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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Individually and on  
behalf of all others similarly situated,  
  
Plaintiff,  
  
v.  
  
WM TECHNOLOGY, INC. f/k/a  
SILVER SPIKE ACQUISITION  
CORP., CHRISTOPHER BEALS,  
ARDEN LEE, DOUGLAS FRANCIS,  
SUSAN ECHERD, MARY HOITT,  
SCOTT GORDON, WILLIAM  
HEALY, and GREGORY M. GENTILE  
  
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 WM Technology, Inc. (“WM” 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 WM Technology, Inc. securities, between  
16 May 25, 2021, and September 24, 2024, inclusive (the “Class Period”). Plaintiff  
17 seeks to recover compensable damages caused by Defendants’ violations of the  
18 federal securities laws under the Securities Exchange Act of 1934 (the “Exchange  
19 Act”).

### 20 **JURISDICTION AND VENUE**

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

24 3. This Court has jurisdiction over the subject matter of this action  
25 pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C.  
26 §78aa).

1 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §  
2 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged  
3 misstatements entered and the subsequent damages took place in this judicial  
4 district.

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

#### 10 PARTIES

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

14 7. Defendant WM Technology, Inc. describes itself as the operator of a  
15 “leading online cannabis marketplace for consumers together with a  
16 comprehensive set of eCommerce and compliance software solutions for cannabis  
17 businesses[.]”

18 8. WM is incorporated in California and its principal executive offices  
19 are located at 41 Discovery Irvine, California, 92618. The Company’s Class A  
20 common stock trades on the NASDAQ exchange under the ticker symbol  
21 “MAPS”. The Company’s warrants trade on the NASDAQ under the ticker symbol  
22 “MAPSW”.

23 9. Until June 16, 2021, WM was a private company, then known as WM  
24 Holding Company, LLC (“Legacy WM”). On June 16, 2021, Legacy WM merged  
25 with a Special Purpose Acquisition Company (“SPAC”) named Silver Spike  
26 Acquisition Corp (“Silver Spike”). Up until that time, Silver Spike shares had  
27 traded on the NASDAQ under the ticker “SSPK”.  
28

1           10. Upon the consummation of the merger, both Legacy WM and Silver  
2 Spike ceased to exist and were replaced by WM Technology, Inc. as we now know  
3 it, and began to trade as a public company under the “MAPS” ticker.

4           11. Defendant Christopher (“Beals”) served as the Chief Executive  
5 Officer of WM Technology and its private company predecessor entity from March  
6 2019 until his departure from the company in November 2022.

7           12. Defendant Arden Lee (“Lee”) served as the Chief Financial Officer of  
8 WM Technology and its private company predecessor entity from February 2019  
9 through his voluntary departure from the company in July 2023.

10          13. Defendant Douglas Francis (“Francis”) has served as WM’s  
11 Executive Chair (the Company’s principal officer) from April 2023 to the present.

12          14. Defendant Susan Echard (“Echard”) has served as WM’s Interim  
13 Chief Financial Officer from February 2024 to the present.

14          15. Defendant Mary Hoitt (“Hoitt”) served as interim chief financial  
15 officer of WM Technology from July 2023 until approximately February 2024.

16          16. Scott Gordon served as the Chief Executive Officer of Silver Spike  
17 from its inception until the merger with Legacy WM.

18          17. William Healy served as the President of Silver Spike from its  
19 inception until the merger with Legacy WM.

20          18. Gregory M. Gentile served as the Chief Financial Officer of Silver  
21 Spike from its inception until the merger with Legacy WM.

22          19. Defendants Beals, Lee, Francis, Echard, Hoitt, Gordon, Healy, and  
23 Gentile are collectively referred to herein as the “Individual Defendants.”

24          20. Each of the Individual Defendants:

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

26           (b) was directly involved in the day-to-day operations of the Company at  
27 the highest levels;

28

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

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

16 22. The scienter of the Individual Defendants and other employees and  
17 agents of the Company is similarly imputed to WM under *respondeat superior* and  
18 agency principles.

19 23. Defendant WM and the Individual Defendants are collectively  
20 referred to herein as "Defendants."

### 21 **SUBSTANTIVE ALLEGATIONS**

#### 22 **Materially False and Misleading Statements Issued During the Class Period**

23 24. As a public company, WM is required to file periodic financial  
24 statements and other materials with the Securities and Exchange Commission of  
25 the United States ("SEC").

26 25. On May 25, 2021, the Company filed with the SEC a fourth Amended  
27 Registration Statement (the "Registration Statement") under the SEC's Form S-4.  
28

26. On May 26, 2021, the Company filed with the SEC its definitive proxy on SEC Form Schedule 14A (the “Proxy”) to solicit votes for its June 10, 2021, Special Meeting to approve the planned merger between Legacy WM and Silver Spike.

27. Both the Proxy and the Registration Statement contained the following table:

	Year Ended December 31,			Three Months Ended March 31,	
	2018	2019	2020	2020	2021
	(dollars in thousands, except for revenue by client)				
Paying clients <sup>(3)</sup>	4,024	4,644	3,786	4,101	4,058
MAUs (in thousands) <sup>(4)</sup>	4,684	8,009	10,000	6,457	9,163

28. This statement, made in both the Proxy and the Registration Statement, was materially false and misleading at the time it was made because the monthly active user (“MAU”) metric had been willfully inflated, and did not accurately represent the amount of monthly active users.

29. In its four quarterly SEC filings between August 13, 2021, and May 6, 2022, WM reported the following MAU metrics:

Filing Date	Reporting Period	Disclosed MAU
8/13/2021	2Q 2021	12.3 million “monthly active users”
11/12/2021	3Q 2021	13.9 million “monthly active users”
2/25/2022	4Q 2021	15.73 million “monthly active users”
5/6/2022	1Q 2022	16.43 million “monthly active users”

30. All four of these statements were materially false and misleading because the metric had been willfully inflated, and did not accurately represent the amount of monthly active users.

31. On February 25, 2022, WM filed with the SEC its annual report on Form 10-K for the fiscal year ended December 31, 2021 (the “2021 Annual Report”). Attached to the 2021 Annual Report were certifications pursuant to the

1 Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Beals and Lee  
2 attesting to the accuracy of financial reporting, to the Company’s implementation  
3 of adequate internal controls over financial reporting, and to the disclosure of all  
4 fraud.

5 32. The 2021 Annual Report SOX certifications were false because the  
6 Company, in allowing a key financial metric to be manipulated, did not maintain  
7 adequate internal controls over financial reporting.

8 33. On August 9, 2022, WM filed with the SEC its quarterly report on  
9 Form 10-Q for the fiscal quarter ended June 30, 2022 (the “Q2 2022 Annual  
10 Report”). Attached to the Q2 2022 Annual Report were certifications pursuant to  
11 the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Francis and Lee  
12 attesting to the accuracy of financial reporting, to the Company’s implementation  
13 of adequate internal controls over financial reporting, and to the disclosure of all  
14 fraud.

15 34. The Q2 2022 Quarterly Report SOX certifications were false because  
16 the Company, in allowing a key financial metric to be manipulated, did not  
17 maintain adequate internal controls over financial reporting.

18 35. On November 8, 2022, WM filed with the SEC its quarterly report on  
19 Form 10-Q for the fiscal quarter ended September 30, 2022 (the “Q3 2022 Annual  
20 Report”). Attached to the Q3 2022 Annual Report were certifications pursuant to  
21 the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Francis and Lee  
22 attesting to the accuracy of financial reporting, to the Company’s implementation  
23 of adequate internal controls over financial reporting, and to the disclosure of all  
24 fraud.

25 36. The Q3 2022 Quarterly Report SOX certifications were false because  
26 the Company, in allowing a key financial metric to be manipulated, did not  
27 maintain adequate internal controls over financial reporting.

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1           37. On May 16, 2023, WM filed with the SEC its annual report on Form  
2 10-K for the fiscal year ended December 31, 2022 (the “2022 Annual Report”).  
3 Attached to the 2022 Annual Report were certifications pursuant to the Sarbanes-  
4 Oxley Act of 2002 (“SOX”) signed by Defendants Francis and Lee attesting to the  
5 accuracy of financial reporting, to the Company’s implementation of adequate  
6 internal controls over financial reporting, and to the disclosure of all fraud.

7           38. The 2022 Annual Report SOX certifications were false because the  
8 Company, in allowing a key financial metric to be manipulated, did not maintain  
9 adequate internal controls over financial reporting.

10           39. On May 9, 2023, WM filed with the SEC its quarterly report on Form  
11 10-Q for the fiscal quarter ended March 31, 2023 (the “Q1 2023 Quarterly  
12 Report”). Attached to the Q1 2023 Quarterly Report were certifications pursuant  
13 to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Francis and Lee  
14 attesting to the accuracy of financial reporting, to the Company’s implementation  
15 of adequate internal controls over financial reporting, and to the disclosure of all  
16 fraud.

17           40. The Q1 2023 Quarterly Report SOX certifications were false because  
18 the Company, in allowing a key financial metric to be manipulated, did not  
19 maintain adequate internal controls over financial reporting.

20           41. On August 9, 2023, WM filed with the SEC its quarterly report on  
21 Form 10-Q for the fiscal quarter ended June 30, 2023 (the “Q2 2023 Quarterly  
22 Report”). Attached to the Q2 2023 Quarterly Report were certifications pursuant  
23 to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Francis and  
24 Hoitt attesting to the accuracy of financial reporting, to the Company’s  
25 implementation of adequate internal controls over financial reporting, and to the  
26 disclosure of all fraud.

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1           42. The Q2 2023 Quarterly Report SOX certifications were false because  
2 the Company, in allowing a key financial metric to be manipulated, did not  
3 maintain adequate internal controls over financial reporting.

4           43. On November 8, 2023, WM filed with the SEC its quarterly report on  
5 Form 10-Q for the fiscal quarter ended September 30, 2022 (the “Q3 2023  
6 Quarterly Report”). Attached to the Q3 2023 Quarterly Report were certifications  
7 pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants  
8 Francis and Hoitt attesting to the accuracy of financial reporting, to the Company’s  
9 implementation of adequate internal controls over financial reporting, and to the  
10 disclosure of all fraud.

11           44. The Q3 2023 Quarterly Report SOX certifications were false because  
12 the Company, in allowing a key financial metric to be manipulated, did not  
13 maintain adequate internal controls over financial reporting.

14           45. On May 24, 2024, WM filed with the SEC its annual report on Form  
15 10-K for the fiscal year ended December 31, 2023 (the “2023 Annual Report”).  
16 Attached to the 2023 Annual Report were certifications pursuant to the Sarbanes-  
17 Oxley Act of 2002 (“SOX”) signed by Defendants Francis and Echard attesting to  
18 the accuracy of financial reporting, to the Company’s implementation of adequate  
19 internal controls over financial reporting, and to the disclosure of all fraud.

20           46. On May 24, 2024, WM filed with the SEC its quarterly report on Form  
21 10-Q for the fiscal quarter ended March 31, 2024 (the “Q1 2024 Quarterly  
22 Report”). Attached to the Q1 2024 Quarterly Report were certifications pursuant  
23 to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Francis and Lee  
24 attesting to the accuracy of financial reporting, to the Company’s implementation  
25 of adequate internal controls over financial reporting, and to the disclosure of all  
26 fraud.

1 47. The Q1 2024 Quarterly Report SOX certifications were false because  
2 the Company, in allowing a key financial metric to be manipulated, did not  
3 maintain adequate internal controls over financial reporting

4 48. On August 8, 2024, WM filed with the SEC its quarterly report on  
5 Form 10-Q for the fiscal quarter ended June 30, 2023 (the “Q2 2024 Quarterly  
6 Report”). Attached to the Q2 2024 Quarterly Report were certifications pursuant  
7 to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Francis and  
8 Hoitt attesting to the accuracy of financial reporting, to the Company’s  
9 implementation of adequate internal controls over financial reporting, and to the  
10 disclosure of all fraud.

11 49. The Q2 2024 Quarterly Report SOX certifications were false because  
12 the Company, in allowing a key financial metric to be manipulated, did not  
13 maintain adequate internal controls over financial reporting.

14 **THE TRUTH BEGINS TO EMERGE**

15 50. The truth began to emerge on August 9, 2022, when, in a Form 8-K  
16 and its Form 10-Q for the quarter ended June 30, 2022, the Company disclosed that  
17 its board of directors had received an internal complaint regarding “the calculation,  
18 definition, and reporting of [its] MAUs.”

19 51. The August 9, 2022 10-Q further disclosed that:

20 ...one of the ways in which we acquire users is through paid  
21 advertising. To an increasing degree over time, growth of our monthly  
22 active users, reported as MAUs, has been driven by the purchase of  
23 pop-under advertisements, which are marketing advertisements on  
24 third party websites that automatically present our platform on users’  
25 screens in certain circumstances. Our internal data suggests that the  
26 vast majority of users who are directed to weedmaps.com via pop-  
27 under advertisements close the site without clicking on any links.  
28 Based on management’s review, users whose access to the website  
resulted from these pop-under advertisements represented  
approximately 65% of our MAUs as of June 30, 2022, and 54%, 50%

1 and 54% of our MAUs as of March 31, 2022, December 31, 2021 and  
2 September 30, 2021, respectively.

3 52. On this news, WM stock dropped from \$3.46 a share to \$2.59 a share  
4 – a drop of over 25%.

5 53. However, it was not until September 24, 2024, that Plaintiff and the  
6 class became aware of all the facts constituting this claim – particularly the element  
7 of scienter on the part of the Defendants. On that day, the SEC issued a litigation  
8 release (the “Release”) in which it announced that it had “charged public company  
9 WM Technology, Inc. (Nasdaq: MAPS), its former CEO, Christopher Beals, and  
10 its former CFO, Arden Lee, for making negligent misrepresentations in WM  
11 Technology’s public reporting of a self-described key operating metric, the  
12 “monthly active users,” or “MAU,” for WM Technology’s online cannabis  
13 marketplace.”

14 54. The Release noted that the SEC had “also instituted a related settled  
15 administrative proceeding against WM Technology” and that “WM Technology  
16 also agreed to pay a civil penalty of \$1,500,000.”

17 55. The Release further detailed the allegations in the underlying  
18 Complaint, writing that:

19 The SEC's complaint against Beals and Lee alleges that from May  
20 2021 to May 2022, including during a merger with a special purpose  
21 acquisition company through which WM Technology became a public  
22 company in June 2021, WM Technology misleadingly reported  
23 substantial and continued MAU growth and emphasized the strength  
24 and expansion of its user base in its public filings and earnings calls.  
25 According to the complaint, although WM Technology's SEC filings  
26 stated that it determined its MAU by counting the total number of users  
27 that had "engaged with" the WM Technology site in a given period, in  
28 truth, a large and increasing percentage of the users of the WM  
Technology site were instead persons who visited a third-party site,  
and who were then automatically shown the WM Technology site by  
way of a "pop-under" advertisement. As alleged by the SEC, these  
purportedly "active" users did not volitionally seek out the WM

1 Technology site, and, in most instances, did not click on any links or  
2 engage in measurable activity on the WM Technology site. The SEC's  
3 complaint further alleges that despite the publicly reported growth in  
4 MAU, WM Technology's user engagement metrics were stagnant or  
5 declining. The SEC also alleges that Beals and Lee were repeatedly  
6 advised of these declining user trends on the WM Technology site and  
7 the fact that these non-engaging users were making up an increasingly  
8 large percentage of WM Technology's total MAU, but failed to  
9 reasonably follow up and negligently continued to sign WM  
10 Technology's SEC filings and make public statements that reported  
11 MAU numbers that included non-engaging users when discussing the  
12 company's purportedly growing user base.

13 56. Per the release, as part of its agreement to settle the SEC's  
14 administrative claims, the Company "agreed to the entry of a cease-and-desist  
15 order prohibiting further violations of Sections 17(a)(2) and (3) of the Securities  
16 Act and Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1,  
17 13a-11, 13a-13, 13a-15(a), and 14a-9 thereunder."

18 57. On this news, the price of WM Technology, Inc. common stock fell  
19 by 1.9% to close at \$0.92 on September 25, 2024.

20 58. As a result of Defendants' wrongful acts and omissions, and the  
21 precipitous decline in the market value of the Company's common shares, Plaintiff  
22 and other Class members have suffered significant losses and damages.

### 23 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

24 59. Plaintiff brings this action as a class action pursuant to Federal Rule  
25 of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons  
26 other than defendants who acquired the Company's securities publicly traded on  
27 NASDAQ during the Class Period, and who were damaged thereby (the "Class").  
28 Excluded from the Class are Defendants, the officers and directors of the Company,  
members of the Individual Defendants' immediate families and their legal

1 representatives, heirs, successors or assigns and any entity in which Defendants  
2 have or had a controlling interest.

3         60. The members of the Class are so numerous that joinder of all members  
4 is impracticable. Throughout the Class Period, the Company's securities were  
5 actively traded on NASDAQ. While the exact number of Class members is  
6 unknown to Plaintiff at this time and can be ascertained only through appropriate  
7 discovery, Plaintiff believes that there are hundreds, if not thousands of members  
8 in the proposed Class.

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

12         62. Plaintiff will fairly and adequately protect the interests of the  
13 members of the Class and has retained counsel competent and experienced in class  
14 and securities litigation. Plaintiff has no interests antagonistic to or in conflict with  
15 those of the Class.

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

- 19         • whether the Exchange Act was violated by Defendants' acts as alleged  
20 herein;
- 21         • whether statements made by Defendants to the investing public during  
22 the Class Period misrepresented material facts about the business and  
23 financial condition of the Company;
- 24         • whether Defendants' public statements to the investing public during  
25 the Class Period omitted material facts necessary to make the statements  
26 made, in light of the circumstances under which they were made, not  
27 misleading;

- 1 • whether the Defendants caused the Company to issue false and
- 2 misleading filings during the Class Period;
- 3 • whether Defendants acted knowingly or recklessly in issuing false
- 4 filings;
- 5 • whether the prices of the Company securities during the Class Period
- 6 were artificially inflated because of the Defendants' conduct complained of
- 7 herein; and
- 8 • whether the members of the Class have sustained damages and, if so,
- 9 what is the proper measure of damages.

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

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

- 18 • the Company's shares met the requirements for listing, and were listed
- 19 and actively traded on NASDAQ, an efficient market;
- 20 • as a public issuer, the Company filed periodic public reports;
- 21 • the Company regularly communicated with public investors via
- 22 established market communication mechanisms, including through the
- 23 regular dissemination of press releases via major newswire services and
- 24 through other wide-ranging public disclosures, such as communications with
- 25 the financial press and other similar reporting services;
- 26 • the Company's securities were liquid and traded with moderate to
- 27 heavy volume during the Class Period; and
- 28

- 1 • the Company was followed by a number of securities analysts who  
2 wrote reports that were widely distributed and publicly available.

3 66. Based on the foregoing, the market for the Company’s securities  
4 promptly digested current information regarding the Company from all publicly  
5 available sources and reflected such information in the prices of the shares, and  
6 Plaintiff and the members of the Class are entitled to a presumption of reliance  
7 upon the integrity of the market.

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

13 **COUNT I**  
14 **For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**  
15 **Against All Defendants**

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

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

21 70. During the Class Period, Defendants, individually and in concert,  
22 directly or indirectly, disseminated or approved the false statements specified  
23 above, which they knew or deliberately disregarded were misleading in that they  
24 contained misrepresentations and failed to disclose material facts necessary in  
25 order to make the statements made, in light of the circumstances under which they  
26 were made, not misleading.

27 71. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that  
28 they:

- 1 • employed devices, schemes and artifices to defraud;
- 2 • made untrue statements of material facts or omitted to state material
- 3 facts necessary in order to make the statements made, in light of the
- 4 circumstances under which they were made, not misleading; or
- 5 • engaged in acts, practices and a course of business that operated as a
- 6 fraud or deceit upon plaintiff and others similarly situated in connection with
- 7 their purchases of the Company's securities during the Class Period.

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

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

26 74. As a result of the foregoing, the market price of the Company's  
27 securities was artificially inflated during the Class Period. In ignorance of the  
28



1 falsity of Defendants' statements, Plaintiff and the other members of the Class  
2 relied on the statements described above and/or the integrity of the market price of  
3 the Company's securities during the Class Period in purchasing the Company's  
4 securities at prices that were artificially inflated as a result of Defendants' false and  
5 misleading statements.

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

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

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

18 **COUNT II**  
19 **Violations of Section 20(a) of the Exchange Act**  
20 **Against the Individual Defendants**

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

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



1 (c) awarding Plaintiff and the Class reasonable costs and expenses  
2 incurred in this action, including counsel fees and expert fees; and

3 (d) awarding Plaintiff and other members of the Class such other and  
4 further relief as the Court may deem just and proper.

5 **JURY TRIAL DEMANDED**

6 Plaintiff hereby demands a trial by jury.  
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