



## **NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of a class consisting of all persons other than Defendants who purchased or otherwise acquired Hill securities between March 19, 2013 and November 3, 2016, both dates inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

## **JURISDICTION AND VENUE**

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

3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and §27 of the Exchange Act.

4. Venue is proper in this District pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the Company conducts business in this district and maintains its headquarters in this district.

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

## PARTIES

6. Plaintiff, as set forth in the accompanying Certification, purchased Hill securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

7. Defendant Hill provides program management, project management, construction management, construction claims, and other consulting services primarily for the buildings, transportation, environmental, energy, and industrial markets worldwide. The Company is incorporated in Delaware with principal executive offices located at One Commerce Square, 2005 Market Street, 17th Floor, Philadelphia, Pennsylvania. The Company's common stock trades on the NYSE under the ticker symbol "HIL".

8. Defendant Irvin E. Richter ("I. Richter") founded Hill in 1976 and served as its Chief Executive Officer ("CEO") from 1976 to December 31, 2014.

9. Defendant John Fanelli III ("Fanelli") has been the Chief Financial Officer ("CFO") of Hill since September 6, 2006 and its Executive Vice President since August 11, 2016. Defendant Fanelli served as the Senior Vice President of Hill from September 6, 2006 until August 11, 2016.

10. Defendant David L. Richter ("D. Richter") has been the CEO of Hill since December 31, 2014. Defendant D. Richter served as the President of Hill since March 2004 until August 11, 2016, and served as the Chief Operating Officer at Hill from April 2004 to December 31, 2014.

11. Defendants I. Richter, Fanelli, and D. Richter sometimes referred to herein as the "Individual Defendants."

12. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or
- (g) approved or ratified these statements in violation of the federal securities laws.

13. Hill is liable for the acts of the Individual Defendants and their employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

14. The scienter of the Individual Defendants and other employees and agents of Hill are similarly imputed to Hill under *respondeat superior* and agency principles.

15. Defendant Hill and the Individual Defendants are referred to herein, collectively, as the "Defendants."

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

#### **Violations of GAAP Render Financial Statements False and Misleading**

16. Generally accepted accounting principles (“GAAP”) constitutes those standards recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time.

17. GAAP are the common set of accounting principles, standards, and procedures that companies in the United States use to compile their financial statements.

18. SEC and NYSE rules and regulations require that publicly traded companies such as Hill include financial statements that comply with GAAP in their annual and quarterly reports filed with the SEC. *See* Sections 12 and 13 of the Exchange Act; Rule 10-01(d) of Regulation SX.

19. SEC Rule 4-01(a) of Regulation S-X states that “[f]inancial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate.” 17 C.F.R. § 210.4-01(a)(1) (emphasis added).

### **FASB Accounting Standards**

20. The Financial Accounting Standards Board (“FASB”) is a private, non-profit organization market regulator whose primary purpose is to establish and improve GAAP within the United States in the public’s interest.

21. On April 25, 2003, the SEC released a Policy Statement titled “Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter” reaffirming the designation of the FASB as the organization responsible for setting accounting standards for

public companies in the U.S., stating in pertinent part: “FASB’s financial accounting and reporting standards are recognized as “generally accepted” for purposes of the federal securities laws.”

22. The *FASB Accounting Standards Codification* (“ASC”) is the source of authoritative GAAP recognized by the FASB to be applied to non-governmental entities. The ASC is effective for interim and annual periods ending after September 15, 2009.

### **Hill’s Libya Account Receivable**

23. According to Hill’s 2012 10-K (defined below), Hill was owed approximately \$60,000,000 from the Libyan Organization for the Development of Administrative Centers (“ODAC”) related to work performed prior to March 2011 (the “Libya Receivable”). As of December 31, 2012, the period covered by Hill’s 2012 10-K; Hill did not receive any payments from ODAC in almost two years (since January 2011).

24. Additionally, Hill recognized the political turmoil that existed in Libya at the time of the filing of the 2012 10-K, as evidenced by the following statement in the 2012 10-K: “[d]ue to the political unrest in Libya that commenced in February 2011, we suspended our operations in and demobilized substantially all of our personnel from Libya.”

25. On September 25, 2012, Hill filed a letter with the SEC responding to the SEC’s comments about Hill’s SEC filings. In the letter, Hill stated that, based on communications with ODAC, “\$31.6 million is in the process for payment approval” and Hill “expected to receive payments and new work [from ODAC] as early as the fourth quarter of 2012.”

26. The 2012 10-K revised this expectation and stated that based on discussions with ODAC officials “and public statements made by the new Libyan government, we believe that we will begin to receive payments from ODAC during 2013.”

### **Materially False and Misleading Statements**

27. On March 18, 2013, during aftermarket hours, the Company filed a Form 10-K for the fiscal year ended December 31, 2012 (the “2012 10-K”) with the SEC, which provided the Company’s year-end financial results and position and stated that the Company’s internal control over financial reporting and disclosure controls and procedures were effective as of December 31, 2012. The 2012 10-K was signed by Defendants I. Richter, Fanelli, and D. Richter. The 2012 10-K also contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants I. Richter and Fanelli attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal controls over financial reporting, and the disclosure of all fraud.

28. On March 14, 2014, the Company filed a Form 10-K for the fiscal year ended December 31, 2013 (the “2013 10-K”) with the SEC, which provided the Company’s year-end financial results and position and stated that the Company’s internal control over financial reporting and disclosure controls and procedures were effective as of December 31, 2013. The 2013 10-K was signed by Defendants I. Richter, Fanelli, and D. Richter. The 2013 10-K also contained signed SOX certifications by Defendants I. Richter and Fanelli attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal controls over financial reporting, and the disclosure of all fraud.

29. 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 that the Company’s internal control over financial reporting and disclosure controls and procedures were effective as of December 31, 2014. The 2014 10-K was signed by Defendants I. Richter, Fanelli, and D. Richter. The 2014 10-K also

contained signed SOX certifications by Defendants D. Richter and Fanelli attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal controls over financial reporting, and the disclosure of all fraud.

30. On May 11, 2015, the Company filed a Form 10-Q for the quarter ended March 31, 2015 (the "1Q 2015 10-Q") with the SEC, which provided the Company's first quarter 2015 financial results and position and stated that the Company's disclosure controls and procedures were effective as of March 31, 2015. The 1Q 2015 10-Q also disclosed that, as of March 31, 2015, "there were no changes in our internal control over financial reporting that materially affected, or were reasonably likely to materially affect, our internal control over financial reporting." The 1Q 2015 10-Q was signed by Defendants D. Richter and Fanelli. The 1Q 2015 10-Q contained signed SOX certifications by Defendants D. Richter and Fanelli attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal controls over financial reporting, and the disclosure of all fraud.

31. On August 5, 2015, the Company filed a Form 10-Q for the quarter ended June 30, 2015 (the "2Q 2015 10-Q") with the SEC, which provided the Company's second quarter 2015 financial results and position and stated that the Company's disclosure controls were effective as of June 30, 2015. The 2Q 2015 10-Q also disclosed that, as of June 30, 2015, "there were no changes in our internal control over financial reporting that materially affected, or were reasonably likely to materially affect, our internal control over financial reporting." The 2Q 2015 10-Q was signed by Defendants D. Richter and Fanelli. The 2Q 2015 10-Q contained signed SOX certifications by Defendants D. Richter and Fanelli attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal controls over financial reporting, and the disclosure of all fraud.

32. The statements referenced in ¶¶ 27 – 31 above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operational and financial results, 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) the anticipated \$31.6 million payment from ODAC was never received by Hill; (2) the Libya Receivable was uncollectable; (3) Hill violated GAAP when it failed to accrue a loss from the Libya Receivable; (4) Hill lacked effective internal control over financial reporting; and (5) as a result, Hill’s public statements were materially false and misleading at all relevant times.

### **The Truth Emerges**

33. On September 24, 2015, the SEC uploaded a letter to Hill’s EDGAR filings, dated September 24, 2015, that was issued by the SEC and addressed to Defendant Fanelli (the “SEC Letter”). The SEC Letter stated that under certain specified ASC provisions, Hill should have accrued a loss relating to the Libya Receivable, and requested that Hill “amend [its] periodic reports to appropriately accrue a reasonable estimate of the amount of loss from uncollectible receivables as of December 31, 2012, with measurement subsequent to that date based on the facts and circumstances.” Additionally, the SEC Letter stated that the anticipated \$31.6 million payment from ODAC was never received by Hill, stating in pertinent part:

### **Form 10-K for the Fiscal Year Ended December 31, 2014**

#### **Note 4, Accounts Receivable, page 64**

1. At December 31, 2012, the accounts receivable related to work performed prior to March 2011 under contracts in Libya amounted to approximately \$60 million. As of that date, you had not received any payments in almost two years. In your letter to us dated September 25, 2012, you stated \$31.6 million was in process for payment approval

based on communications with ODAC and you expected payment in the fourth quarter. **This payment was never received, providing significant negative evidence regarding collectability, as well as your ability to base further judgments on communications with ODAC. It remains unclear how you concluded a reserve was not appropriate.**

As discussed in ASC 310-10-35-7, the conditions under which receivables exist usually involve some degree of uncertainty about their collectability. However, as noted in ASC 310-10-35-19 and ASC 450-20-25-3, the criteria for subsequent measurement are not intended to be so rigid that they require virtual certainty before a loss is accrued. **Given the guidance in ASC 310-35-10 that the condition in ASC 450-20-25-2(a) is met if it is probable “that the entity will be unable to collect all amounts due according to the contractual terms of the receivable,” and the fact that you were unable to collect all amounts due, and the length of delay and shortfall in amount of payments was significant, it appears a loss was incurred under ASC 310-10-35.**

**Please amend your periodic reports to appropriately accrue a reasonable estimate of the amount of loss from uncollectible receivables as of December 31, 2012, with measurement subsequent to that date based on the facts and circumstances.**

[Emphasis added].

34. On this news, shares of Hill fell \$0.19 per share, or approximately 5.3%, over two trading days to close at \$3.35 per share on September 28, 2015, damaging investors.

35. On October 19, 2015, during aftermarket hours, Hill issued a press release titled “Hill International Announces Restatement Associated with Libya Receivable; Restated Results Expected to Increase Net Loss in 2012 But Increase Net Earnings in 2013 and Decrease Net Loss in 2014”, announcing “that it intends to restate prior period financial statements filed for each of the years ended December 31, 2012, 2013, and 2014, as well as the quarters ended March 31 and June 30, 2015”, stating in pertinent part:

**Hill International Announces Restatement Associated with Libya Receivable; Restated Results Expected to Increase Net Loss in 2012 But Increase Net Earnings in 2013 and Decrease Net Loss in 2014**

PHILADELPHIA, Oct. 19, 2015 (GLOBE NEWSWIRE) -- Hill International (NYSE:HIL), the global leader in managing construction risk, **announced today that it intends to restate prior period financial statements filed for each of the years ended December 31, 2012, 2013, and 2014, as well as the quarters ended March 31 and June 30, 2015. The restatement follows a determination that the Company's previous accounting treatment of the accounts receivable (the "Libya Receivable") from the Libyan Organization for Development of Administrative Centres ("ODAC") was no longer appropriate as of and for the year ended December 31, 2012. As a result, all prior communications issued by the company as well as other prior statements made by or on behalf of the company relating to the periods under review for restatement (collectively, the "Non-Reliance Periods") should not be relied upon.**

The decision of Hill's Audit Committee to restate these financial statements is in connection with a review (the "Staff Review") by the staff of the Securities and Exchange Commission (the "SEC") of our Annual Report on Form 10-K for the year ended December 31, 2014, Quarterly Report on Form 10-Q for the quarter ended March 31, 2015 and Definitive Proxy Statement filed April 30, 2015 and subsequent communications between the Staff and the Company relating to the Staff Review. As a result of the Staff Review, the company, under the direction of its Audit Committee, re-evaluated its historical and current practices with respect to analyzing the collectability of accounts receivable in accordance with U.S. generally accepted accounting principles ("GAAP"). The company has included significant disclosures in prior periodic reports filed with the SEC regarding the status of the Libya Receivable, including regarding the political situation in Libya, the amounts of payments, the company's continued dialogue with representatives of ODAC, the circumstances under which the company would evaluate its options to pursue legal claims and/or assess the carrying amount of the Libya Receivable, and the risks regarding its collectability.

**Under the restatement, Hill will reserve the entire net Libya Receivable of \$48.1 million, consisting of a gross amount of \$59.9 million net of \$11.8 million in subconsultant and other contingent expenses then owed, in the year ended December 31, 2012, and adjust subsequent annual and quarterly results as required by GAAP.** The adjustment related to the Libya Receivable will result in non-cash financial statement adjustments and will have no impact on the company's current or previously reported cash position, investing or financing cash flows, or net operating loss carryforward.

"This action is not based on any change in our management's current view of the collectability of the Libya Receivable, and we intend to continue to pursue collection of the monies owed to us by ODAC," said David L. Richter, Hill's President and Chief Executive Officer. "Despite this action, Hill's underlying

business remains strong, and we continue to expect to report record results in 2015," added Richter.

**Final restatement amounts for the Non-Reliance Periods have not yet been determined. The company is continuing to evaluate the total amount of the adjustments and the specific impact on each of the Non-Reliance Periods, and intends to present the quarterly and annual restated financial statements in amendments to applicable periodic reports with respect to the Non-Reliance Periods (the "Restated Filings") as soon as practicable.**

Preliminary indications from the Company's evaluation are that the changes described above are expected to primarily result in a:

- \$48.1 million increase in selling, general and administrative expenses, a \$59.9 million decrease in accounts receivable, an \$11.8 million decrease in accounts payable and accrued expenses, a \$48.1 million decrease in net earnings and a corresponding \$48.1 million decrease in retained earnings for the year ended December 31, 2012;
- \$2.0 million increase in net earnings primarily to reflect collections related to the Libya Receivable, a \$57.3 million decrease in accounts receivable, an \$11.5 million decrease in accounts payable and accrued expenses and a \$46.1 million decrease in retained earnings for the year ended December 31, 2013;
- \$5.6 million decrease in net loss primarily to reflect collections related to the Libya Receivable, a \$49.7 million decrease in accounts receivable – Libya, a \$9.4 million decrease in other liabilities and a \$40.6 million decrease in retained earnings for the year ended December 31, 2014;
- \$0.8 million increase in net earnings, a \$49.0 million decrease in accounts receivable – Libya, a \$9.2 million decrease in other liabilities and a \$39.7 million decrease in retained earnings for the quarter ended March 31, 2015; and
- \$49.8 million decrease in accounts receivable – Libya, a \$9.9 million decrease in other liabilities and a \$39.9 million decrease in retained earnings for the quarter ended June 30, 2015.

36. On this news, shares of Hill fell \$0.07 per share, or approximately 2%, from its previous closing price to close at \$3.47 per share on October 20, 2015, damaging investors.

37. On November 10, 2016, during aftermarket hours, Hill filed the quarterly and annual restated financial statements in amendments to applicable periodic reports with respect to each of the years ended December 31, 2012, 2013, and 2014, as well as the quarters ended March 31 and June 30, 2015 (the "Restated Filings"). The Restated Filings consisted of three

filings: one (1) Form 10-K/A for the period ended December 31, 2014 (the “Form 10-K/A”); one (1) Form 10-Q/A for the period ended March 31, 2015 (the “Restated Q1 2015”); and one (1) Form 10-Q/A for the period ended June 30, 2015 (the “Restated Q2 2015”).

38. The Form 10-K/A stated that Hill’s “internal control over financial reporting was not effective as of each of December 31, 2014, 2013 and 2012” due to the material weakness identified by management, stating in pertinent part:

**[M]anagement identified the following material weakness as of December 31, 2014, 2013 and 2012: management misapplied U.S. generally accepted accounting principles as it relates to the estimation of the potential loss on the Company’s accounts receivable. Specifically, the Company did not have sufficient procedures and controls in place to enable the proper application of U.S. generally accepted accounting principles to significant, non-routine transactions, such as the events which occurred in Libya, which give rise to the restatement requiring the filing of this Form 10-K/A.**

In connection with the preparation and filing of this Form 10-K/A, management has re-evaluated the effectiveness of our internal control over financial reporting as of December 31, 2014. Based on this re-evaluation, management identified an additional material weakness as of December 31, 2014. As a result of the restatement, previous immaterial variances in certain accounts that were not recorded during the December 31, 2014 year end closing process became material when aggregated and assessed against the restated 2014 financial statements. Specifically, **management has identified the following deficiencies that constituted the material weakness as of December 31, 2014: management did not maintain effective procedures in the areas of the accounting closing process, accounting estimates and non-routine transactions.**

[Emphasis added].

39. The Restated Q1 2015 was filed to “restate and amend the Company’s previously issued consolidated financial statements and related financial information for the three months ended March 31, 2015 and 2014 included in its previously filed Quarterly Reports on Form 10-Q related to each such period to reflect a change related to its accounting treatment for accounts receivable from the Libyan Organization for Development of Administrative Centres (“ODAC”) (the “Libya Receivable”) and certain related liabilities.”

40. The Restated Q1 2015 stated that the remediation efforts undertaken by Hill as a result of the material weakness identified by management in the Form 10-K/A constituted “material changes in our internal control over financial reporting that occurred during the three months ended March 31, 2015 that materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.”

41. The Restated Q2 2015 was filed to “restate and amend the Company’s previously issued consolidated financial statements and related financial information for the six months ended June 30, 2015 and 2014 included in its Original Form 10-Q to reflect a change related to its accounting treatment for accounts receivable from the Libyan Organization for Development of Administrative Centres (“ODAC”) (the “Libya Receivable”) and certain related liabilities.”

42. The Restated Q2 2015 stated that the remediation efforts undertaken by Hill as a result of the material weakness identified by management in the Form 10-K/A constituted “material changes in our internal control over financial reporting that occurred during the three months ended March 31, 2015 that materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.”

43. On this news, shares of Hill fell \$0.23 per share, or approximately 6.6%, over two trading days to close at \$3.23 per share on November 12, 2015, damaging investors.

44. On November 3, 2016, during aftermarket hours, Hill issued a press release titled “Hill International Announces Delay in Release of Third Quarter and First Nine Months 2016 Financial Results and Conference Call”, announcing that it is delaying “the release of its third quarter and first nine months 2016 financial results” due to “the accounting treatment of certain accounts receivable”, stating in pertinent part:



## Hill International

*Source: Hill International, Inc.*

*November 03, 2016 16:35 ET*

### ***Hill International Announces Delay in Release of Third Quarter and First Nine Months 2016 Financial Results and Conference Call***

PHILADELPHIA, Nov. 03, 2016 (GLOBE NEWSWIRE) -- Hill International (NYSE:HIL), the global leader in managing construction risk, **announced today that it will delay the release of its third quarter and first nine months 2016 financial results, which was previously scheduled for today after the close of the stock market, as well as its conference call and webcast which was previously scheduled for Friday, November 4, 2016.**

**The company is in continuing discussions with its independent accounting firm regarding the accounting treatment of certain accounts receivable the outcome of which could have a material effect on the company's financial position and results of operations.**

[Emphasis added].

45. On this news, shares of Hill fell \$0.65 per share, or approximately 17.8%, from its previous closing price to close at \$3.00 per share on November 4, 2016.

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

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Hill common stock traded on the NYSE during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant

times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

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

49. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

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

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

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the financial condition, business, operations, and management of Hill;

- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- whether the Individual Defendants caused Hill to issue false and misleading SEC filings and public statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading SEC filings and public statements during the Class Period;
- whether the prices of Hill common stock during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

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

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

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Hill common stock are traded in efficient markets;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NYSE, and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's common stock; and

- Plaintiff and members of the Class purchased and/or sold Hill common stock between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

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

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

### **COUNT I**

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

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

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

58. During the Class Period, Hill and the Individual Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

59. Hill and the Individual Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Hill common stock during the Class Period.

60. Hill and the Individual Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of Hill were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of Hill, their control over, and/or receipt and/or modification of Hill allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning Hill, participated in the fraudulent scheme alleged herein.

61. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Hill personnel to members of the investing public, including Plaintiff and the Class.

62. As a result of the foregoing, the market price of Hill common stock was artificially inflated during the Class Period. In ignorance of the falsity of Hill's and the Individual Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of Hill common stock during the Class Period in purchasing Hill common stock at prices that were artificially inflated as a result of Hill's and the Individual Defendants' false and misleading statements.

63. Had Plaintiff and the other members of the Class been aware that the market price of Hill common stock had been artificially and falsely inflated by Hill's and the Individual Defendants' misleading statements and by the material adverse information which Hill's and the Individual Defendants did not disclose, they would not have purchased Hill's common stock at the artificially inflated prices that they did, or at all.

64. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

65. By reason of the foregoing, Hill and the Individual Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of Hill common stock during the Class Period.

## **COUNT II**

### **Violation of Section 20(a) of The Exchange Act** **Against The Individual Defendants**

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

67. During the Class Period, the Individual Defendants participated in the operation and management of Hill, and conducted and participated, directly and indirectly, in the conduct of Hill's business affairs. Because of their senior positions, they knew the adverse non-public information regarding Hill's business practices.

68. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Hill's financial condition and results of operations, and to correct promptly any public statements issued by Hill which had become materially false or misleading.

69. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Hill disseminated in the marketplace during the Class Period. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Hill to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Hill within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Hill common stock.

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

71. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Hill.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
- B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

Dated: \_\_\_\_\_

Respectfully submitted,

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

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