA, EDGX and 14 states.

15 3. Throughout the Class Period, Defendants made false and/or misleading  
16 statements, as well as failed to disclose material adverse facts about the Company’s  
17 business, operations, prospects and performance. Specifically, during the Class  
18 Period, Defendants made false and/or misleading statements and/or failed to disclose  
19 that: (1) AlterNet operated a proprietary trading operation in 2010 through mid-2011  
20 inside of ITG's POSIT dark pool, a private stock trading platform, against some of its  
21 broker clients; (2) the proprietary trading operation used information from customer  
22 stock orders within ITG's dark pool, as well as information from ITG clients that used  
23 the firm's algorithms to execute trades on other trading platforms, which should not  
24 have been available; and (3) as a result of the foregoing, the Company’s public  
25 statements were materially false and misleading at all relevant times.

26 4. On August 4, 2015, the Company issued a press release, announcing,  
27 among other things, that it is setting aside \$20.3 million for a probable settlement  
28 with the SEC to resolve allegations that the Company failed to disclose crossing

1 against sell-side clients in POSIT and violations of ITG policy and procedures by a  
2 former employee.

3 5. On this news, the Company's shares fell \$5.46 per share or over 23%  
4 from its previous closing price to close at \$18.36 per share on July 30, 2015,  
5 damaging investors.

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

9 **JURISDICTION AND VENUE**

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

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

15 9. Venue is proper in this District pursuant to §27 of the Exchange Act, 15  
16 U.S.C. §78aa and 28 U.S.C. §1391(b), as Defendants conducts business in this  
17 District, has an office in this District, and a significant portion of the Defendants'  
18 actions and the subsequent damages, took place within this District.

19 10. In connection with the acts, conduct and other wrongs alleged in this  
20 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of  
21 interstate commerce, including but not limited to, the United States mail, interstate  
22 telephone communications and the facilities of the national securities exchange.

23 **PARTIES**

24 11. Plaintiff \_\_\_\_\_, as set forth in the attached Certification, acquired ITG  
25 securities at artificially inflated prices during the Class Period and was damaged upon  
26 the revelation of the alleged corrective disclosures.

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1 12. Defendant ITG is a broker-dealer and dark pool operator. ITG is  
2 headquartered in New York, New York and maintains an office in Los Angeles,  
3 California. Its common stock trades on the NYSE under the ticker symbol “ITG.”

4 13. Defendant Robert C. Gasser (“Gasser”) has served as the Company’s  
5 Chief Executive Officer (“CEO”), President and Director since October 2006 and was  
6 replaced as CEO on August 3, 2015.

7 14. Defendant Steven R. Vigliotti (“Vigliotti”) served as the Company’s  
8 Chief Financial Officer (“CFO”) throughout the entire Class Period.

9 15. The defendants referenced above in ¶¶ 13 – 14 are sometimes referred  
10 to herein as the “Individual Defendants.”

11 16. Defendant ITG and the Individual Defendants are referred to herein,  
12 collectively, as the “Defendants.”

### 13 **SUBSTANTIVE ALLEGATIONS**

#### 14 **Background**

15 17. ITG is an independent execution and research broker. Its business is  
16 organized into four reportable operating segments: U.S. Operations; Canadian  
17 Operations; European Operations; and Asia Pacific Operations. These four operating  
18 segments offer a wide range of solutions for asset managers and broker-dealers in the  
19 areas of: electronic brokerage; research, sales and trading; platforms and analytics.

20 18. ITG electronic brokerage services include self-directed trading by clients  
21 using algorithms, smart routing and matching in cash equities through POSIT  
22 (including single stocks and portfolio lists), futures and options.

#### 23 **Materially False And Misleading Statements Issued During the Class Period**

24 19. The Class Period starts on February 28, 2011, when the Company filed a  
25 Form 10-K for the fiscal year ended December 31, 2010 (the “2010 10-K”) with the  
26 SEC, which provided the Company’s year end financial results and position and  
27 stated the following with regards to the effectiveness of its disclosure controls and  
28 procedures:

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**Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. Based on this evaluation, *our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this annual report.*

(Emphasis added).

20. The 2010 10-K was signed by the Individual Defendants and contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by the Individual Defendants attesting to the accuracy of the 2010 10-K.

21. On February 28, 2012, the Company filed a Form 10-K for the fiscal year ended December 31, 2011 (the “2011 10-K”) with the SEC, which provided the Company’s year end financial results and position and stated the following with regards to the effectiveness of its disclosure controls and procedures:

**Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. *Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this annual report.*

(Emphasis added).

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2 22. The 2011 10-K was signed by the Individual Defendants and contained  
3 signed SOX certifications by the Individual Defendants attesting to the accuracy of  
4 the 2011 10-K.

5 23. On March 6, 2013, the Company filed a Form 10-K for the fiscal year  
6 ended December 31, 2012 (the “2012 10-K”) with the SEC, which provided the  
7 Company’s year end financial results and position and stated the following with  
8 regards to the effectiveness of its disclosure controls and procedures:

9 **Conclusion Regarding the Effectiveness of Disclosure Controls and**  
10 **Procedures**

11 Under the supervision and with the participation of our management,  
12 including our principal executive officer and principal financial officer,  
13 we conducted an evaluation of our disclosure controls and procedures, as  
14 such term is defined under Rule 13a-15(e) promulgated under the  
15 Exchange Act. *Based on this evaluation, our principal executive officer*  
16 *and our principal financial officer concluded that our disclosure*  
17 *controls and procedures were effective as of the end of the period*  
18 *covered by this annual report.*

19 (Emphasis added).

20 24. The 2012 10-K was signed by the Individual Defendants and contained  
21 signed SOX certifications by the Individual Defendants attesting to the accuracy of  
22 the 2012 10-K.

23 25. On March 17, 2014, the Company filed a Form 10-K for the fiscal year  
24 ended December 31, 2013 (the “2013 10-K”) with the SEC, which provided the  
25 Company’s year end financial results and position and stated the following with  
26 regards to the effectiveness of its disclosure controls and procedures:  
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**Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. *Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this annual report.*

(Emphasis added).

26. The 2013 10-K was signed by the Individual Defendants and contained signed SOX certifications by the Individual Defendants attesting to the accuracy of the 2013 10-K.

27. On March 13, 2015, the Company filed a Form 10-K for the fiscal year ended December 31, 2014 (the “2014 10-K”) with the SEC, which provided the Company’s year end financial results and position and stated the following with regards to the effectiveness of its disclosure controls and procedures:

**Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. *Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this annual report.*

(Emphasis added).





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crossing against sell-side clients in POSIT and (b) violations of ITG policy and procedures by a former employee. These violations principally involved information breaches for a period of several months in 2010 regarding sell-side parent orders flowing into ITG’s algorithms and executions by all customers in non-POSIT markets that were not otherwise available to ITG clients. ITG has negotiated a potential settlement with the Staff of the SEC Enforcement Division. Based on the terms of the potential settlement, ITG would pay an aggregate amount of \$20.3 million representing a civil penalty of \$18 million, disgorgement of approximately \$2.1 million in trading revenues and prejudgment interest of approximately \$250,000. As a result, ITG reserved \$20.3 million for a probable settlement with the SEC and incurred \$2.3 million in legal and other related costs associated with this matter during the second quarter of 2015.

Final resolution of this matter is subject to preparation and negotiation of documentation satisfactory to all the parties, including approval by ITG’s Board of Directors and authorization by the SEC. ITG can provide no assurances that a satisfactory final agreement will be reached and that authorization by the SEC will be obtained or with respect to the timing or definitive terms of any such agreement or approvals.

Until this matter is fully resolved, ITG expects to continue to incur costs, primarily professional fees and expenses, which may be significant.

The discussion above includes guidance on adjusted net income and related per share amounts, which are non-GAAP financial measures that are described in the attached table along with a reconciliation of these non-GAAP financial measures to GAAP results.

31. On this news, the Company’s shares fell \$5.46 per share or over 23% from its previous closing price to close at \$18.36 per share on July 30, 2015, damaging investors.

32. 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.

1 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

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

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

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

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

25 37. Common questions of law and fact exist as to all members of the Class  
26 and predominate over any questions solely affecting individual members of the Class.  
27 Among the questions of law and fact common to the Class are:  
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- 1       • whether the federal securities laws were violated by Defendants' acts as  
2       alleged herein;
- 3       • whether statements made by Defendants to the investing public during  
4       the Class Period misrepresented material facts about the business,  
5       operations and management of ITG;
- 6       • whether the Individual Defendants caused ITG to issue false and  
7       misleading financial statements during the Class Period;
- 8       • whether Defendants acted knowingly or recklessly in issuing false and  
9       misleading financial statements;
- 10      • whether the prices of ITG securities during the Class Period were  
11      artificially inflated because of the Defendants' conduct complained of  
12      herein; and
- 13      • whether the members of the Class have sustained damages and, if so,  
14      what is the proper measure of damages.

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

21       39. Plaintiff will rely, in part, upon the presumption of reliance established  
22 by the fraud-on-the-market doctrine in that:

- 23      • Defendants made public misrepresentations or failed to disclose material  
24      facts during the Class Period;
- 25      • the omissions and misrepresentations were material;
- 26      • ITG securities are traded in an efficient market;
- 27      • the Company's shares were liquid and traded with moderate to heavy  
28      volume during the Class Period;

- 1 • the Company traded on the NYSE and was covered by multiple analysts;
- 2 • the misrepresentations and omissions alleged would tend to induce a
- 3 reasonable investor to misjudge the value of the Company's securities;
- 4 and
- 5 • Plaintiff and members of the Class purchased, acquired and/or sold ITG
- 6 securities between the time the Defendants failed to disclose or
- 7 misrepresented material facts and the time the true facts were disclosed,
- 8 without knowledge of the omitted or misrepresented facts.

9 40. Based upon the foregoing, Plaintiff and the members of the Class are  
10 entitled to a presumption of reliance upon the integrity of the market.

11 41. Alternatively, Plaintiff and the members of the Class are entitled to the  
12 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of*  
13 *the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants  
14 omitted material information in their Class Period statements in violation of a duty to  
15 disclose such information, as detailed above.

## 16 COUNT I

### 17 **Violations of Section 10(b) of The Exchange Act and Rule 10b-5** 18 **Against All Defendants**

19 42. Plaintiff repeats and realleges each and every allegation contained above  
20 as if fully set forth herein.

21 43. This Count is asserted against Defendants and is based upon Section  
22 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated  
23 thereunder by the SEC.

24 44. During the Class Period, Defendants engaged in a plan, scheme,  
25 conspiracy and course of conduct, pursuant to which they knowingly or recklessly  
26 engaged in acts, transactions, practices and courses of business which operated as a  
27 fraud and deceit upon Plaintiff and the other members of the Class; made various  
28 untrue statements of material facts and omitted to state material facts necessary in

1 order to make the statements made, in light of the circumstances under which they  
2 were made, not misleading; and employed devices, schemes and artifices to defraud  
3 in connection with the purchase and sale of securities. Such scheme was intended to,  
4 and, throughout the Class Period, did: (i) deceive the investing public, including  
5 Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and  
6 maintain the market price of ITG securities; and (iii) cause Plaintiff and other  
7 members of the Class to purchase or otherwise acquire ITG securities at artificially  
8 inflated prices. In furtherance of this unlawful scheme, plan and course of conduct,  
9 Defendants, and each of them, took the actions set forth herein.

10       45. Pursuant to the above plan, scheme, conspiracy and course of conduct,  
11 each of the Defendants participated directly or indirectly in the preparation and/or  
12 issuance of the annual reports, SEC filings, press releases and other statements and  
13 documents described above, including statements made to securities analysts and the  
14 media that were designed to influence the market for ITG securities. Such reports,  
15 filings, releases and statements were materially false and misleading in that they  
16 failed to disclose material adverse information and misrepresented the truth about  
17 ITG's disclosure controls and procedures.

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

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1           47. Defendants were personally motivated to make false statements and omit  
2 material information necessary to make the statements not misleading in order to  
3 personally benefit from the sale of ITG securities from their personal portfolios.

4           48. Information showing that Defendants acted knowingly or with reckless  
5 disregard for the truth is peculiarly within Defendants' knowledge and control. As the  
6 senior managers and/or directors of ITG, the Individual Defendants had knowledge of  
7 the details of ITG's internal affairs.

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

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

1 securities, or would not have purchased or otherwise acquired them at the inflated  
2 prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and  
3 the Class, the true value of ITG securities was substantially lower than the prices paid  
4 by Plaintiff and the other members of the Class. The market price of ITG securities  
5 declined sharply upon public disclosure of the facts alleged herein to the injury of  
6 Plaintiff and Class members.

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

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

## 15 **COUNT II**

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

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

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

25 55. As officers and/or directors of a publicly owned company, the Individual  
26 Defendants had a duty to disseminate accurate and truthful information with respect  
27 to ITG's business practices, and to correct promptly any public statements issued by  
28 ITG which had become materially false or misleading.





1 C. Awarding Plaintiff and the other members of the Class prejudgment and  
2 post-judgment interest, as well as her reasonable attorneys' fees, expert fees and other  
3 costs; and

4 D. Awarding such other and further relief as this Court may deem just and  
5 proper.

6 **DEMAND FOR TRIAL BY JURY**

7 Plaintiff hereby demands a trial by jury.

8  
9 Dated: August 5, 2015

Respectfully submitted,

10 **THE ROSEN LAW FIRM, P.A.**

11 /s/ Laurence M. Rosen

12 Laurence M. Rosen, Esq. (SBN 219683)

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18 *Counsel for Plaintiff* \_\_\_\_\_