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8 *Counsel for Plaintiff*

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

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

14 Plaintiff,

15 v.

16 MITSUBISHI ELECTRIC  
17 CORPORATION, TAKESHI  
18 SUGIYAMA, and MASAKI  
19 SAKUYAMA,

20 Defendants.

Case No.

CLASS ACTION COMPLAINT  
FOR VIOLATION OF THE  
FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

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

1 of the Defendants’ public documents, announcements made by Defendants, public  
2 filings, wire and press releases published by and regarding Mitsubishi Electric  
3 Corporation (“Mitsubishi Electric” or the “Company”), and information readily  
4 obtainable on the Internet. Plaintiff believes that substantial evidentiary support  
5 will exist for the allegations set forth herein after a reasonable opportunity for  
6 discovery.

7  
8 **NATURE OF THE ACTION**

9 1. This s a federal securities class action on behalf of a class consisting  
10 of all persons and entities other than Defendants who purchased or otherwise  
11 acquired the publicly traded securities of Mitsubishi Electric between July 28, 2016  
12 and July 2, 2021, both dates inclusive (the “Class Period”). Plaintiff seeks to  
13 recover compensable damages caused by Defendants’ violations of the federal  
14 securities laws and to pursue remedies under Sections 10(b) and 20(a) of the  
15 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated  
16 thereunder.

17 2. Mitsubishi Electric engages in the manufacture, development, and sale  
18 of electric and electronic equipment. The Company operates through six business  
19 segments: Energy and Electric Systems, Industrial Automation Systems,  
20 Information and Communication Systems, Electronic Devices, Home Appliances,  
21 and Others. As part of its Energy and Electric Systems segment, the Company  
22 manufactures and supplies equipment to rail carriages across the globe, such as air  
23 conditioning equipment and pneumatic devices used in braking systems and to  
24 operate the train doors.

25 3. Throughout the Class Period, Defendants made false and/or  
26 misleading statements, as well as failed to disclose material adverse facts about the  
27

1 Company's business, operations, and compliance policies. Specifically,  
2 Defendants made false and/or misleading statements that failed to disclose that: (1)  
3 the Company was falsifying inspection data on air conditioning equipment for  
4 trains, such as in tests to assess the colling performance and power consumption of  
5 the air conditioners, to make it seem like the inspections fulfilled client standards;  
6 (2) as a result, the Company was not testing its products for flaws or defects which  
7 could lead to overheating and even fires; (3) as a result, the Company was not  
8 committed to the quality or safety of its products; (4) the foregoing increased the  
9 Company's regulatory and litigation risks with respect to these products; (5) as a  
10 result of all the foregoing, the Company's revenues and growth were unsustainable  
11 because they were derived, in part, from improper and/or illegal conduct; and (6) as  
12 a result, Defendants' public statements were materially false and/or misleading at  
13 all relevant times.  
14

15 4. On June 30, 2021, Mitsubishi Electric issued a press release admitting  
16 that the Company manipulated inspection data of certain products for railcars,  
17 stating that the Company had not actually conducted inspections (as they should  
18 have) or had used improper statements in inspection reports provided to customers.  
19 The same day, *The Asahi Shimbun*, a Japanese newspaper, published an article that  
20 revealed that for over 30 years Mitsubishi Electric faked testing data on equipment  
21 supplied to railway companies to give the appearance that the equipment had passed  
22 inspections for various functions. However, no tests were conducted before the  
23 equipment was supplied to train companies. Instead, the Company used a computer  
24 program to churn out fictitious data to fit clients' specifications, even if the Company  
25 conducted inspections that produced different results.  
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1 States mail, interstate telephone communications and the facilities of the national  
2 securities exchange.

3 **PARTIES**

4 13. 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 14. Defendant Mitsubishi Electric is a Japan-based company that  
8 manufactures and distributes a range of electronic equipment and components. Its  
9 product portfolio includes air conditioning systems, such as ventilators, air curtains,  
10 compressors, and variable refrigerant flow systems; automotive equipment, such as  
11 engine management, transmission control, body control, and car multimedia  
12 products; building systems, such as elevators and escalators; and energy systems,  
13 such as power generation and photovoltaic systems.  
14

15 15. Defendant Mitsubishi Electric is incorporated in Japan and maintains  
16 its head office at 7-3, Marunouchi 2-chome, Chiyoda-ku, Tokyo, 100-8310 Japan.  
17 Mitsubishi Electric's ADSs trade on the OTC Pink Market under the ticker symbol  
18 "MIELY" and "MIELF."

19 16. Defendant Takeshi Sugiyama ("Sugiyama") has served as the  
20 Company's President and Chief Executive Officer ("CEO") from April 2018 until  
21 July 2021. He has worked at Mitsubishi Electric since 1979.

22 17. Defendant Masaki Sakuyama ("Sakuyama") served as the Company's  
23 President and CEO from 2014 until April 1, 2018, and previously served as Senior  
24 Vice President and Senior General Manager of Corporate Strategic Planning  
25 Division during his 37-year tenure with the Company.  
26  
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1           18. Defendants Sugiyama and Sakuyama are collectively referred to herein  
2 as the “Individual Defendants.” Each of the Individual Defendants:

- 3           (a) directly participated in the management of the Company;  
4           (b) was directly involved in the day-to-day operations of the  
5           Company at the highest levels;  
6           (c) was privy to confidential proprietary information concerning the  
7           Company and its business and operations;  
8           (d) was directly or indirectly involved in drafting, producing,  
9           reviewing and/or disseminating the false and misleading  
10           statements and information alleged herein;  
11           (e) was directly or indirectly involved in the oversight or  
12           implementation of the Company’s internal controls;  
13           (f) was aware of or recklessly disregarded the fact that the false and  
14           misleading statements were being issued concerning the  
15           Company; and/or  
16           (g) approved or ratified these statements in violation of the federal  
17           securities laws.  
18

19           19. The Company is liable for the acts of the Individual Defendants and its  
20 employees under the doctrine of *respondeat superior* and common law principles of  
21 agency because all the wrongful acts complained of herein were carried out within  
22 the scope of their employment.

23           20. The scienter of the Individual Defendants and other employees and  
24 agents of the Company is similarly imputed to the Company under *respondeat*  
25 *superior* and agency principles.  
26  
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28





1 the contract, Mitsubishi Electric would provide various train management equipment  
 2 to “93 train sets comprising 744 cars that will operate on Hong Kong’s Mass Transit  
 3 Railway.” The Company claimed that it “aims to *strengthen its transportation*  
 4 *systems business in Asia by means of this order*, and to further expand its  
 5 maintenance and modernization business.” (Emphasis added). The press release  
 6 went on to forecast expanding revenue for this business segment, stating, in pertinent  
 7 part, that “Mitsubishi Electric’s global revenue target for the transportation business  
 8 until the year 2021 is 320 billion yen and *expects to continue to further expand its*  
 9 *transportation business* in Asia.” (Emphasis added).

10  
 11 29. In or around June 2017, the Company issued its annual report for the  
 12 fiscal year ended March 31, 2017 (the “2017 Annual Report”). The 2017 Annual  
 13 Report was signed by Defendant Sakuyama.

14 30. The 2017 Annual Report announced the financial results by Business  
 15 Segment:

**RESULTS BY BUSINESS SEGMENT**

**Net Sales by Business Segment**

Years ended March 31	Yen (millions)					U.S. dollars
	2017	2016	2015	2014	2013	(thousands)
Energy and Electric Systems	<b>¥1,227,906</b>	¥1,264,604	¥1,228,958	¥1,180,093	¥1,058,177	<b>\$10,963,446</b>
Industrial Automation Systems	<b>1,310,136</b>	1,321,937	1,282,749	1,098,796	927,857	<b>11,697,643</b>
Information and Communication Systems	<b>447,754</b>	561,119	559,521	548,282	522,422	<b>3,997,804</b>
Electronic Devices	<b>186,554</b>	211,580	238,402	194,658	164,065	<b>1,665,661</b>
Home Appliances	<b>1,004,415</b>	982,064	944,830	944,351	821,298	<b>8,967,991</b>
Others	<b>713,603</b>	707,746	740,517	676,034	590,366	<b>6,371,455</b>
Subtotal	<b>4,890,368</b>	5,049,050	4,994,977	4,642,214	4,084,185	<b>43,664,000</b>
Eliminations	<b>(651,702)</b>	(654,697)	(671,936)	(587,855)	(517,001)	<b>(5,818,768)</b>
Consolidated total	<b>¥4,238,666</b>	¥4,394,353	¥4,323,041	¥4,054,359	¥3,567,184	<b>\$37,845,232</b>

**Operating Income (Loss) by Business Segment**

Years ended March 31	Yen (millions)					U.S. dollars
	2017	2016	2015	2014	2013	(thousands)
Energy and Electric Systems	<b>¥ 44,319</b>	¥ 50,342	¥ 72,448	¥ 76,324	¥ 85,140	<b>\$ 395,705</b>
Industrial Automation Systems	<b>140,073</b>	159,160	145,982	98,079	60,592	<b>1,250,652</b>
Information and Communication Systems	<b>12,700</b>	14,999	18,934	5,529	1,591	<b>113,393</b>
Electronic Devices	<b>8,382</b>	16,870	30,163	10,050	(5,580)	<b>74,839</b>
Home Appliances	<b>69,696</b>	63,856	54,296	52,878	19,300	<b>622,286</b>
Others	<b>23,214</b>	23,620	23,742	19,801	18,790	<b>207,268</b>
Subtotal	<b>298,384</b>	328,847	345,565	262,661	179,833	<b>2,664,143</b>
Eliminations and other	<b>(28,280)</b>	(27,675)	(27,961)	(27,489)	(27,738)	<b>(252,500)</b>
Consolidated total	<b>¥270,104</b>	¥301,172	¥317,604	¥235,172	¥152,095	<b>\$2,411,643</b>

1           31. The 2017 Annual Report claimed that the Company made “investments  
2 . . . in Energy and Electric Systems . . . aimed at increasing production capacity,  
3 streamlining operations, and enhancing quality.” This was misleading because,  
4 instead of investing in the quality of the products in this business segment,  
5 Defendants did not even invest in simple testing of their products, like the air  
6 conditioning units sent to railway companies. The 2017 Annual Report also claimed  
7 that “[i]nternal regulations and systems are in place to ensure proper operations by  
8 the Mitsubishi Electric Group,” however, there were no systems in place to ensure  
9 proper testing of the Company’s products.  
10

11           32. In or around June 2018, the Company issued its annual report for the  
12 fiscal year ended March 31, 2018 (the “2018 Annual Report”). The 2018 Annual  
13 Report was signed by Defendant Sugiyama.

14           33. The 2018 Annual Report stated the following about the Company’s  
15 growth drivers:

16           **Make Strong Business Stronger**

17           Currently, *Refrigeration Systems—as growth drivers. In*  
18 *addition to these businesses being prioritized for the allocation*  
19 *of management resources, ongoing initiatives are under way to*  
20 *improve these operations and enhance their strengths.* Focusing on these businesses, the Group will thus expand its  
21 operations into markets worldwide, ranging from Japan, North  
22 America, Europe, and China to newly emerging markets,  
23 including those elsewhere in Asia. *By satisfying the needs of*  
24 *each market, the Group will continue to provide and create*  
25 *value for its customers, and thereby secure sustainable growth*  
26 *going forward.*

27           34. The 2018 Annual Report also falsely asserted that: “Particularly with  
28 respect to initiatives related to ethics and legal compliance, *Group-wide efforts are*

1 *made to enforce measures such as enhancing training and strengthening internal*  
2 *controls. Active measures are also taken to ensure and improve quality assurance,*  
3 environmental preservation activities, philanthropic activities, and communication  
4 with stakeholders.” (Emphasis added).

5 35. According to the 2018 Annual Report, quality was one of the  
6 Company’s Seven Guiding Principles. The 2018 Annual Report stated the following  
7 about the Company’s quality assurance and management policy:

8 **Basic Policy**

9  
10 The Mitsubishi Electric Group is committed to improving its  
11 technologies and services by applying creativity to all aspects of  
12 its business, to thereby enhance the quality of life in our society,  
13 as stated in our corporate mission. This commitment inherits the  
14 principles outlined in the Keys to Management (in Japanese,  
15 Keiei no Yotei) with regard to “our contribution to social  
16 prosperity” “quality improvement,” and “customer satisfaction,”  
17 and forms the basic spirit of our relationship with society and our  
18 customers.

19 To give concrete shape to this basic spirit, the Seven Guiding  
20 Principles define our actions in response to society and  
21 customers. It teaches us to establish relationships based on trust,  
22 provide the best products and services with unsurpassed quality,  
23 and respond to customer expectations through technology by  
24 promoting research and development and pioneering new  
25 markets.

26 Under these principles, we constantly strive to increase customer  
27 satisfaction and contribute to social prosperity in all aspects of  
28 our business, from the production of high-quality, easy-to-use  
products to our after-purchase support and response to major  
issues.



1 formulated quality assurance guidelines to ensure compliance with quality assurance  
2 legislation and standards and further develop quality improvement activities.”

3 39. The 2019 Annual Report also stated that the Company “will ensure  
4 safety through risk assessment and implement product development that places top  
5 priority on customer safety.”

6 40. In or around June 2020, the Company issued its Annual Securities  
7 Report for the fiscal year ended March 31, 2020 (“2020 Securities Report”), which  
8 noted that the Company’s Energy and Electric Systems segment saw “buoyant  
9 investment in train system business worldwide” and that the “business saw an  
10 increase in orders from the previous fiscal year due primarily to an increase in the  
11 power systems business worldwide and the public utility and transportation systems  
12 business in Japan.”

13 41. The 2020 Securities Report emphasized that the Company focuses on  
14 the quality of its products. It stated that the Company “will continue . . . emphasizing  
15 [] quality from the early stages of design and development” and “*will put serious  
16 effort into preventing . . . improper quality-related conduct leading to delivery of  
17 products not conforming to contracts with customers.*” (Emphasis Added). It also  
18 stated that “[i]n Energy and Electric Systems, investments were executed mainly for  
19 streamlining operations and enhancing quality in power systems, electric equipment  
20 for rolling stock, and the elevators/escalators.”

21 42. The 2020 Securities Report stated the following about the Company’s  
22 Energy and Electric Systems segment:  
23

24 The market of the social infrastructure systems business saw  
25 buoyant investment in the public utility for preventing and  
26 reducing disaster risks in Japan, *also buoyant investment in  
27 train system business worldwide*, and continued demand in the  
28 power systems in Japan due to the electricity system reform. In

1 this environment, *the business saw an increase in orders from*  
2 *the previous fiscal year due primarily to* an increase in the power  
3 systems business worldwide and the *public utility and*  
4 *transportation systems businesses in Japan*. Revenue for this  
5 business remained substantially unchanged from the previous  
6 fiscal year due mainly to a decrease in thermal power generation  
7 business worldwide despite *an increase in orders*.

8 43. In or around June 2020, the Company issued its annual report for the  
9 fiscal year ended March 31, 2020 (the “2020 Annual Report”). The 2020 Annual  
10 Report was signed by Defendant Sugiyama.

11 44. The 2020 Annual Report stated the following about the Company’s  
12 quality control management:

13 [The Company] ha[s] *established a system for quality assurance*  
14 *and improvement activities throughout the entire Group,*  
15 *including the appointment of a quality assurance promotion*  
16 *manager in all business group headquarters*. We have also  
17 formulated quality assurance guidelines to ensure compliance  
18 with quality assurance legislation and standards and further  
19 develop quality improvement activities. *At the level of*  
20 *management, we also regularly report on the status of quality*  
21 *at meetings of executive officers*.

22 (Emphasis Added).

23 45. The 2020 Annual Report stated the following about the Company’s  
24 product safety-related principles:

25 Particularly in regard to consumer products, Mitsubishi Electric  
26 is committed to preventing serious hazards that could result in  
27 death, injury, fire, or other damage, by subjecting *all products to*  
28 *a quantitative risk assessment at the development stage*, while  
also designing and developing products in consideration of their  
end-of-life management (to ensure safety even at the stage where  
products are prone to break or be discarded.) Especially in the

1 case of home appliances, *Mitsubishi Electric conducts risk*  
2 *assessment for 100% of the products subject to such*  
3 *assessments in pursuit of safety.*

4 (Emphasis added).

5 46. The statements referenced in ¶¶24-45 were materially false and/or  
6 misleading because Defendants made false and/or misleading statements, as well as  
7 failed to disclose material adverse facts about the Company's business, operations,  
8 and compliance policies. Specifically, Defendants made false and/or misleading  
9 statements that failed to disclose that: (1) the Company was falsifying inspection  
10 data on air conditioning equipment for trains, such as in tests to assess the cooling  
11 performance and power consumption of the air conditioners, to make it seem like  
12 the inspections fulfilled client standards; (2) as a result, the Company was not testing  
13 its products for flaws or defects which could lead to overheating and even fires; (3)  
14 as a result, the Company was not committed to the quality or safety of its products;  
15 (4) the foregoing increased the Company's regulatory and litigation risks with  
16 respect to these products; (5) as a result of all the foregoing, the Company's revenues  
17 and growth were unsustainable because they were derived, in part, from improper  
18 and/or illegal conduct; and (6) as a result, Defendants' public statements were  
19 materially false and/or misleading at all relevant times.  
20

21 **The Truth Emerges**

22 47. On June 30, 2021, Mitsubishi Electric issued a press release announcing  
23 that an internal investigation revealed that inspections of certain Heating, Ventilation  
24 and Air Conditioning (HVAC) systems for railcars manufactured at the Company's  
25 Nagasaki factory were not accurate in that the Company had not actually conducted  
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1 inspections (as they claimed they had) or has used improper statements and data in  
2 the inspection reports provided to customers.

3 48. On the same day, *The Asahi Shimbun* published an article entitled  
4 “Mitsubishi Electric faked train test data likely for decades,” which reported that for  
5 over 30 years Mitsubishi Electric had been falsifying tests for air-conditioning  
6 equipment the Company supplied to train companies. The tests were intended to  
7 uncover waterproofing and voltage problems that might lead to overheating of the  
8 air conditioning equipment and even fires.

9 49. The article explained that railway companies had standards they wanted  
10 Mitsubishi Electric to meet and wanted Mitsubishi Electric to test the air  
11 conditioning capabilities, fuel efficiency, the level of waterproofing, and the shelf  
12 life of the equipment. Despite these requirements, Mitsubishi Electric had not  
13 performed any tests since the 1980s. Instead, the Company created fake data and  
14 included it in test reports to give the appearance there were no problems with the  
15 Company’s equipment.  
16

17 50. On this news, Mitsubishi Electric’s ADSs (“MIELY”) fell \$1.54 per  
18 ADS, or approximately 5%, to close at \$27.30 per ADS on July 1, 2021.

19 51. On July 1, 2021, *The Japan Times* published an article explaining that  
20 since the 1980s, Mitsubishi Electric used a computer program that automatically  
21 filled in fabricated inspection data on air conditioning equipment for trains, even if  
22 the Company conducted inspections that produced different results. A Mitsubishi  
23 Electric factory in the Nagasaki Prefecture introduced the program to avoid the time-  
24 consuming process of conducting tests in a way specified by clients, sources familiar  
25 with the matter told *The Japan Times*. The scandal may have affected up to 84,600  
26  
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28

1 air conditioners, with 68,800 units shipped to railway operators in Japan and 15,800  
2 units shipped abroad, including the United States.

3 52. On July 2, 2021, *Nikkei Asia*, one of the world’s largest financial  
4 newspapers, published an article entitled “Mitsubishi Electric CEO Sugiyama quits  
5 over fake inspections,” which revealed that Mitsubishi Electric’s President and CEO,  
6 Defendant Sugiyama, announced that he would resign because of the fake  
7 inspections scandal. The article also reported that a survey of 160 employees at the  
8 Nagasaki factory revealed that senior managers in the quality control and design  
9 departments were aware of the underlying issues.

10 53. The *Nikkei Asia* article also reported that during a news conference,  
11 Defendant Sugiyama described the underlying issue as “systemic wrongdoing.”

12 54. On this news, Mitsubishi Electric’s ADSs (“MIELY”) fell an additional  
13 4% over the next three days to close at \$26.15 per ADS on July 8, 2021.

14 55. As a result of Defendants’ wrongful acts and omissions, and the decline  
15 in the market value of the Company’s securities, Plaintiff and other Class members  
16 have suffered significant losses and damages.

17  
18 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

19 56. Plaintiff brings this action as a class action pursuant to Federal Rule of  
20 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who  
21 purchased or otherwise acquired the publicly traded securities of Mitsubishi Electric  
22 during the Class Period (the “Class”) and were damaged upon the revelation of the  
23 alleged corrective disclosure. Excluded from the Class are Defendants herein, the  
24 officers and directors of the Company, at all relevant times, members of their  
25 immediate families and their legal representatives, heirs, successors or assigns and  
26 any entity in which Defendants have or had a controlling interest.



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

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

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

- 24 (a) Defendants made public misrepresentations or failed to disclose  
25 material facts during the Class Period;
- 26 (b) the omissions and misrepresentations were material;
- 27

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

17 63. Based upon the foregoing, Plaintiff and the members of the Class are

18 entitled to a presumption of reliance upon the integrity of the market.

19 64. Alternatively, Plaintiff and the members of the Class are entitled to the

20 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens*

21 *of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as

22 Defendants omitted material information in their Class Period statements in

23 violation of a duty to disclose such information, as detailed above.

24

25

26

27

1 **COUNT I**

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

3 **Against All Defendants**

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

6 66. This Count is asserted against the Defendants and is based upon Section  
7 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated  
8 thereunder by the SEC.

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

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

22 69. The Defendants acted with scienter in that they knew that the public  
23 documents and statements issued or disseminated in the name of the Company were  
24 materially false and misleading; knew that such statements or documents would be  
25 issued or disseminated to the investing public; and knowingly and substantially  
26





1 Defendants exercised their power and authority to cause the Company to engage in  
2 the wrongful acts complained of herein. The Individual Defendants, therefore, were  
3 “controlling persons” of the Company within the meaning of Section 20(a) of the  
4 Exchange Act. In this capacity, they participated in the unlawful conduct alleged  
5 which artificially inflated the market price of the Company’s securities.

6 79. Each of the Individual Defendants, therefore, acted as a controlling  
7 person of the Company. By reason of their senior management positions and/or  
8 being directors of the Company, each of the Individual Defendants had the power  
9 to direct the actions of, and exercised the same to cause, the Company to engage in  
10 the unlawful acts and conduct complained of herein. Each of the Individual  
11 Defendants exercised control over the general operations of the Company and  
12 possessed the power to control the specific activities which comprise the primary  
13 violations about which Plaintiff and the other members of the Class complain.  
14

15 80. By reason of the above conduct, the Individual Defendants are liable  
16 pursuant to Section 20(a) of the Exchange Act for the violations committed by the  
17 Company.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

20 A. Determining that the instant action may be maintained as a class action  
21 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as  
22 the Class representative;

23 B. Requiring Defendants to pay damages sustained by Plaintiff and the  
24 Class by reason of the acts and transactions alleged herein;  
25  
26  
27

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

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

6 **DEMAND FOR TRIAL BY JURY**

7 Plaintiff hereby demands a trial by jury.  
8

9 Dated:

Respectfully submitted,

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

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