

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Individually and on Behalf of All Others  
Similarly Situated,

Plaintiff,

v.

SERITAGE GROWTH PROPERTIES,  
ANDREA OLSHAN, and JOHN GARILLI,

Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**DEMAND FOR JURY TRIAL**

Plaintiff

(“Plaintiff”), and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Seritage Growth Properties (“Seritage” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Seritage; and (c) review of other publicly available information concerning Seritage.

### **NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Seritage securities between July 7, 2022 and May 10, 2024, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Seritage commenced operations in 2015 as a real estate investment trust which primarily held properties acquired from Sears Holdings Corporation. After formation, the Company was principally engaged in the ownership, development and leasing of retail and mixed-use properties throughout the United States.

3. In early 2022, Seritage revoked its real estate investment trust status and sought shareholder approval of a proposed plan of sale of the Company’s assets and eventual dissolution (the “Plan of Sale”). Pursuant to the Plan of Sale, the Board would sell all of the Company’s assets, distribute the net proceeds to shareholders, and dissolve the Company “to maximize value

for [] shareholders.” The Plan of Sale was approved by the Company’s shareholders on October 24, 2022.

4. On August 14, 2023, after the market closed, Seritage revealed that there was a “material weakness” in the Company’s internal control over financial reporting “due to a deficiency in the design of our control over the identification of impairment indicators for investments in real estate and documentation of evidence of review.” Moreover, the deficiency related “to the failure to identify potential indicators of impairment related to development projects in a timely manner.”

5. On this news, Seritage’s stock price fell \$0.86, or 9.67%, to close at \$8.03 per share on August 15, 2023, on unusually heavy trading volume.

6. Then, on May 10, 2024, after the market closed, Seritage released its first quarter 2024 financial results, revealing it was “adjusting [its] pricing projections for some of [its] assets.” As a result, the gross value of the Company’s portfolio of assets was reduced by at least \$325 million.

7. On this news, Seritage’s stock price fell \$2.54, or 27.3%, to close at \$6.78 per share on May 13, 2024, on unusually heavy trading volume.

8. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company lacked effective internal controls regarding the identification and review of impairment indicators for investments in real estate; (2) that, as a result, the Company had overstated the value and projected gross proceeds of certain real estate assets; and (3) that, as a result of the

foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

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

### **JURISDICTION AND VENUE**

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

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

12. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, the Company's principal executive offices are located in this District.

13. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

14. Plaintiff

as set forth in the accompanying certification, incorporated by reference

herein, purchased Seritage securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

15. Defendant Seritage is incorporated under the laws of Maryland with its principal executive offices located in New York, New York. Seritage's Class A Common shares trade on the New York Stock Exchange under the symbol "SRG."

16. Defendant Andrea Olshan ("Olshan") was the Company's Chief Executive Officer ("CEO") at all relevant times.

17. Defendant John Garilli ("Garilli") was the Company's Chief Financial Officer ("CFO") at all relevant times.

18. Defendants Olshan and Garilli (together, the "Individual Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

## SUBSTANTIVE ALLEGATIONS

### Background

19. Seritage commenced operations in 2015 as a real estate investment trust which primarily held properties acquired from Sears Holdings Corporation. After formation, the Company was principally engaged in the ownership, development and leasing of retail and mixed-use properties throughout the United States.

20. On March 31, 2022, Seritage revoked its real estate investment trust status. The Company then sought shareholder approval of a proposed plan of sale of the Company’s assets and eventual dissolution (the “Plan of Sale”). Pursuant to the Plan of Sale, the Board would sell all of the Company’s assets, distribute the net proceeds to shareholders, and dissolve the Company “to maximize value for [] shareholders.”

### **Materially False and Misleading**

#### Statements Issued During the Class Period

21. The Class Period begins on July 7, 2022. On that day, Seritage filed with the SEC a preliminary proxy statement on Schedule 14A in connection with the Company’s 2022 Annual Meeting of Shareholders, soliciting shareholder approval of the Plan of Sale. The preliminary proxy statement stated in relevant part:<sup>1</sup>

#### **PROPOSAL 4: PLAN OF SALE AND DISSOLUTION**

At the Annual Meeting, our shareholders will be asked to consider and vote upon a proposal for approval of the plan of sale. If our shareholders approve this proposal, we will be authorized to begin implementing the plan of sale as soon as practicable. Pursuant to the plan of sale, the Board will have the authority to approve the disposition of any or all of our assets in one or more transactions.

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<sup>1</sup> Unless otherwise stated, all emphasis in bold and italics hereinafter is added, and all footnotes are omitted.

After selling all of our assets and paying off all of our known liabilities and expenses, and making reasonable provisions for any unknown or contingent liabilities, we expect to distribute the net proceeds of our plan of sale to our shareholders. Based upon management’s review and evaluation with its advisors, including CBRE, and with input from the Special Committee’s financial advisor, Barclays, if the plan of sale is approved by our shareholders and we are able to successfully implement the plan of sale, *we have estimated, based on data and information reviewed by management of the Company as of or prior to early June 2022 (without taking into account macroeconomic, market or other factors after June 7, 2022), that the Estimated Total Shareholder Distributions Range will be between \$18.50 and \$29.00 per share. Our Estimated Total Shareholder Distributions Range was derived from the estimated total gross asset sale proceeds*, less [debts, expenses, and wind-down costs].

22. On August 9, 2022, the Company issued a press release announcing its financial results for the three and six months ended June 30, 2022, which reported the Company held \$2,237,313,000 in total assets, including \$1,032,979,000 in investment in real estate.

23. On August 9, 2022, the Company submitted its quarterly report for the period ended June 30, 2022, on a Form 10-Q filed with the SEC (the “2Q22 10-Q”). The 2Q22 10-Q affirmed the previously reported financial results. The 2Q22 10-Q alleged that the Company’s “[r]eal estate assets are recorded at cost, less accumulated depreciation and amortization” and that “[t]he Company, on a periodic basis, assesses whether there are indicators, including macroeconomic conditions, that the value of the real estate assets may be impaired.”

24. The 2Q22 10-Q further stated the following regarding internal controls over financial reporting:

#### **Item 4. Controls and Procedures**

##### **Evaluation of Disclosure Controls and Procedures.**

Under the supervision and with the participation of our management, including the principal executive officer and the principal financial officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. *Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of such date.*

25. On September 14, 2022, the Company filed its definitive proxy statement on Schedule 14A with the SEC in advance of the 2022 Annual Meeting of Shareholders to be held on October 24, 2022, soliciting stockholder approval of, among other things, the Plan of Sale. The definitive proxy statement described the key provisions of the Plan of Sale, including that *“the Company’s estimate of total gross asset sale proceeds ranged from \$2,848,035,000 to \$3,557,999,000.”* It also reported the Company’s Estimated Total Shareholder Distribution Range, stating in relevant part:

[T]he Estimated Total Shareholder Distributions Range of between \$18.50 and \$29.00 was derived based on data and information reviewed by Company management and advisors as of or prior to early June 2022, and was *designed to reflect a range to account for potential fluctuations to the inputs used to derive the range* and, as a result, variability to the amount that will ultimately be distributed to our Class A shareholders.

26. On October 24, 2022, the Company filed a Form 8-K with the SEC announcing that the Plan of Sale had been approved by stockholders.

27. On November 9, 2022, the Company issued a press release announcing its financial results for the three and nine months ended September 30, 2022 which reported that the Company had total assets valued at \$2,054,526,000, including \$960,756,000 in investment in real estate.

28. On November 9, 2022, the Company submitted its quarterly report for the period ended September 30, 2022, on a Form 10-Q filed with the SEC (the “3Q22 10-Q”). The 3Q22 10-Q affirmed the previously reported financial results. The 3Q22 10-Q alleged that the Company’s “[r]eal estate assets are recorded at cost, less accumulated depreciation and amortization” and that “[t]he Company, on a periodic basis, assesses whether there are indicators, including macroeconomic conditions, that the value of the real estate assets may be impaired.”



29. The 3Q22 10-Q further stated the following regarding internal controls over financial reporting:

**Item 4. Controls and Procedures**

Evaluation of Disclosure Controls and Procedures.

Under the supervision and with the participation of our management, including the principal executive officer and the principal financial officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. *Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of such date.*

30. On March 14, 2023, the Company issued a press release announcing its financial results for the year ended December 31, 2022, which reported that the Company held \$1,841,721,000 in total assets, including \$579,099,000 in investments in real estate.

31. On March 14, 2023, the Company submitted its quarterly report for the year ended December 31, 2022, on a Form 10-K filed with the SEC (the “FY22 10-K”). The FY22 10-K affirmed the previously reported financial results. The FY22 10-K alleged that the Company’s “[r]eal estate assets are recorded at cost, less accumulated depreciation and amortization” and that “[t]he Company, on a periodic basis, assesses whether there are indicators, including macroeconomic conditions, that the value of the real estate assets may be impaired.”

32. The FY22 10-K stated the following regarding internal controls over financial reporting:

**Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures (as defined in Rules 13a-15(e) under the Exchange Act) that are designed to provide reasonable assurance that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our principal

executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

\* \* \*

Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures. *Based on that evaluation, our principal executive officer and principal financial officer concluded that, as of the end of the period covered by this report, our disclosure controls and procedures are effective.*

33. On April 4, 2023, the Company issued a press release providing a business update on the Company’s first quarter 2023 disposition activity, which set forth the Company’s sales projections as follows:

Category	As of	2023 Sales Projections as of 3/31/2023					2024 &
	1/1/2023	Sold	Under Contract - No DD	Under Contract - in DD	PSA Neg.	Remaining 2023 Transactions	Beyond
	<b>Total Properties</b>						<b>Remaining</b>
Gateway markets	11	-	2	-	-	-	9
Primary markets	43	10	9	1	4	9	10
Secondary markets	35	12	6	2	3	5	7
Tertiary markets	16	5	2	2	3	4	-
<b>Market Composition Total</b>	<b>105</b>	<b>27</b>	<b>19</b>	<b>5</b>	<b>10</b>	<b>18</b>	<b>26</b>
Multi-Tenant Retail	32	18	6	1	1	1	5
Premier	10	-	2	-	-	-	8
Residential	5	2	1	-	-	-	2
Other Unconsolidated Entities	13	-	3	-	1	2	7
Non-Core Properties	45	7	7	4	8	15	4
<b>Property Type Total</b>	<b>105</b>	<b>27</b>	<b>19</b>	<b>5</b>	<b>10</b>	<b>18</b>	<b>26</b>
Under \$10M	59	16	5	4	9	16	9
\$10M - \$30M	27	10	9	1	1	1	5
\$30M - \$50M	11	1	3	-	-	1	6
Over \$50M	8	-	2	-	-	-	6
<b>Transaction Size Total</b>	<b>105</b>	<b>27</b>	<b>19</b>	<b>5</b>	<b>10</b>	<b>18</b>	<b>26</b>

34. On May 10, 2023, the Company issued a press release announcing its financial results for the quarter ended March 31, 2023, which reported the Company held \$1,516,373,000 in total assets including \$564,046,000 in investment in real estate for the three months ended March 31, 2023.

35. On May 10, 2023, the Company submitted its quarterly report for the quarter ended March 31, 2023, on a Form 10-Q filed with the SEC (the “1Q23 10-Q”). The 1Q23 10-Q affirmed the previously reported financial results. The 1Q23 10-Q alleged that the Company’s “[r]eal estate assets are recorded at cost, less accumulated depreciation and amortization” and that “[t]he Company, on a periodic basis, assesses whether there are indicators, including macroeconomic conditions, that the value of the real estate assets may be impaired.”

36. The 1Q23 10-Q stated the following regarding internal controls over financial reporting:

#### **Item 4. Controls and Procedures**

##### **Evaluation of Disclosure Controls and Procedures.**

Under the supervision and with the participation of our management, including the principal executive officer and the principal financial officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. ***Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of such date.***

37. On August 14, 2023, the Company issued a press release regarding its financial results for the three and six months ended June 30, 2023 which reported that the Company held \$1,167,967,000 in total assets, including \$447,874,000 in investments in real estate, for the three months ended June 30, 2023.

38. The above statements identified in ¶¶ 21-25, 27-37 were materially false and/or misleading, and failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company lacked effective internal controls regarding the identification and review of impairment indicators for investments in real estate; (2) that, as a result, the Company had overstated the value and projected gross proceeds of certain real estate assets; and (3) that, as a result of the

foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

39. The truth began to emerge on August 14, 2023, after the market closed, when the Company revealed it had a material weakness in its internal control over financial reporting related to the identification and review of impairment indicators for its real estate investments. Specifically, the Company submitted its quarterly report for the quarter ended June 30, 2023 on a Form 10-Q filed with the SEC, stating that there was a "material weakness" in the Company's internal control over financial reporting "due to a deficiency in the design of our control over the identification of impairment indicators for investments in real estate and documentation of evidence of review." The report described the material weakness, as follows, in relevant part:

#### **Evaluation of Disclosure Controls and Procedures.**

Under the supervision and with the participation of our management, including the principal executive officer and the principal financial officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and our principal financial officer concluded that, *as of the end of the reporting period covered by this report, our disclosure controls and procedures were not effective due to the material weakness described below.*

\* \* \*

#### **Material Weakness**

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. In the course of preparing our financial statements for the interim period ended June 30, 2023, management identified a material weakness in our internal control over financial reporting that existed due to a *deficiency in the design of our control over the identification of impairment indicators for investments in real estate and documentation of evidence of review. The deficiency relates to the failure to identify potential indicators of impairment related to development projects in a timely manner.* This deficiency contributed to the potential for there to be material errors in our financial statements.

40. On this news, Seritage’s stock price fell \$0.86, or 9.7%, to close at \$8.03 per share on August 15, 2023, on unusually heavy trading volume.

41. On November 8, 2023, the Company issued a press release announcing its financial results for the three and nine months ended September 30, 2023, which reported that the Company held \$1,016,290,000 in total assets, including \$398,028,000 in real estate assets. The press release also set forth the Company’s Future Sales Projections for all assets “anticipated to occur in 2024 and beyond,” stating in relevant part:

The data below provides additional information regarding current *estimated gross sales proceeds per asset in the portfolio* as of November 7, 2023

\* \* \*

#### **Gateway Markets**

- One Multi-Tenant Asset \$25 - \$30 million
- ***Nine Premier Assets*** (Dallas & UTC are each assumed to be sold in two transactions)
  - ***One Asset \$15 - \$20 million***
  - ***One Asset \$35 - \$40 million***
  - ***One Asset \$40 - \$45 million***
  - ***One Asset \$45 - \$50 million***
  - ***One Asset \$50 - \$60 million***
  - ***One Asset \$70 - \$80 million***
  - ***One Asset \$100 - \$150 million***
  - ***Two Assets \$200 - \$300 million***

42. On November 8, 2023, the Company submitted its quarterly report for the quarter ended September 30, 2023, on a Form 10-Q filed with the SEC (the “3Q23 10-Q”). The 3Q23 10-Q affirmed the previously reported financial results. The 3Q23 10-Q alleged that the Company’s “[r]eal estate assets are recorded at cost, less accumulated depreciation and amortization” and that “[t]he Company, on a periodic basis, assesses whether there are indicators, including macroeconomic conditions, that the value of the real estate assets may be impaired.”

43. The 3Q23 10-Q stated the following regarding internal controls over financial reporting, in relevant part:

**Evaluation of Disclosure Controls and Procedures.**

Under the supervision and with the participation of our management, including the principal executive officer and the principal financial officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report.

\* \* \*

Notwithstanding the material weaknesses in our internal control over financial reporting, *our principal executive officer and principal financial officer have concluded that the unaudited condensed consolidated financial statements included in this Form 10-Q fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with accounting principles generally accepted in the United States of America.*

44. On April 1, 2024, the Company issued a press release announcing its financial results for the year ended December 31, 2023, which reported the reported the Company held \$973,864,000 in total assets, including \$411,037,000 in investment in real estate. The press release also set out the Company’s Future Sales Projections and estimated gross sales proceeds per asset, stating in relevant part:

**Gateway Markets**

- One Multi-Tenant Asset \$25 - \$30 million
- **Nine Premier Assets** (Dallas & UTC are each assumed to be sold in two transactions)
  - **One Asset \$15 - \$20 million**
  - **One Asset \$30 - \$35 million**
  - **Two Assets \$40 - \$45 million each**
  - **One Asset \$50 - \$60 million**
  - **One Asset \$70 - \$80 million**
  - **One Asset \$100 - \$150 million**
  - **Two Assets \$200 – \$300 million each**

45. On April 1, 2024, the Company submitted its annual report for the year ended December 31, 2023 on a Form 10-K filed with the SEC (the “FY23 10-K”). The FY23 10-K alleged that the Company’s “[r]eal estate assets are recorded at cost, less accumulated depreciation and amortization” and that “[t]he Company, on a periodic basis, assesses whether there are indicators, including macroeconomic conditions, that the value of the real estate assets may be impaired.”

46. The FY23 10-K stated the following regarding internal controls over financial reporting, in relevant part:

**Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d – 15(e) under the Securities Exchange Act of 1934, as amended, (the “Exchange Act”)).

\* \* \*

Notwithstanding the material weaknesses in our internal control over financial reporting, *our principal executive officer and principal financial officer have concluded that the audited consolidated financial statements included in this Form 10-K fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with accounting principles generally accepted in the United States of America.*

47. The above statements identified in ¶¶ 39, 41-46 were materially false and/or misleading, and failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company had overstated the value and projected gross proceeds of certain real estate assets; and (2) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

### Disclosures at the End of the Class Period

48. On May 10, 2024, after the market closed, Seritage released its first quarter 2024 financial results in a press release, revealing it was “adjusting [its] pricing projections for some of [its] assets.” As a result, the gross value of the Company portfolio of assets was reduced by at least \$325 million. Specifically, the press release stated, in relevant part:

“. . . Based on *our broad transaction experience*, we are seeing a few themes emerge. Assets previously underwritten for life sciences or tech office are now frequently being reconsidered for other uses in higher demand but with less aggressive rent profiles, which, taken together with high construction costs, drives down the amount that can be paid for land. We are also seeing investors focusing on less risky debt or cash flowing equity investments to generate double-digit returns. Yet, some with a longer-term view are starting to come back to the development market. With more stability in interest rates and inflation, buyers are able to underwrite deals more confidently, albeit at lower valuations. *As such we are adjusting our pricing projections for some of our assets.*” said Andrea L. Olshan, Chief Executive Officer and President.

\* \* \*

### Future Sales Projections

The data below provides additional information regarding current estimated gross sales proceeds per asset in the portfolio as of May 7, 2024, excluding assets under contract or in PSA negotiation, which are described above. The assets listed below are either being marketed or are to be marketed and, as a result, any sales thereof are anticipated to occur in 2024 and beyond. Sales projections are based on the Company’s latest forecasts and assumptions, but the Company cautions that actual results may differ materially. In addition, see “Market Update” below and the “Risk Factors” section contained in the Company’s filings with the Securities and Exchange Commission for discussion of the risks associated with such estimated gross sale proceeds.

#### **Gateway Markets**

- One Multi-Tenant Asset \$25 - \$30 million
- ***Eight Premier Assets*** (Dallas & San Diego are each assumed to be sold in two transactions)
  - ***One Asset \$15 - \$20 million***
  - ***Two Assets \$30 - \$35 million***
  - ***Two Assets \$50 - \$60 million***
  - ***One Asset \$60 - \$70 million***
  - ***One Asset \$100 - \$150 million***



- *One Asset \$150 - \$200 million*

49. On this news, Seritage's stock price fell \$2.54, or 27.3%, to close at \$6.78 per share on May 13, 2024, on unusually heavy trading volume.

### **CLASS ACTION ALLEGATIONS**

50. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Seritage securities between July 7, 2022 and May 10, 2024, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

51. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Seritage's shares actively traded on the New York Stock Exchange. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of Seritage shares were traded publicly during the Class Period on the New York Stock Exchange. Record owners and other members of the Class may be identified from records maintained by Seritage or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

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

53. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

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

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

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Seritage; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

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

#### **UNDISCLOSED ADVERSE FACTS**

56. The market for Seritage's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, Seritage's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Seritage's securities

relying upon the integrity of the market price of the Company's securities and market information relating to Seritage, and have been damaged thereby.

57. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Seritage's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about Seritage's business, operations, and prospects as alleged herein.

58. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Seritage's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

### **LOSS CAUSATION**

59. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

60. During the Class Period, Plaintiff and the Class purchased Seritage's securities at artificially inflated prices and were damaged thereby. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **SCIENTER ALLEGATIONS**

61. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding Seritage, their control over, and/or receipt and/or modification of Seritage's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Seritage, participated in the fraudulent scheme alleged herein.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE**

#### **(FRAUD-ON-THE-MARKET DOCTRINE)**

62. The market for Seritage's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, Seritage's securities traded at artificially inflated prices during the Class Period. On August 11, 2022, the Company's share price closed at a Class Period high of \$14.06 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's

securities relying upon the integrity of the market price of Seritage's securities and market information relating to Seritage, and have been damaged thereby.

63. During the Class Period, the artificial inflation of Seritage's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Seritage's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Seritage and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

64. At all relevant times, the market for Seritage's securities was an efficient market for the following reasons, among others:

(a) Seritage shares met the requirements for listing, and was listed and actively traded on the New York Stock Exchange, a highly efficient and automated market;

(b) As a regulated issuer, Seritage filed periodic public reports with the SEC and/or the New York Stock Exchange;

(c) Seritage regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public

disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) Seritage was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

65. As a result of the foregoing, the market for Seritage's securities promptly digested current information regarding Seritage from all publicly available sources and reflected such information in Seritage's share price. Under these circumstances, all purchasers of Seritage's securities during the Class Period suffered similar injury through their purchase of Seritage's securities at artificially inflated prices and a presumption of reliance applies.

66. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business operations and financial prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

#### **NO SAFE HARBOR**

67. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.

The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Seritage who knew that the statement was false when made.

**FIRST CLAIM**

**Violation of Section 10(b) of The Exchange Act and**

**Rule 10b-5 Promulgated Thereunder**

**Against All Defendants**

68. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

69. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Seritage’s securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

70. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Seritage's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

71. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Seritage's financial well-being and prospects, as specified herein.

72. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Seritage's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Seritage and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

73. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives



and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

74. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Seritage's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

75. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of

Seritage's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Seritage's securities during the Class Period at artificially high prices and were damaged thereby.

76. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Seritage was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Seritage securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

77. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

78. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

## **SECOND CLAIM**

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

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

79. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

80. Individual Defendants acted as controlling persons of Seritage within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

81. In particular, Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

82. As set forth above, Seritage and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the

Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.