

1 Laurence M. Rosen, Esq. (SBN 219683)
2 **THE ROSEN LAW FIRM, P.A.**
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, CA 90071
5 Telephone: (213) 785-2610
6 Facsimile: (213) 226-4684
7 Email: lrosen@rosenlegal.com

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 VOLKSWAGEN AG, VOLKSWAGEN
16 GROUP OF AMERICA, INC., SCOTT
17 KEOGH, and MARK GILLIES,

18 Defendants.
19

Case No.

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

20
21 Plaintiff _____ (“Plaintiff”), individually and on behalf of all other
22 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
23 complaint against Defendants (defined below), alleges the following based upon
24 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and
25 belief as to all other matters, based upon, inter alia, the investigation conducted by
26 and through his attorneys, which included, among other things, a review of the
27 Defendants’ public documents, announcements, United States Securities and
28

1 Exchange Commission (“SEC”) filings, wire and press releases published by and
2 regarding Volkswagen AG (“Volkswagen” or together with its subsidiaries the
3 “Company”) and its wholly-owned subsidiary Volkswagen Group Of America, Inc.
4 (“VWoA”), and information readily obtainable on the Internet. Plaintiff believes
5 that substantial evidentiary support will exist for the allegations set forth herein after
6 a reasonable opportunity for discovery.

7
8 **NATURE OF THE ACTION**

9 1. This is a class action on behalf of persons or entities who purchased or
10 otherwise acquired publicly traded Volkswagen securities between March 29, 2021
11 and March 30, 2021, inclusive (the “Class Period”). Plaintiff seeks to recover
12 compensable damages caused by Defendants’ violations of the federal securities
13 laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

14 **JURISDICTION AND VENUE**

15 2. The claims asserted herein arise under and pursuant to §§10(b) and
16 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5
17 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

18 3. This Court has jurisdiction over the subject matter of this action under
19 28 U.S.C. §1331 and §27 of the Exchange Act.

20 4. Venue is proper in this judicial district pursuant to §27 of the Exchange
21 Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the alleged misstatements entered
22 and the subsequent damages took place in this judicial district. Further, the
23 Company sells many vehicles in Los Angeles County.

24 5. In connection with the acts, conduct and other wrongs alleged in this
25 Complaint, Defendants (defined below), directly or indirectly, used the means and
26 instrumentalities of interstate commerce, including but not limited to, the United
27

1 States mail, interstate telephone communications and the facilities of the national
2 securities exchange.

3 **PARTIES**

4 6. Plaintiff, as set forth in the accompanying Certification, purchased the
5 Company's securities at artificially inflated prices during the Class Period and was
6 damaged upon the revelation of the alleged corrective disclosure.

7 7. Defendant Volkswagen purports to be one of the world's largest
8 producers of passenger cars.

9 8. Defendant Volkswagen is a German corporation with its principal
10 executive offices in Wolfsburg, Germany. Volkswagen's American depository
11 receipt ("ADRs") trade on OTC under the ticker symbol "VWAGY."

12 9. Defendant VWoA is a wholly owned subsidiary of Volkswagen.
13 Defendant VWoA houses the U.S. operations of Volkswagen.

14 10. Defendant Scott Keogh ("Keogh") has served as the Chief Executive
15 Officer and President of VWoA since November 2018.

16 11. Defendant Mark Gillies ("Gillies") has served as a spokesperson for
17 VWoA since May 2011 and currently serves as VWoA's Acting Head of
18 Communications.

19 12. Defendants Keogh and Gillies are sometimes referred to herein as the
20 "Individual Defendants."

21 13. The Individual Defendants:

22 (a) directly participated in the management of the Company;

23 (b) were directly involved in the day-to-day operations of the Company at
24 the highest levels;
25

- 1 (c) were privy to confidential proprietary information concerning the
2 Company and its business and operations;
- 3 (d) were directly or indirectly involved in drafting, producing, reviewing
4 and/or disseminating the false and misleading statements and
5 information alleged herein;
- 6 (e) were directly or indirectly involved in the oversight or implementation
7 of the Company's internal controls;
- 8 (f) were aware of or recklessly disregarded the fact that the false and
9 misleading statements were being issued concerning the Company;
10 and/or
- 11 (g) approved or ratified these statements in violation of the federal
12 securities laws.

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

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

21 16. The Company and the Individual Defendants are referred to herein,
22 collectively, as the "Defendants."
23
24
25
26
27

1 **SUBSTANTIVE ALLEGATIONS**

2 **Materially False and Misleading Statements**

3 17. On March 29, 2021, VWoA published a “draft” of a press release
4 announcing its purported name change to “Volkswagen” on its website for a short
5 time. This “draft” had the incorrect date of “April 29.”

6 18. On March 29, 2021, in response to the name change press release,
7 multiple news agencies reported that they confirmed with Company insiders that the
8 name change was real.

9 19. These March 29 news reports on the name change include a CNBC
10 article entitled “VW accidentally leaks new name for its U.S. operations:
11 Volkswagen” which reported, in pertinent part, that:

12 *Volkswagen accidentally posted a press release on its website a month
13 early on Monday announcing a new name for its U.S. operations,
14 Volkswagen of America, emphasizing the German automaker’s
15 electric vehicle efforts.*

16 * * *

17 *A person familiar with the company’s plans confirmed the
18 authenticity of the release to CNBC. They asked to remain anonymous
19 because the plans were not meant to be public yet.*

20 The release said the name change is expected to take effect in May and
21 called the change a “*public declaration of the company’s future-*
22 *forward investment in e-mobility.*” It said Volkswagen will be placed
23 as an exterior badge on all EV models with gas vehicles having the
24 company’s iconic VW emblem only.

25 To “preserve elements of Volkswagen’s heritage,” the release said the
26 company planned to retain the dark blue color of the VW logo for gas-
27 powered vehicles and *use light blue to differentiate “the new, EV-*
28 *centric branding.*”

1
2 The release said Voltswagen of America would remain an operating
3 unit of Volkswagen Group of America and a subsidiary of Volkswagen
4 AG, with headquarters in Herndon, Virginia.

5 * * *

6 The VW press release was incomplete, citing the need for an additional
7 quote and photography from the automaker's plant in Chattanooga,
8 Tennessee.

9 *A name change would be the latest EV news from Volkswagen, which*
10 *earlier this month held a "Power Day" to discuss its EV technologies.*
11 It also announced goals of significantly increasing sales of EVs through
12 the end of the decade. It expects more than 70% of its Volkswagen
13 brand's European sales will be EVs by 2030, up from a previous target
14 of 35%. In the U.S. and China, it expects half of its sales to be EVs by
15 that time frame.

16 (Emphasis added.)

17 20. These March 29 news reports on the purported name change also
18 includes a USA Today article, which was later updated and re-titled "Volkswagen
19 says it plans name change, later pulls back, reports say[,]” reported, in pertinent part,
20 the following:

21 *Volkswagen's American division appears poised to change its name*
22 *to "Voltswagen," switching the "k" to a "t" in a nod toward the*
23 *automaker's investment in electric vehicles.*

24 *The German automaker's announcement on the change appeared*
25 *briefly on its media site Monday before it was removed, having*
26 *apparently been released before it was ready for an official rollout.*

27 * * *

1 But *VW was not hacked, the announcement is not a joke*, it's not a
2 marketing ploy and the plan is for the change to be made permanent,
3 *said a person familiar with the company's plans* on condition of
4 anonymity because they were not authorized to speak publicly.

5 The news release, which was dated April 29 when it was accidentally
6 posted, *was published March 29 before it was ready to be distributed,*
7 *the person said. A USA TODAY reporter noticed the announcement*
8 *on VW's website and saved it before it was removed.*

9 *In the errantly published news release, the automaker said that "more*
10 *than a name change, 'Voltswagen' is a public declaration of the*
11 *company's future-forward investment in e-mobility."*

12 "The new name and branding symbolize the highly-charged forward
13 momentum Voltswagen has put in motion, pursuing a goal of moving
14 all people point-to-point with EVs," the automaker said in the release.

15 According to the announcement, electric models would get an exterior
16 badge with the name "Voltswagen," while gas-powered vehicles will
17 have the standard "VW" badge. It was not immediately clear Monday
18 whether any details of the plan are still subject to change.

19 The move would signal a significant pivot for the world's second-
20 largest automaker, whose U.S. division dates to 1955. It would also
21 come after several competitors, including General Motors and Volvo,
22 recently announced plans to eventually phase out gas vehicles.

23 "We might be changing out our K for a T, but what we aren't changing
24 is this brand's commitment to making best-in-class vehicles for drivers
25 and people everywhere," VW of America CEO Scott Keogh said in the
26 news release.

27 *The change would also further distance VW from the diesel emissions*
28 *scandal that sullied its reputation, harmed the environment, hurt*
public health and led to penalties of more than \$30 billion as well as
criminal charges.

1 ***The announcement would also coincide with the arrival of the brand-***
2 ***new Volkswagen ID.4, the automaker’s first long-range electric SUV***
3 ***sold in the U.S.*** It’s part of a new lineup of electric cars under the ID
4 sub-brand, including the forthcoming revival of the VW microbus.

5 The company plans to launch more than 70 electric vehicles worldwide
6 by 2029 and sell 1 million by 2025. VW and its related brands,
7 including Audi and Porsche, sold more than 9 million vehicles of all
8 kinds globally in 2020, making it a close second to Toyota, though it
9 previously held the No. 1 title for several years.

10 (Emphasis added.)

11 21. On March 30, 2021, VWoA re-published the press release entitled
12 “Volkswagen: A new name for a new era of e-mobility” announcing the Company’s
13 name change to “Volkswagen,” this time with the correct date of March 30, 2021.
14 The press release was also taken down later that day.

15 22. Also on March 30, 2021, Volkswagen tweeted: “***We know, 66 is an***
16 ***unusual age to change your name,*** but we’ve always been young at heart.
17 ***Introducing Volkswagen.*** Similar to Volkswagen, but ***with a renewed focus on***
18 ***electric driving.*** Starting with our all-new, all-electric SUV the ID.4 - available
19 today. #***Volkswagen*** #ID4.” (Emphasis added.) The tweet included a video showing
20 the “k” in Volkswagen changing to a “t.”¹

21
22
23
24
25 ¹ <https://twitter.com/VW/status/1376868756782219266>;
26 [https://web.archive.org/web/20210330121247/https://twitter.com/VW/status/13768](https://web.archive.org/web/20210330121247/https://twitter.com/VW/status/1376868756782219266)
27 68756782219266.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The image shows the Volkswagen logo, which consists of the word "Volkswagen" in a white, sans-serif font on a black rectangular background.The image shows the Volkswagen logo, which consists of the word "Volkswagen" in a white, sans-serif font on a black rectangular background.

23. The statements referenced in ¶17 and ¶¶19-22 above, made by or attributed to Defendants, 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) "Volkswagen" was never going to be used by the Company, VWoA, or on any relevant vehicle; (2) Volkswagen, VWoA, and their spokespeople purposefully misled reporters

1 regarding the now-purported “joke” and/or “promotion”; and (4) as a result,
2 Defendants’ public statements and statements to journalists were materially false
3 and/or misleading at all relevant times.

4 **The Truth Emerges**

5 24. Late on March 30, 2021, still two days before April Fool’s Day on April
6 1, the Wall Street Journal published a “WSJ News Exclusive” which was entitled
7 “No, Volkswagen Isn’t Rebranding Itself Voltswagen: German car maker says
8 announcement by its U.S. operation was supposed to be an April Fools’ gag[.]” The
9 Wall Street Journal article reported, in pertinent part, that:

10 Volkswagen AG’s U.S. subsidiary said Tuesday the company would
11 rebrand itself as Voltswagen of America to promote its electric car
12 strategy, but *a spokesman for the parent company in Germany later*
13 *said the move was a joke.*

14 * * *

15 The problem for VW is that everyone took it seriously, creating
16 confusion about the company’s intentions and moving the shares,
17 putting VW’s communications team on the defensive.

18 * * *

19 The spoof began late Monday, when VW communications in the U.S.
20 published a draft of the press release on the company’s website and then
21 quickly took it down, according to VW officials in Germany.

22 They left the document online long enough to grab the attention of
23 journalists and VW fans, sparking a flood of online news and tweets.

24 * * *

1 *VW's U.S. unit published the release in full again on Tuesday on the*
2 *U.S. website, a move that suggested the name change was in fact real*
3 *and would take effect as stated in the release in May.*

4 The press release quoted Scott Keogh as president and CEO of
5 Volkswagen of America saying: "We might be changing out our K for
6 a T, but what we aren't changing is this brand's commitment to making
7 best-in-class vehicles for drivers and people everywhere."

8 Back in Germany, a VW official told the Journal that the name change
9 shouldn't be taken seriously.

10 *"There will be no name change,"* the official said.

11 *Volkswagen's top executives have become more active on social*
12 *media recently.* The CEO, Herbert Diess, is a frequent contributor to
13 his LinkedIn page and recently opened a Twitter feed. But until now
14 the company has refrained from PR stunts or outlandish statements that
15 are more typical of Tesla CEO Elon Musk.

16 *Investors have been clamoring for shares of companies involved in*
17 *electric vehicles and have recently been pouring money into the stocks*
18 *of established car makers with solid EV plans.*

19 (Emphasis added.)

20 25. On March 31, 2021, further reports regarding how Volkswagen,
21 VWoA, and its spokespeople purposefully misled to reporters were published. For
22 example, ABC News published an article entitled "An unwelcome prank:
23 Volkswagen purposely hoodwinks reporters: Journalists are wary of looking out for
24 pranksters around April Fool's Day, but this time it came from a multi-billion dollar
25 corporation[.]" The ABC News article reported, in pertinent part, that:

26 *Volkswagen admitted Tuesday that it had put out a false news release*
27 *saying that it had changed the name of its U.S. subsidiary to*

1 ***“Volkswagen of America”*** in an attempt to be funny and promote a new
2 electric utility vehicle.

3 ***Several news organizations, including The Associated Press, USA***
4 ***Today, CNBC and The Washington Post, had reported the original***
5 ***press release as real news, some after being assured specifically that***
6 ***it was no joke.***

7 * * *

8 ***“The Associated Press was repeatedly assured by Volkswagen that its***
9 ***U.S. subsidiary planned a name change, and reported that***
10 ***information, which we now know to be false,” company***
11 ***spokeswoman Lauren Easton said.*** “We have corrected our story and
12 published a new one based on the company’s admission. This and any
13 deliberate release of false information hurts accurate journalism and the
14 public good.”

15 The story emerged Monday after a news release was briefly posted on
16 a company website and then disappeared, but not before catching some
17 eyes. CNBC, which declined comment on the hoax, is believed to be
18 the first major news organization to report it as legitimate news.

19 ***The AP wrote a story about it Monday after its reporter was assured***
20 ***by Mark Gillies, a company spokesman in the United States, that it***
21 ***was serious, Easton said.***

22 ***It was a similar story at USA Today, where a reporter specifically***
23 ***asked if it was a joke and was told “no,” said the newspaper’s***
24 ***spokeswoman, Chrissy Terrell.***

25 “The company used this fake announcement as a way to manipulate
26 respected reporters from trusted news outlets to get attention for their
27 marketing campaign,” she said. “We are disheartened that the company
28 would choose this type of disingenuous marketing.”

The USA Today reporter who was initially lied to was more blunt.

1 ***“This was not a joke,” reporter Nathan Bomey wrote on Twitter. “It***
2 ***was deception.*** In case you haven't noticed, we have a misinformation
3 problem in this country. Now you're part of it. Why should anyone trust
4 you again?”

5 ***At first on Tuesday, the company doubled down on its story by***
6 ***reissuing the news release, which quoted Scott Keogh, the president***
7 ***and CEO of Volkswagen of America. It even changed its Twitter page,***
8 ***announcing that “we know, 66 is an unusual age to change your***
9 ***name, but we've always been young at heart.”***

10 * * *

11 ***Gillies, after presenting the false information the day before, came***
12 ***clean on Tuesday.*** The Journal quoted a spokesman for the company
13 in Germany as saying, “we didn't mean to mislead anyone. The whole
14 thing is just a marketing action to get people talking” about its new car
15 model.

16 The AP and other news organizations that falsely reported the news
17 later wrote about the hoax. “About that plan to change Volkswagen of
18 America’s name.” wrote USA Today's Mike Snider. “Never mind.”

19 (Emphasis added.)

20 26. On this news, Volkswagen ADRs fell \$2.14 per ADR, or over 5%, over
21 the next two full trading days, to close at \$35.58 per share on April 1, 2020,
22 damaging investors.

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

PLAINTIFF’S CLASS ACTION ALLEGATIONS

26 28. Plaintiff brings this action as a class action pursuant to Federal Rule of
27 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
28

1 purchased or otherwise acquired the publicly traded securities of Volkswagen
2 during the Class Period (the "Class") and were damaged upon the revelation of the
3 alleged corrective disclosure. Excluded from the Class are Defendants herein, the
4 officers and directors of the Company, at all relevant times, members of their
5 immediate families and their legal representatives, heirs, successors or assigns and
6 any entity in which Defendants have or had a controlling interest.

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

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

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

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

- 1 (a) whether Defendants' acts as alleged violated the federal securities
2 laws;
- 3 (b) whether Defendants' statements to the investing public during the
4 Class Period misrepresented material facts about the financial
5 condition, business, operations, and management of the Company;
- 6 (c) whether Defendants' statements to the investing public during the
7 Class Period omitted material facts necessary to make the statements
8 made, in light of the circumstances under which they were made, not
9 misleading;
- 10 (d) whether the Individual Defendants caused the Company to issue false
11 and misleading SEC filings and public statements during the Class
12 Period;
- 13 (e) whether Defendants acted knowingly or recklessly in issuing false and
14 misleading SEC filings and public statements during the Class Period;
- 15 (f) whether the prices of the Company's securities during the Class Period
16 were artificially inflated because of the Defendants' conduct
17 complained of herein; and
- 18 (g) whether the members of the Class have sustained damages and, if so,
19 what is the proper measure of damages.

20
21 33. A class action is superior to all other available methods for the fair and
22 efficient adjudication of this controversy since joinder of all members is
23 impracticable. Furthermore, as the damages suffered by individual Class members
24 may be relatively small, the expense and burden of individual litigation make it
25 impossible for members of the Class to individually redress the wrongs done to
26 them. There will be no difficulty in the management of this action as a class action.
27

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

- 3 (a) Defendants made public misrepresentations or failed to disclose
4 material facts during the Class Period;
5 (b) the omissions and misrepresentations were material;
6 (c) the Company's securities are traded in efficient markets;
7 (d) the Company's securities were liquid and traded with moderate to
8 heavy volume during the Class Period;
9 (e) the Company traded on OTC, and was covered by multiple analysts;
10 (f) the misrepresentations and omissions alleged would tend to induce a
11 reasonable investor to misjudge the value of the Company's securities;
12 Plaintiff and members of the Class purchased and/or sold the
13 Company's securities between the time the Defendants failed to
14 disclose or misrepresented material facts and the time the true facts
15 were disclosed, without knowledge of the omitted or misrepresented
16 facts; and
17 (g) Unexpected material news about the Company was rapidly reflected
18 in and incorporated into the Company's stock price during the Class
19 Period.
20

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

23 36. Alternatively, Plaintiff and the members of the Class are entitled to the
24 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens*
25 *of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as
26
27
28

1 Defendants omitted material information in their Class Period statements in
2 violation of a duty to disclose such information, as detailed above.

3 **COUNT I**

4 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**

5 **Against All Defendants**

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

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

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

17 40. The Company and the Individual Defendants violated §10(b) of the
18 1934 Act and Rule 10b-5 in that they: employed devices, schemes and artifices to
19 defraud; made untrue statements of material facts or omitted to state material facts
20 necessary in order to make the statements made, in light of the circumstances under
21 which they were made, not misleading; and/or engaged in acts, practices and a
22 course of business that operated as a fraud or deceit upon plaintiff and others
23 similarly situated in connection with their purchases of the Company's securities
24 during the Class Period.
25
26
27
28

1 41. The Company and the Individual Defendants acted with scienter in that
2 they knew that the public documents and statements issued or disseminated in the
3 name of the Company were materially false and misleading; knew that such
4 statements or documents would be issued or disseminated to the investing public;
5 and knowingly and substantially participated, or acquiesced in the issuance or
6 dissemination of such statements or documents as primary violations of the
7 securities laws. These defendants by virtue of their receipt of information reflecting
8 the true facts of the Company, their control over, and/or receipt and/or modification
9 of the Company's allegedly materially misleading statements, and/or their
10 associations with the Company which made them privy to confidential proprietary
11 information concerning the Company, participated in the fraudulent scheme alleged
12 herein.

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

20 43. As a result of the foregoing, the market price of the Company's
21 securities was artificially inflated during the Class Period. In ignorance of the falsity
22 of the Company's and the Individual Defendants' statements, Plaintiff and the other
23 members of the Class relied on the statements described above and/or the integrity
24 of the market price of the Company's securities during the Class Period in
25 purchasing the Company's securities at prices that were artificially inflated as a
26

1 result of the Company's and the Individual Defendants' false and misleading
2 statements.

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

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

11 46. By reason of the foregoing, the Company and the Individual
12 Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5
13 promulgated thereunder and are liable to the Plaintiff and the other members of the
14 Class for substantial damages which they suffered in connection with their
15 purchases of the Company's securities during the Class Period.
16

17 **COUNT II**

18 **Violation of Section 20(a) of The Exchange Act**

19 **Against The Individual Defendants**

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

22 48. During the Class Period, the Individual Defendants participated in the
23 operation and management of the Company, and conducted and participated,
24 directly and indirectly, in the conduct of the Company's business affairs. Because
25 of their senior positions, they knew the adverse non-public information regarding
26 the Company's business practices.
27

1 49. As officers of VWoA, the Individual Defendants had a duty to
2 disseminate accurate and truthful information with respect to the Company and to
3 correct promptly any public statements issued by the Company which had become
4 materially false or misleading.

5 50. Because of their positions of control and authority as senior officers,
6 Individual Defendants were able to, and did, control the contents of the various
7 reports, press releases and public filings which the Company disseminated in the
8 marketplace during the Class Period. Throughout the Class Period, Individual
9 Defendants exercised their power and authority to cause the Company to engage in
10 the wrongful acts complained of herein. The Individual Defendants therefore, were
11 “controlling persons” of the Company within the meaning of Section 20(a) of the
12 Exchange Act. In this capacity, they participated in the unlawful conduct alleged
13 which artificially inflated the market price of the Company’s securities.
14

15 51. The Individual Defendants, therefore, acted as controlling persons of
16 the Company. By reason of their senior management positions, the Individual
17 Defendants had the power to direct the actions of, and exercised the same to cause,
18 the Company to engage in the unlawful acts and conduct complained of herein. The
19 Individual Defendants exercised control over the general operations of the
20 Company and possessed the power to control the specific activities which comprise
21 the primary violations about which Plaintiff and the other members of the Class
22 complain.

23 52. By reason of the above conduct, the Individual Defendants are liable
24 pursuant to Section 20(a) of the Exchange Act for the violations committed by the
25 Company.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

Respectfully submitted,

THE ROSEN LAW FIRM, P.A.

Laurence M. Rosen, Esq. (SBN 219683)
355 S. Grand Avenue, Suite 2450
Los Angeles, CA 90071
Telephone: (213) 785-2610
Facsimile: (213) 226-4684
Email: lrosen@rosenlegal.com

Counsel for Plaintiff