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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____, Individually and on behalf of all others similarly situated, Plaintiff, v. TREASURY WINE ESTATES LIMITED, MICHAEL CLARKE, MATT YOUNG, ROBERT FOYE, TIM FORD, ANGUS MCPHERSON, VICTORIA SNYDER, GUNTHER BURGHARDT, PAUL RAYNER, ED CHAN, LOUISA CHEANG, WARWICK EVERY-BURNS, GARRY HOUNSELL, COLLEEN JAY, LAURI SHANAHAN, and MICHAEL CHEEK, Defendants.	Case No. CLASS ACTION COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS JURY TRIAL DEMANDED CLASS ACTION

Plaintiff _____ ("Plaintiff"), individually and on behalf of all other persons similarly situated, by Plaintiff's undersigned attorneys, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff's attorneys, which included, *inter alia*, a review of U.S. Securities and Exchange Commission ("SEC") filings by Treasury Wine Estates Limited ("Treasury", "TWE", or the "Company"), as well as media reports about the

Company and Company press releases. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants (defined below) who purchased or otherwise acquired the publicly traded American depository receipts ("ADRs") of Treasury between June 30, 2018 and January 28, 2020, 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 judicial district pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the alleged misstatements entered and subsequent damages took place within this judicial 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 the Company's securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosure.

7. Defendant Treasury purports to be a vertically integrated global wine business which includes the production, sale and distribution of wine in the U.S. wine market.

8. Defendant Treasury is incorporated in Australia and maintains its principal executive offices at 77 Southbank Boulevard, Southbank, Victoria C3 3006. Treasury ADRs are traded over-the-counter ("OTC") under the ticker symbol "TSRYY" and "TSRYF". The Company's agent for service in the United States, as stated in the Company's Form F-6 filed with the SEC, is The Bank of New York Mellon ADR Division, located at One Wall Street, 29th Floor, New York, New York 10286.

9. Defendant Michael Clarke ("Clarke") was, at all relevant times, the Chief Executive Officer and the Managing Director of the Company.

10. Defendant Matt Young ("Young") was, from May 1, 2018 and at all relevant times thereafter, the Chief Financial Officer of the Company.

11. Defendant Robert Foye ("Foye") was, from at least the start of the class period to January 21, 2019, the Chief Operating Officer of the Company.

12. Defendant Tim Ford ("Ford") was: the Managing Director, Europe, South East Asia, Middle East and Africa and Global Supply Chain at the Company from at least the start of the class period to June 2018; Deputy Chief Operating Officer between approximately July 2018 and January 21, 2019; and Chief Operating Officer from January 21, 2019 and at all relevant times thereafter.

13. Defendant Angus McPherson ("McPherson") was: Managing Director Australia and New Zealand ("ANZ") from at least the start of the class period to June 20, 2018; Managing Director ANZ and Europe from July 1, 2018 to February 15, 2019; Managing Director ANZ, Europe, South East Asia, Middle East and Africa from February 15, 2019 to September 23, 2019; and President, Americas & Global Sales from September 24, 2019 to January 12, 2020.

14. Defendant Victoria Snyder ("Snyder") was: Executive Vice President, Americas from at least the start of the class period to July 1, 2018; and President, Americas from July 2, 2018 to August 19, 2019.

15. Defendant Gunther Burghardt ("Burghardt") was, from May 1, 2018 to approximately August 2019, Executive Vice President, Operations – Americas.

16. Defendant Paul Rayner ("Rayner") was, at all relevant times, the Chairman of the Board of the Company.

17. Defendants Clarke, Young, Foye, Ford, McPherson, Snyder, Burghardt, and Rayner (collectively, the "Officer 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.

18. The Company is liable for the acts of the Officer 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.

19. The scienter of the Officer Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

20. The Company and the Officer Defendants are referred to herein, collectively, as the "Defendants."

SUBSTANTIVE ALLEGATIONS

Materially False and Misleading Statements

21. On January 31, 2018, Treasury issued an Australian Stock Exchange ("ASX") announcement (the "January 2018 Announcement"), stating the performance of the "Americas" division would strengthen through fiscal year 2019 ("FY19" or "F19") and fiscal year 2020 ("FY20" or "F20") and contribute to accelerated EBITS growth for Treasury through FY19, FY20 and beyond. The January 2018 Announcement stated in relevant part:

> TWE reported Earnings Before Interest, Tax, SGARA [Self-Generating and Regenerating Assets] and material items (EBITS) of $283.3m, ***up 25% on a reported currency basis.***
> The Company also delivered further EBITS margin accretion of 4.4ppts to 21.9%, highlighting the progress being made in TWE's journey towards an EBITS margin of 25%.
>
> [. . .]
>
> ***EBITS growth expected to accelerate to 25% in F19***.
>
> [. . .]

Americas reported 8% EBITS growth to $100.4m and an EBITS margin of 19.9% (up 3.7 ppts), supported by underlying premiumisation, Diageo Wine synergies and cost optimisation ahead of route-to-market changes being made in the US. ***The EBITS result includes an adverse one-off impact of $10m from reduced shipments*** as part of the transition process associated with these route-to-market changes that result in TWE selling direct to key retail partners in California and Washington; as well as an increased allocation of US sourced Luxury volume to Asia.

[. . .]

US route-to-market improvements

Today, TWE also announced a series of transformational changes to its route-to-market in the US that are ***expected to strengthen the Company's competitive positioning, increase efficiency and effectiveness, and drive portfolio growth.***

[. . .]

Once fully embedded, these changes are ***expected to be margin enhancing for the Americas***, underpinned by a more efficient and lower cost value chain, particularly in states where TWE will operate a direct or hybrid sales and distribution model.

Transition is now underway, and TWE expects to have completed implementation by the end of F18 [fiscal year 2018], and ***fully embedded internal operating model changes, and operating rhythms with retail and distributor partners, by 2H19*** [last 6 months of fiscal year 2019].

Michael Clarke commented on TWE's future prospects: "I am very excited about the outlook for the Company, and am ***confident that the business model changes we are making this year, along with an increased availability of high-end wine, will set TWE up for accelerated growth in F19, F20 and beyond"***.

(Emphasis added.)

22. By no later than June 30, 2018, various grape and wine trade reports revealed market conditions that would likely have a negative impact on the Company's business operations. For example, a June 2018 report by Ciatti Global Wine & Grape Brokers ("Ciatti"), titled "California Report", stated that crop yields would be "average-sized at worst" and that "***those wishing to move large volumes must consider discounting their price.***" (Emphasis added.) Another report, published by Wines Vines Analytics on July 17, 2018, titled "Early Reports Put

2018 Harvest at Above Average", stated retail sales of U.S. wines decelerated from "5% rate of growth in June 2017 to ***less than 1% growth in June 2018.***" (Emphasis added.)

23. U.S. market conditions were likely to have a material adverse impact on the Company's performance in the Americas division through fiscal year 2020, notwithstanding the new route-to-market model. And a deterioration in the performance of the Americas division would materially adversely impact the Company's ability to achieve accelerated EBITS growth through fiscal year 2020. However, the Company failed to address whether they accounted for these market conditions in their statements and, if they had accounted for the market conditions, how the Company accounted for said conditions.

24. Rather than acknowledge the changing market conditions and its likely material adverse impact on the Company's operations, the Defendants intentionally and/or recklessly failed to account for the U.S. market conditions and continued to tout similar claims as those made in their January 2018 Announcement.

25. On August 16, 2018, the Company issued an ASX announcement ("August 2018 Announcement"). In it, Defendants reaffirmed their statements from the January 2018 Announcement, stating:

> ***TWE reiterates guidance of approximately 25% EBITS growth in F19 and journey to deliver an EBITS margin of 25%.***
>
> On TWE's outlook, Michael Clarke commented: "F19 is set to be an exciting year for TWE. We have wine, the brands, the business models and the organisational talent to ***propel our Company into its next phase of growth that will see TWE become the world's most celebrated wine company and deliver a 5 [year] EBITS [Compound Annual Growth Rate] of 25%***".
>
> (Emphasis added.)

26. On August 29, 2018, Treasury published an annual report ("2018 Annual Report"). In it, the Company continued to tout its growth potential despite the risks surrounding market

conditions that were known or should have been known by Defendants. Specifically, Defendants reported:

> F18 EBITS up 17% to $530.2 million; EBITS margin accretion of 2.8 percentage points to 21.8%.
>
> [. . .]
>
> We are ***confident*** we have the world-class quality wines, the brands, the capability and the discipline to ***deliver approximately 25% EBITS growth in F19 and continue on our journey to achieving 25% EBITS margin over time***.
>
> [. . .]
>
> TWE ***expects to deliver approximately 25% EBITS growth in F19*** and ongoing EBITS margin and ROCE [Return On Capital Employed] accretion in F19 and beyond.
>
> (Emphasis added.)

The 2018 Annual Report was signed by Defendants Clarke and Rayner attesting to the accuracy of the financial statements contained therein.

27. On February 14, 2019, the Company issued an ASX Announcement ("February 2019 Announcement") in which Defendants continued to praise the growth and growth potential of the Company. The February 2019 Announcement stated, in relevant part:

> ***TWE reiterates its guidance for F19 reported EBITS growth of approximately 25% and expects growth in F20 reported EBITS in the range of approximately 15% to 20%, which is broadly in line with consensus.***
>
> [. . .]
>
> EBITS were up $338.3m, up 19%, with growth delivered across all regions. The Company also delivered EBITS margin accretion of 0.5ppts to 22.4%, representing another step forward on TWE's journey to a 25% EBITS margin.
> [. . .]
>
> ***Americas reported 12% EBITS growth to $112.1m and an EBITS margin of 18.5%.*** NSR [net service revenue] grew 20% through positive execution under the new route-to-market model combined with underlying premiumisation, offset by higher costs of doing business (CODB) reflecting a new sales organisation, and

including transitional overhead investment carried above the line, not in material items.

[. . .]

TWE reiterates guidance of approximately 25% EBITS growth in F19 and expects reported EBITS growth in F20 in the range of approximately 15% to 20%, which is broadly in line with consensus. The Company will provide a further update on expectations for F20 at the time of the full year release in August 2019.

(Emphasis added.)

28. The Company continued to intentionally and/or recklessly disregard the developing market risk factors. The market trends as reported in June 2018 were ongoing at the time of the February 2019 Announcement. Furthermore, a February 6, 2019 report titled 'State of the Wine Industry', published by Silicon Valley Bank, explained the market trends further, reporting:

[C]onsolidated annual ***volume growth of wine consumption is close to becoming negative*** for the first time since the early 1990s.

[. . .]

Nielsen Beverage reported retail store sales for the 52 weeks through November 3, 2018, were up 1.4 percent and volumes down 0.5 percent.

[. . .]

Price increase [in 2018] on average was zero — some brands found opportunities to raise prices, and others were forced to drop prices.

[. . .]

By all accounts, ***when 2018 totals are calculated California will have crushed a record volume of grapes. We are forecasting the harvest to come in at 4.4 million tons in California.*** Once counted, the Pacific Northwest harvests will also set records in terms of yield.

[. . .]

Price increases will be very difficult to pass through in 2019. Overall pricing should be flat for premium wine as the industry works through sluggish volume growth and a surplus of wine. The added supply will show up in both négociant and value-priced private label products. We should see some limited price

> reductions in the middle-teens bottle pricing. Wine below $9 will continue to shrink in volume and value.
>
> Routinely increasing both volume and price, as has occurred over the past 20 years, will prove to be difficult for wineries given the low-growth, low-inflation environment. ***As an industry, we're transitioning to a period of flat to negative volume growth, low sales growth and a modest surplus of grapes, which will put pressure on prices.***
>
> (Emphasis added.)

Despite the fact that Defendants knew or should have known the market factors would likely have an adverse impact on their business, they failed to acknowledge and/or address the above risk factors in their February 2019 Announcement and continued to ensure investors the Company would continue to grow.

29. On August 15, 2019, the Company issued an ASX Announcement ("August 2019 Announcement") wherein the Defendants continued to intentionally and/or recklessly disregard negative market conditions and reiterated their growth outlook. The August 2019 Announcement reiterated, in part:

> TWE reported EBITS of $662.7m, up 25% on a reported currency basis, with EBITS margin increasing to 23.4%, another meaningful step on the journey to an EBITS margin of 25% and beyond.
>
> [. . .]
>
> ***TWE reiterates F20 guidance of reported EBITS growth of approximately 15% to 20%***, with F20 full year underlying cash conversion expected to be in line with F19.
>
> [. . .]
>
> ***Americas reported 13% EBITS growth to $218.7m and an EBITS margin of 19.3% (down 0.8ppts) whilst successfully embedding route-to-market changes and investment in the US.*** Premiumisation continues to be a key driver of performance, with increased Luxury and Masstige volumes complemented by growth in Canada and Latin America.
>
> [. . .]

> ***TWE reiterates guidance of approximately 15% to 20% reported EBITS growth for F20***, which will be delivered by growth in all markets, through continued top line growth and premiumisation as well as ongoing operational efficiency. A patient and disciplined approach to execution through the improved US route-to-market model will be taken in seeking to achieve this target, and TWE will also seek to navigate adverse impacts to Commercial COGS [cost of goods sold] from the 2019 Australian vintage.
>
> (Emphasis added.)

30. On August 28, 2019, the Company issued an annual report ("2019 Annual Report"). In the 2019 Annual report, the Company continued to discuss its growth potential while ignoring the risks that were known or should have been known by Defendants. The report said, in relevant parts:

> F19 EBITS up 25% to $662.7 million; EBITS margin accretion of 1.6 percentage points to 23.4%.
>
> [. . .]
>
> F19 EBITS growth contributed to a 5 year EBITS CAGR of 30%; ***EBITS growth of 15% to 20% in F20 reiterated.***
>
> [. . .]
>
> ***TWE expects to deliver approximately 15% to 20% EBITS growth on a reported basis in F20*** and ongoing EBITS margin and Return on Capital Employed accretion in F20 and beyond.
>
> (Emphasis added.)

The 2019 Annual Report was signed by Defendants Clarke and Rayner attesting to the accuracy of the financial statements contained therein.

31. On October 16, 2019, the Company held its 2019 Annual General Meeting. At this meeting, Defendants Rayner and Clarke spoke, reiterating their belief about the Company's continued growth despite risks that were known or should have been known. Defendant Clarke stated, "I'd like to report that we are pleased with our first quarter and we ***re-affirm our guidance***

of 15% to 20% reported EBITS growth in fiscal 20." (Emphasis added.) He did not address whether the Company was aware of the market conditions, and if so, how the Company was accounting for or addressing the negative impact U.S. market conditions would have on their operations.

32. However, by the date of the address given at the 2019 Annual General Meeting, Defendants knew or should have known about the developing market conditions that would have likely had a negative impact on their Americas operation.

33. A September 2019 Ciatti report, titled "Global Market Report," stated in relevant part:

> It is still early days but the expectation is that California's 2019 ***harvest will be average to potentially average-plus in size.***
>
> [. . .]
>
> The ***high level of wine inventory as it stands now, and what appears to be another good-sized crop coming in over the next few weeks, should make potential international buyers of Californian bulk wines feel confident that prices in the Central Valley are going to be good value for some time to come.***
>
> [. . .]
>
> ***There is an awareness among bulk wine sellers even in California's most premium areas that the slowness of the market domestically is not a short-term phenomenon***: the prices are there for international buyers to brand-build.
>
> [. . .]
>
> ***With large inventory and another good-sized harvest underway, Californian bulk wine prices have fallen*** and offer very good value for the international buyer – ***now and for the longer-term, potentially even on premium wines*** from the Coast.
>
> (Emphasis added.)

34. Additionally, Ciatti released a report in October 2019 called "California Report." In this report, as in their earlier reports, Ciatti explained the slowing market conditions, saying in part:

> ***The wine retail market in the US continues to be challenging***, bringing no respite for grape growers and bulk wine sellers. ***Since at least 2017 we have seen a flattening in retail sales growth***: wine consumption growth in the US is currently only keeping pace with the increase in the legal drinking age population, not outpacing it.
>
> (Emphasis added.)

35. Ciatti also released a "Global Report" in October 2019, which similarly painted a picture of a stagnating market:

> ***With casegood sales in the US stagnant, the grape and bulk wine markets continuing to move very slowly, and the state's 2019 crush looking potentially average to average-plus in size, sellers of grapes and bulk wines are plentiful but buyers are not.***
>
> [. . .]
>
> A widely held view is that ***it will take more than a single year for the bulk wine market dynamic in California – oversupply coupled with slow casegood demand – to radically change.***
>
> [. . .]
>
> With ***large inventory and another good-sized harvest underway, Californian bulk wine prices have fallen and offer very good value for the international buyer – now and for the longer-term***, potentially even on premium wines from the Coast.
>
> (Emphasis added.)

36. On December 5, 2019, the Company announced a sudden change in leadership in its Americas operation. Defendant McPherson, who was serving as President of the Company's Americas operations, was unable to relocate to the United States due to unforeseen personal circumstances. Defendant McPherson was replaced with Ben Dollard, whose tenure was announced to start on January 13, 2020.

37. Defendant Clarke, speaking about the sudden change in management, failed to address how it would impact the Company's U.S. operations. "It is really unfortunate that Angus' personal circumstances have kept him in Australia for quite some time. During this period, Tim Ford, Chief Operating Officer, and I have each been spending time in the Americas region covering the President Americas role. In the interim, Tim and I will continue to work in the US to ensure a smooth transition of the role to Mr. Dollard."

38. Despite the continuing trend of oversupply and depressed prices in the U.S. market, Defendants continued to fail to address the risk factors. Additionally, Defendants failed to address or account for the risks and impact on the Company's U.S. operations following an unforeseen leadership change, particularly Defendant McPherson's sudden departure from the role of President of the Americas operation.

39. The statements referenced in ¶¶21-39 above were materially false and/or misleading because they misrepresented and failed to disclose 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) Treasury, despite relying on its U.S. operations for continued growth, willfully or recklessly ignored and/or failed to address market conditions that were likely to have a material negative impact on their overall business; (2) Treasury faced difficulty with an unforeseen change in its regional management in its Americas operations; (3) as a result, Defendants' public statements were materially false and/or misleading at all relevant times.

The Truth Emerges

40. On January 28, 2020, Treasury released a revised Fiscal Year 2020 Guidance (the "Revised F20 Guidance") detailing, among other things, how Treasury misled investors and failed

to disclose pertinent information, including: (i) unexpected changes in Treasury's Americas leadership, which resulted in a loss of execution momentum through the first half of fiscal year 2020 that will carry into the second half; (ii) U.S. wine market dynamics where suppliers were trying to move surplus wine across the market at lower prices, resulting in an accelerated growth of private label, which was up approximately 15% in a market that was flat to down; (iii) that Treasury walked away from just under half a million cases of Commercial volume in the U.S. due to private label growth, aggressive market pricing and higher COGS; and (iv) that, as a result of these market dynamics, Treasury was unable to recover or offset higher U.S. Luxury COGS and higher Australian Commercial COGS, with higher levels of discounting required to try to maintain share across all price points.

41. The Revised F20 Guidance stated the following, in pertinent part, about the Company's financial performance and outlook:

> ***Americas reported a 17% decline in EBITS to $98.3m and an EBITS margin of 16.1% (down 3.6ppts).*** A loss of execution momentum, contributed to by unforeseen changes in regional management, was exacerbated by the persistence of challenging conditions in the US wine market which accelerated in Q2 [second quarter] post vintage. Regional volume declined 6%, reflecting declines in the Commercial portfolio of 11%, partly offset by growth in Luxury volume which grew 7%. Benefits of premiumisation were offset by increased promotional support which was required to compete with persistent aggressive competitor discounting. Higher COGS on Australian sourced Commercial wine and US sourced Luxury wine also had an adverse impact.
>
> (Emphasis added.)

42. On this news, Treasury's ADRs fell $1.33 per share, or approximately 13%, to close at $8.83 per ADR on January 29, 2020.

43. As a result of Defendants' wrongful acts and omissions, and the 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

44. 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 the publicly traded securities of Treasury during the Class Period (the "Class") and were damaged upon the revelation of the alleged corrective disclosure. 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.

45. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the Company's securities were actively traded over-the-counter. 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 the Company 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.

46. 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.

47. 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.

48. 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:

(a) whether Defendants' acts as alleged violated the federal securities laws;

(b) whether Defendants' statements to the investing public during the Class Period misrepresented material facts about the financial condition, business, operations, and management of the Company;

(c) whether Defendants' 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;

(d) whether the Officer Defendants caused the Company to issue false and misleading SEC filings and public statements during the Class Period;

(e) whether Defendants acted knowingly or recklessly in issuing false and misleading SEC filings and public statements during the Class Period;

(f) whether the prices of the Company's securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and

(g) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

49. 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.

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

(a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

(b) the omissions and misrepresentations were material;

(c) the Company's securities are traded in efficient markets;

(d) the Company's securities were liquid and traded with moderate to heavy volume during the Class Period;

(e) the Company traded on the NASDAQ, and was covered by market analysts;

(f) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities;

(g) Plaintiff and members of the Class purchased and/or sold the Company's securities 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; and

(h) Unexpected material news about the Company was rapidly reflected in and incorporated into the Company's stock price during the Class Period.

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

52. 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

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

54. This Count is asserted against the 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.

55. During the Class Period, the 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.

56. The 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; and/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 the Company's securities during the Class Period.

57. The Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company 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 the Company, their

control over, and/or receipt and/or modification of the Company's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company, participated in the fraudulent scheme alleged herein.

58. The Officer Defendants, who were senior officers and 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 personnel of the Company to members of the investing public, including Plaintiff and the Class.

59. As a result of the foregoing, the market price of the Company's securities was artificially inflated during the Class Period. In ignorance of the falsity of the 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 the Company's securities during the Class Period in purchasing the Company's securities at prices that were artificially inflated as a result of the Defendants' false and misleading statements.

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

61. 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.

62. By reason of the foregoing, the 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 purchases of the Company's securities during the Class Period.

COUNT II
Violation of Section 20(a) of the Exchange Act
Against the Director Defendants

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

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

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

66. Because of their positions of control and authority as senior officers, the Officer Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period. Throughout the Class Period, the Officer Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. The Officer Defendants, therefore, were "controlling persons" of the Company 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 the Company's securities.

67. The Officer Defendants, therefore, acted as controlling persons of the Company. By reason of their senior management positions and being directors of the Company, the Officer Defendants had the power to direct the actions of, and exercised the same to cause, the Company to engage in the unlawful acts and conduct complained of herein. The Officer Defendants exercised control over the general operations of the Company 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.

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

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 _____, 2020

Respectfully submitted,

THE ROSEN LAW FIRM, P.A.

/s/Phillip Kim
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