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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Individually and on  
behalf of all others similarly situated,  
  
Plaintiff,  
  
v.  
  
TOYOTA MOTOR CORPORATION,  
KOJI SATO, YOICHI MIYAZAKI,  
AKIO TOYODA, and KENTA KON  
  
Defendants.

No.  
  
**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**  
  
CLASS ACTION  
  
JURY TRIAL DEMANDED

1 Plaintiff (“Plaintiff”), individually and on behalf of all other  
2 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s  
3 complaint against Defendants (defined below), alleges the following based upon  
4 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and  
5 belief as to all other matters, based upon, among other things, the investigation  
6 conducted by and through Plaintiff’s attorneys, which included, among other  
7 things, a review of the Defendants’ public documents, public filings, wire and press  
8 releases published by and regarding Toyota Motor Corporation (“Toyota” or the  
9 “Company”), and information readily obtainable on the Internet. Plaintiff believes  
10 that substantial evidentiary support will exist for the allegations set forth herein  
11 after a reasonable opportunity for discovery.

12 **NATURE OF THE ACTION**

13  
14 1. This is a class action on behalf of persons or entities who purchased  
15 or otherwise acquired publicly traded Toyota securities between June 23, 2022 and  
16 June 2, 2024, inclusive (the “Class Period”). Plaintiff seeks to recover compensable  
17 damages caused by Defendants’ violations of the federal securities laws under the  
18 Securities Exchange Act of 1934 (the “Exchange Act”).

19 **JURISDICTION AND VENUE**

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

23 3. This Court has jurisdiction over the subject matter of this action  
24 pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C.  
25 §78aa).

26 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §  
27 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged  
28

1 misstatements entered and the subsequent damages took place in this judicial  
2 district.

3 5. In connection with the acts, conduct and other wrongs alleged in this  
4 complaint, Defendants (defined below), directly or indirectly, used the means and  
5 instrumentalities of interstate commerce, including but not limited to, the United  
6 States mails, interstate telephone communications and the facilities of the national  
7 securities exchange.

### 8 PARTIES

9 6. Plaintiff, as set forth in the accompanying certification, incorporated  
10 by reference herein, purchased Toyota securities during the Class Period and was  
11 economically damaged thereby.

12 7. Defendant Toyota is a Japanese car company.

13 8. Toyota is incorporated in Japan and its head office located at 1  
14 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its American  
15 headquarters are located at 6565 Headquarters Drive, Plano, Texas 75024. Toyota  
16 has offices at 1630 W. 186th St. Gardena, California 90248-3807.

17 9. Toyota American Depositary Shares (“ADS”) trade on the New York  
18 Stock Exchange (the “NYSE”) under the ticker symbol “TM”

19 10. Defendant Koji Sato (“Sato”) has served as the Company’s Chief  
20 Executive Officer (“CEO”) since April 2023.

21 11. Defendant Yoichi Miyazaki (“Miyazaki”) has served as the  
22 Company’s Chief Financial Officer (“CFO”) since April 2023. He also serves as  
23 Chief Competitive Officer and on the Board of Directors (the “Board”)

24 12. Defendant Akio Toyoda (“Toyoda”) is the Chairman of the  
25 Company’s Board of Directors and was previously a member of the Board.

26 13. Defendant Kenta Kon (“Kon”) served on the Board through April 1,  
27 2023.



1        **Materially False and Misleading Statements Issued During the Class Period**

2            19.    On June 23, 2022, the Company filed with the SEC its Annual Report  
3 on Form 20-F for the fiscal year ended March 31, 2022 (the “2022 Annual  
4 Report”). Attached to the 2022 Annual Report were certifications pursuant to the  
5 Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Toyoda and Kon  
6 attesting to the accuracy of any material changes to the Company’s internal control  
7 over financial reporting, and the disclosure of all fraud.

8            20.    The 2022 Annual Report contained the following risk disclosure  
9 regarding the Company’s brand image:

10            *Toyota’s success is significantly impacted by its ability to maintain and*  
11            *develop its brand image.*

12            In the highly competitive automotive industry, it is critical to maintain and  
13 develop a brand image. In order to maintain and develop a brand image, it is  
14 necessary to further increase customers’ confidence by providing safe, high-  
15 quality products that meet customer preferences and demand. If Toyota is  
16 unable to effectively maintain and develop its brand image as a result of such  
17 reasons as its inability to provide safe, high-quality products or as a result of  
18 the failure to promptly implement safety measures such as recalls when  
19 necessary, vehicle unit sales and/or sale prices may decrease, and as a result  
20 revenues and profits may not increase as expected or may decrease,  
21 adversely affecting its financial condition and results of operations.

22            21.    The statement in ¶ 20 was materially false and misleading because it  
23 omitted that malfeasance relating to certification of the Company’s cars, including  
24 for safety, posed a risk to its brand.

25            22.    The 2022 Annual Report contained the following risk regarding  
26 government regulations and actions:

27            *The automotive industry is subject to various governmental regulations*  
28            *and actions.*

          The worldwide automotive industry is subject to various laws and  
governmental regulations including those related to vehicle safety and  
environmental matters such as emission levels, fuel economy, noise and

1 pollution. In particular, automotive manufacturers such as Toyota are  
2 required to implement safety measures such as recalls for vehicles that do  
3 not or may not comply with the safety standards of laws and governmental  
4 regulations. In addition, Toyota may, in order to reassure its customers of  
5 the safety of Toyota's vehicles, decide to voluntarily implement recalls or  
6 other safety measures even if the vehicle complies with the safety standards  
7 of relevant laws and governmental regulations. If Toyota launches products  
8 that result in safety measures such as recalls (including where parts related  
9 to recalls or other measures were procured by Toyota from a third party),  
10 Toyota may incur various costs including significant costs for free repairs.  
11 Many governments also impose tariffs and other trade barriers, taxes and  
12 levies, or enact price or exchange controls. Toyota has incurred significant  
13 costs in response to governmental regulations and actions, including costs  
14 relating to changes in global trade dynamics and policies, and expects to  
15 incur such costs in the future. **Furthermore, new legislation or regulations  
16 or changes in existing legislation or regulations may also subject Toyota  
17 to additional costs in the future. If Toyota incurs significant costs related  
18 to implementing safety measures or responding to laws, regulations and  
19 governmental actions, Toyota's financial condition and results of  
20 operations may be adversely affected.**

(Emphasis added).

21 23. The statement in ¶ 22 was materially false and misleading because it  
22 understated the risk of government action affecting the Company, considering its  
23 malfeasance relating to certification of its cars.

24 24. The 2022 Annual Report contained the following risk disclosure  
25 regarding litigation risk:

26 As an automotive manufacturer, Toyota may become subject to legal  
27 proceedings in respect of various issues, including issues relating to the  
28 topics discussed in “—The automotive industry is subject to various  
governmental regulations and actions,” as well as product liability and  
infringement of intellectual property. Toyota may also be subject to legal  
proceedings brought by its shareholders and governmental proceedings and  
investigations. Toyota is in fact currently subject to a number of pending  
legal proceedings and government investigations. A negative outcome in  
one or more of these pending legal proceedings could adversely affect  
Toyota's reputation, brand image, financial condition and results of  
operations. For a further discussion of governmental regulations, see

1 “Information on the Company — Business Overview — Governmental  
2 Regulation, Environmental and Safety Standards” and for legal proceedings,  
3 please see “Information on the Company — Business Overview — Legal  
4 Proceedings.”

5 25. The statement in ¶ 24 was materially false and misleading because it  
6 understated the Company’s litigation risk, considering its malfeasance relating to  
7 certification of its cars.

8 26. The 2022 Annual Report contained the following statement regarding  
9 malfeasance at Hino Motors, Ltd. (“Hino”), of which Toyota owns a majority  
10 stake:

11 On March 4, 2022, Hino Motors, Ltd., a publicly traded Japanese company  
12 that produces and sells commercial trucks and buses, and of which Toyota  
13 owns 50.18% of the voting interests as of March 31, 2022, *disclosed that it  
14 had voluntarily commenced an investigation into potential issues  
15 regarding emissions performance and certification in the North American  
16 and Japanese markets*, and that it has reported such issues to and is  
17 cooperating with the relevant authorities, including the Japanese Ministry of  
18 Land, Infrastructure, Transport and Tourism (“MLIT”) and the U.S.  
19 Department of Justice. Hino announced that, through such investigation, *it  
20 identified past misconduct in relation to its applications for certification  
21 concerning the emissions and the fuel economy performance of certain of  
22 its engines for the Japanese market*. Accordingly, Hino disclosed that it  
23 decided to suspend the sale of such engine models and their corresponding  
24 vehicles in Japan and announced on March 25, 2022 a recall of vehicles  
25 equipped with one of the engines. On March 29, 2022, MLIT announced  
26 that it had revoked certain of the “type approvals” (that is, approvals that  
27 exempt new vehicles or vehicles with certain equipment from individual  
28 testing by government inspectors prior to sale) and the fuel consumption  
ratings relating to such engine models. Investigations by governmental  
authorities related to these matters could result in the imposition of civil or  
criminal penalties, fines or other sanctions, or litigation. Toyota cannot  
predict the scope, duration, or outcome of these matters at this time.

(Emphasis added).

1           27. The statement in ¶ 26 was materially false and misleading because it  
2 gave the impression that malfeasance relating to certification of the Company’s  
3 vehicles was isolated to past misconduct at Hino.

4           28. On June 30, 2023, the Company filed with the SEC its Annual Report  
5 on Form 20-F for the fiscal year ended March 31, 2023 (the “2023 Annual  
6 Report”). Attached to the 2023 Annual Report were certifications pursuant to SOX  
7 signed by Defendants Sato and Miyazaki attesting to the accuracy of any material  
8 changes to the Company’s internal control over financial reporting, and the  
9 disclosure of all fraud.

10           29. The 2023 Annual Report contained the following statement:

11           ***Toyota’s success is significantly impacted by its ability to maintain and***  
12           ***develop its brand image and reputation.***

13           In the highly competitive automotive industry, it is critical to maintain and  
14           develop a brand image and reputation. In order to do so, it is necessary to  
15           further increase stakeholders’ confidence by ensuring that the Toyota group  
16           and its suppliers thoroughly comply with laws and regulations, provide safe,  
17           high-quality products that meet customer preferences and demand, as well  
18           as timely and appropriately disseminate information to stakeholders. It is  
19           also becoming increasingly important for companies to contribute to  
20           sustainability.

21           However, the Toyota group may not be able to ensure that it or its suppliers  
22           do so in all cases. Concerns regarding product safety or our product safety  
23           validation processes, whether raised internally, by regulators, or consumer  
24           advocates, can lead to product delays, recalls, lost sales, regulatory  
25           investigations, legal claims that cause reputational damage. ***For example,***  
26           ***on March 4, 2022, Hino Motors, Ltd. (“Hino”), a consolidated subsidiary***  
27           ***of Toyota, confirmed and announced misconduct in relation to its***  
28           ***applications for certification concerning the emissions and the fuel***  
                  ***economy performance of certain of its engines for the Japanese market.***  
                  ***Additionally, Daihatsu Motor Co., Ltd. (“Daihatsu”), a consolidated***  
                  ***subsidiary of Toyota, confirmed and announced misconduct in relation to***  
                  ***its applications for certification concerning safety tests of certain of its***  
                  ***vehicles for the overseas market on April 28, 2023 for vehicles developed***



1 *by Daihatsu*. See “Item 4. Information on the Company — 4.B Business  
2 Overview — Selected Initiatives” for further discussion of these and related  
3 matters. In addition, actual or perceived failures on the part of Toyota or its  
4 suppliers to contribute to sustainability or to meet certain sustainability-  
5 related goals or objectives, including those relating to climate change or the  
6 protection of human rights in Toyota’s supply chain, may also harm  
7 Toyota’s reputation. Any insufficient measures taken by the Toyota group  
8 or its suppliers to maintain and develop Toyota’s brand image and reputation  
9 may have an adverse effect on Toyota’s financial condition and results of  
10 operations.

11 (Emphasis added).

12 30. The statement in ¶ 29 was materially false and misleading because it  
13 omitted that Toyota itself had improperly submitted data as part of the Japanese  
14 government’s certification process, in addition to two of its subsidiaries.

15 31. The 2023 Annual Report contained the following statement:

16 ***Misconduct of Hino and Daihatsu in Relation to their Applications for***  
17 ***Certification***

18 ***On March 4, 2022, Hino, a consolidated subsidiary of Toyota, announced***  
19 ***that it identified past misconduct in relation to its applications for***  
20 ***certification concerning emissions and the fuel economy performance of***  
21 ***its vehicle engines for the Japanese market.*** Hino subsequently received an  
22 investigation report from a special investigation committee consisting of  
23 outside experts concerning this matter. Hino also was subject to an on-  
24 site inspection from the Ministry of Land, Infrastructure, Transport and  
25 Tourism (“MLIT”), and received a corrective action order from it. On  
26 October 7, 2022, Hino submitted a recurrence prevention report to MLIT.  
27 To clarify management responsibility regarding this matter, Hino decided to  
28 have four persons who were directors or senior managing officers resign,  
reduce the remuneration of directors, and request the voluntary return of part  
of the remuneration of certain past representative directors. Further, Hino  
formulated and announced “Three Reforms,” namely reforms to  
management, corporate culture and vehicle manufacturing, to prevent future  
misconduct. Hino is committed to addressing this issue head on and living  
out with renewed intent its corporate mission: “We make a better world and  
future by helping people and goods get where they need to go.” See “Item  
4. Information on the Company — 4.B Business Overview — Legal

1 Proceedings” for a discussion of related legal proceedings, including  
2 government investigations and actions.

3 *Furthermore, on April 28, 2023, Daihatsu announced and disclosed that*  
4 *it had committed procedural irregularities in approval applications for*  
5 *side collision tests for vehicles developed by Daihatsu destined for overseas*  
6 *markets. During the subsequent in-house inspection, it was newly*  
7 *discovered and announced that Daihatsu identified irregularities in the*  
8 *certification procedures for the side impact collision tests of Daihatsu*  
9 *ROCKY HEVs and Toyota RAIZE HEVs. The irregularities were promptly*  
10 *reported to, and consultations were undertaken, with the inspection and*  
11 *certification authorities after they were discovered, and shipments and sales*  
12 *of the vehicles at issue were suspended in the countries in which approval*  
13 *had been granted. In addition, Daihatsu has confirmed and reported that the*  
14 *vehicles at issue conform to laws and regulations in in-house re-tests using*  
15 *proper parts. Daihatsu has established a third-party committee consisting of*  
16 *external experts in legal and technical matters to fully clarify the nature of*  
17 *the irregularities and identify their root cause; it has also asked the*  
18 *committee to recommend measures to prevent the recurrence of similar*  
19 *irregularities by examining the company’s organization and development*  
20 *processes.*

21 In the wake of the large-scale recalls that occurred in 2009, Toyota promised  
22 its customers around the world that it would not “run away, hide, or lie.”  
23 Given this, we take very seriously the fact that these problems nevertheless  
24 occurred in our group. For this matter, as the chief executive officer,  
25 Toyota’s President will further strive to improve the car manufacturing  
26 operations of Toyota and the group companies, while the Chairman of the  
27 Board of Toyota will lead initiatives to strengthen governance and  
28 compliance.

29 *On May 12, 2023, the top management of each group company gathered*  
30 *to discuss Toyota’s commitment to facing manufacturing with sincerity*  
31 *and renewed our recognition of this goal. We are currently working with*  
32 *all of our group companies to re-examine our past governance structure,*  
33 *including our own, and have begun a thorough review. We view this case*  
34 *not as an individual or workplace issue, but rather a company-wide issue*  
35 *where an individual or workplace was forced to commit a wrongdoing.*  
36 *Together with Daihatsu, we are committed to listening to the voices of those*  
37 *on the front lines and carefully responding to the situation.*

1 At Toyota worksites, everyone is committed to making better cars. Toyota  
2 is a company where, when a problem occurs, everyone always stops, pursues  
3 the root cause by going and seeing the location or process where the problem  
4 exists, makes improvements, and works to prevent recurrence. This is the  
5 Toyota philosophy that has been cherished since the company's founding.  
6 We believe that there is no other way to regain the trust of our customers  
7 than for all of Toyota and its group companies to return to this philosophy  
8 once again, for each group company's top management to confront the  
9 problems at their respective workplaces, uncover them, and make  
10 improvements one by one, and continue this steady effort. The entire Toyota  
11 group will work together to regain trust of our customers as soon as possible.

12 (Emphasis added).

13 32. The statement in ¶ 31 was materially false and misleading because it  
14 omitted that Toyota itself had submitted incorrect data during the certification  
15 process for certain vehicles, in addition to two of its subsidiaries.

16 33. The statements contained in ¶¶ 20, 22, 24, 26, 29 and 31 were  
17 materially false and/or misleading because they misrepresented and failed to  
18 disclose the following adverse facts pertaining to the Company's business,  
19 operations and prospects, which were known to Defendants or recklessly  
20 disregarded by them. Specifically, Defendants made false and/or misleading  
21 statements and/or failed to disclose that: (1) Toyota understated its malfeasance  
22 relating to certification of its cars and issues relating to overall legal compliance;  
23 and (2) as a result, Defendants' statements about its business, operations, and  
24 prospects, were materially false and misleading and/or lacked a reasonable basis at  
25 all times.

### 26 **THE TRUTH EMERGES**

27 34. On June 3, 2024, before the market opened, Toyota filed with the SEC  
28 a current report on Form 6-K. Attached to this current report was an English  
translation of an announcement that Toyota had filed with the Tokyo Stock  
Exchange on June 3, 2024. The announcement stated the following:

1 Toyota Motor Corporation (Toyota) *investigated its model certification*  
2 *applications as per instructions from the Ministry of Land, Infrastructure,*  
3 *Transport and Tourism (MLIT) on January 26 this year.* Although the  
4 investigation is still in progress, seven models, including some that have  
5 already been discontinued since 2014, were tested using methods that  
differed from the government standards, and we reported this to MLIT on  
May 31.

6 The model certification applications in question involve inadequate data in  
7 pedestrian and occupant protection tests for three production models  
8 (Corolla Fielder/Axio and Yaris Cross) and errors in crash tests and other  
9 test methods for four discontinued models (Crown, Isis, Sienta, and RX).

10 We sincerely apologize for any concern or inconvenience this may cause to  
11 our customers and stakeholders who have placed their trust in Toyota. *We*  
12 *take it seriously that the problem was discovered at Toyota following the*  
13 *recent discovery of certification issues at Hino Motors, Ltd. and Daihatsu*  
*Motor Co., Ltd. and Toyota Industries Corporation.*

14 Following comprehensive internal verifications on the affected vehicles,  
15 including those that are no longer in production, we can confirm that there  
16 are no performance issues that contravene laws and regulations. Therefore,  
17 there is no need to stop using the affected vehicles. However, considering  
18 these findings, we have taken action to temporarily halt shipments and sales  
19 of three models currently produced in Japan (Corolla Fielder, Corolla Axio,  
20 and Yaris Cross), effective today. We will continue to provide detailed  
21 explanations to the authorities and expedite appropriate measures, including  
22 conducting testing in the presence of witnesses.

23 In January this year, we announced the Toyota Group Vision, “Inventing our  
24 path forward, together.” We will continue to work on making “ever-better  
25 cars” in a genba where employees have authority, which is a unique Toyota  
26 corporate culture.

27 *Again, we extend our sincere apologies to our customers and stakeholders.*

28 (Emphasis added).



1 But, Mr. Aoyama [a senior director at Fitch Ratings] said, “*there has long*  
2 *been a perception of the superior manufacturing and quality of Japanese*  
3 *products and with these instances of fraud appearing again and again,*  
4 *perceptions may be beginning to change.*”

5 In addition to the problems Toyota found involving three current models, *it*  
6 *discovered errors in crash tests and other tests for four models it had*  
7 *discontinued.*

8 \* \* \*

9 Mr. Toyoda said he was working with Toyota group companies to identify  
10 problems with internal certification processes and work structures, and had  
11 made several trips to visit their work sites himself. “We will carry out  
12 concrete improvements,” he said.

13 *Japan’s transport ministry said it would conduct an inspection at Toyota*  
14 *headquarters on Tuesday to follow up on the latest disclosures.*

15 (Emphasis added).

16 37. On the same day, the Associated Press released an article entitled  
17 “Toyota apologizes for cheating on vehicle testing and halts production of three  
18 models.” It stated the following:

19 Toyota Chairman Akio Toyoda apologized Monday for massive cheating on  
20 certification tests for seven vehicle models as the automaker suspended  
21 production of three of them.

22 *The wide-ranging fraudulent testing at Japan’s top automaker involved*  
23 *the use of inadequate or outdated data in collision tests, and incorrect*  
24 *testing of airbag inflation and rear-seat damage in crashes. Engine power*  
25 *tests were also found to have been falsified.*

26 [Toyota] suspended production in the country of the Corolla Fielder, Corolla  
27 Axio and Yaris Cross. The deceptive tests were also found on discontinued  
28 models.

\* \* \*

1 “We sincerely apologize,” Toyoda told reporters, bowing deeply and  
2 holding the position for several seconds, as is customary in Japan at news  
3 conferences where companies apologize for misbehavior.

4 (Emphasis added).

5 38. On this news, the price of Toyota American Depositary Shares  
6 (“ADSs”) fell by \$5.34 per ADS, or 2.45%, to close at \$212.17 per ADS on June  
7 3, 2024.

8 39. As a result of Defendants’ wrongful acts and omissions, and the  
9 precipitous decline in the market value of the Company’s common shares, Plaintiff  
10 and other Class members have suffered significant losses and damages.

11 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

12 40. Plaintiff brings this action as a class action pursuant to Federal Rule  
13 of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons  
14 other than defendants who acquired the Company’s securities publicly traded on  
15 NYSE during the Class Period, and who were damaged thereby (the “Class”).  
16 Excluded from the Class are Defendants, the officers and directors of the Company,  
17 members of the Individual Defendants’ immediate families and their legal  
18 representatives, heirs, successors or assigns and any entity in which Defendants  
19 have or had a controlling interest.

20  
21 41. The members of the Class are so numerous that joinder of all members  
22 is impracticable. Throughout the Class Period, the Company’s securities were  
23 actively traded on NYSE. While the exact number of Class members is unknown  
24 to Plaintiff at this time and can be ascertained only through appropriate discovery,  
25 Plaintiff believes that there are hundreds, if not thousands of members in the  
26 proposed Class.

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

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

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

- 11           • whether the Exchange Act was violated by Defendants' acts as alleged  
12           herein;
- 13           • whether statements made by Defendants to the investing public during  
14           the Class Period misrepresented material facts about the business and  
15           financial condition of the Company;
- 16           • whether Defendants' public statements to the investing public during  
17           the Class Period omitted material facts necessary to make the statements  
18           made, in light of the circumstances under which they were made, not  
19           misleading;
- 20           • whether the Defendants caused the Company to issue false and  
21           misleading filings during the Class Period;
- 22           • whether Defendants acted knowingly or recklessly in issuing false  
23           filings;
- 24           • whether the prices of the Company securities during the Class Period  
25           were artificially inflated because of the Defendants' conduct complained of  
26           herein; and



- 1           • whether the members of the Class have sustained damages and, if so,  
2           what is the proper measure of damages.

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

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

- 11           • the Company's shares met the requirements for listing, and were listed  
12 and actively traded on NYSE, an efficient market;
- 13           • as a public issuer, the Company filed periodic public reports;
- 14           • the Company regularly communicated with public investors via  
15 established market communication mechanisms, including through the  
16 regular dissemination of press releases via major newswire services and  
17 through other wide-ranging public disclosures, such as communications with  
18 the financial press and other similar reporting services;
- 19           • the Company's securities were liquid and traded with moderate to  
20 heavy volume during the Class Period; and
- 21           • the Company was followed by a number of securities analysts  
22 employed by major brokerage firms who wrote reports that were widely  
23 distributed and publicly available.

24           47. Based on the foregoing, the market for the Company's securities  
25 promptly digested current information regarding the Company from all publicly  
26 available sources and reflected such information in the prices of the shares, and

1 Plaintiff and the members of the Class are entitled to a presumption of reliance  
2 upon the integrity of the market.

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

8 **COUNT I**

9 **For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**  
10 **Against All Defendants**

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

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

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

22 52. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that  
23 they:

- 24 • employed devices, schemes and artifices to defraud;
- 25 • made untrue statements of material facts or omitted to state material
- 26 facts necessary in order to make the statements made, in light of the
- 27 circumstances under which they were made, not misleading; or
- 28

- 1           • engaged in acts, practices and a course of business that operated as a  
2 fraud or deceit upon plaintiff and others similarly situated in connection with  
3 their purchases of the Company's securities during the Class Period.

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

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

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

3 56. 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 Defendants' misleading statements and by the material adverse information  
6 which Defendants did not disclose, they would not have purchased the Company's  
7 securities at the artificially inflated prices that they did, or at all.

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

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

## 15 **COUNT II**

### 16 **Violations of Section 20(a) of the Exchange Act**

#### 17 **Against the Individual Defendants**

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

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

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

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

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

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for  
18 judgment and relief as follows:

19 (a) declaring this action to be a proper class action, designating Plaintiff  
20 as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of  
21 the Federal Rules of Civil Procedure and designating Plaintiff's counsel as Lead  
22 Counsel;

23 (b) awarding damages in favor of Plaintiff and the other Class members  
24 against all Defendants, jointly and severally, together with interest thereon;

25 (c) awarding Plaintiff and the Class reasonable costs and expenses  
26 incurred in this action, including counsel fees and expert fees; and  
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(d) awarding Plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.