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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

COMERICA INCORPORATED,
CURTIS C. FARMER, and JAMES J.
HERZOG,

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 his attorneys, which included, among other things, a
7 review of the Defendants’ public documents, public filings, wire and press releases
8 published by and regarding Comerica Incorporated (“Comerica” 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 Comerica securities between February 9,
16 2021 and May 29, 2023, inclusive (the “Class Period”). Plaintiff seeks to recover
17 compensable damages caused by Defendants’ violations of the federal securities
18 laws under the 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 Comerica securities during the Class Period and
11 was economically damaged thereby.

12 7. Defendant Comerica is a financial services company.

13 8. In January 2008, the United States Department of the Treasury
14 selected the Company as the issuing bank for the federal Direct Express program.
15 Under this program, the federal government uses the Express Debit product to issue
16 electronic payments (such as Social Security or veteran's benefits) to individuals
17 who do not have bank accounts.

18 9. As part of its administration of the Direct Express program, Comerica
19 must adhere to the terms of its contract with the United States government (the
20 "Federal Contract"), including that all operations relating to the Direct Express
21 contract must be in the United States or an American territory, in addition to other
22 applicable laws and regulations. In particular, the Company must adhere to
23 Regulation E. As per the Federal Reserve, Regulation E "provides a basic
24 framework that establishes the rights, liabilities, and responsibilities of participants
25 in electronic fund transfer systems such as automated teller machine transfers,
26 telephone bill-payment services, point-of-sale (POS) terminal transfers in stores,
27 and preauthorized transfers from or to a consumer's account (such as direct deposit
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1 and social security payments).” Regulation E provides for consumer protections in
2 the event of a fraud involving electronic fund transfers by placing certain
3 requirements on institutions that facilitate fund transfers, and covers a variety of
4 transfers including issuing debit cards to recipients of federal funds.

5 10. The Company is incorporated in Delaware, considers California to be
6 a “primary U.S. location”, and has a major office located at 601 South Figueroa
7 Street, Suite 100, Los Angeles, CA 90017. The Company’s stock trades on the
8 New York Stock Exchange under the ticker symbol “CMA.”

9 11. Defendant Curtis C. Farmer (“Farmer”) has served as the Company’s
10 Chief Executive Officer (“CEO”) since April 2019. He has also serves as Chairman
11 of the Board of Directors (the “Board”) since January 1, 2020, and additionally
12 serves as President.

13 12. Defendant James J. Herzog (“Herzog”) has served as the Company’s
14 Chief Financial Officer (“CFO”) and Senior Executive Vice President since
15 February 2020.

16 13. Defendants Farmer and Herzog are collectively referred to herein as
17 the “Individual Defendants.”

18 14. Each of the Individual Defendants:

- 19 (a) directly participated in the management of the Company;
20 (b) was directly involved in the day-to-day operations of the Company at
21 the highest levels;
22 (c) was privy to confidential proprietary information concerning the
23 Company and its business and operations;
24 (d) was directly or indirectly involved in drafting, producing, reviewing
25 and/or disseminating the false and misleading statements and information
26 alleged herein;

1 (e) was directly or indirectly involved in the oversight or implementation
2 of the Company's internal controls;

3 (f) was aware of or recklessly disregarded the fact that the false and
4 misleading statements were being issued concerning the Company; and/or

5 (g) approved or ratified these statements in violation of the federal
6 securities laws.

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

11 16. The scienter of the Individual Defendants and other employees and
12 agents of the Company is similarly imputed to Comerica under *respondeat*
13 *superior* and agency principles.

14 17. Defendant Comerica and the Individual Defendants are collectively
15 referred to herein as "Defendants."

16 **SUBSTANTIVE ALLEGATIONS**

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

18
19 18. On February 9, 2021, the Company filed with the SEC its Annual
20 Report on Form 10-K for the year ended December 31, 2020 (the "2020 Annual
21 Report"). Attached to the 2020 Annual Report were signed certifications pursuant
22 to the Sarbanes-Oxley Act of 2002 ("SOX") signed by Defendants Farmer and
23 Herzog attesting to the accuracy of financial reporting, the disclosure of any
24 material changes to the Company's internal controls over financial reporting, and
25 the disclosure of all fraud.

26 19. The 2020 Annual Report included the following disclosure regarding
27 its reliance on other Companies as vendors:

1 **Comerica relies on other companies to provide certain key**
2 **components of its delivery systems, and certain failures could**
3 **materially adversely affect operations.**

4 Comerica faces the risk of operational disruption, failure or capacity
5 constraints due to its dependency on third party vendors for
6 components of its delivery systems. Third party vendors provide
7 certain key components of Comerica's delivery systems, such as
8 cloud-based computing, networking and storage services, payment
9 processing services, recording and monitoring services, internet
10 connections and network access, clearing agency services, card
11 processing services and trust processing services. *While Comerica*
12 *conducts due diligence prior to engaging with third party vendors*
13 *and performs ongoing monitoring of vendor controls, it does not*
14 *control their operations. Further, while Comerica's vendor*
15 *management policies and practices are designed to comply with*
16 *current regulations, these policies and practices cannot eliminate*
17 *this risk.* In this context, any vendor failure to properly deliver these
18 services could adversely affect Comerica's business operations, and
19 result in financial loss, reputational harm, and/or regulatory action.

20 (Emphasis added).

21 20. This statement was materially false and misleading because by the
22 time the 2020 Annual Report was filed, the Company was aware that, among other
23 issues with vendors, personally identifiable information on veterans, social
24 Security and disability recipients who received money under the Direct Express
25 program were routinely shared and handled by i2c Inc. ("i2c"), a Company vendor,
26 from its office in Lahore, Pakistan—in violation of the Federal Contract, which
27 requires operations to be conducted within the United States.

28 21. The 2020 Annual Report included the following disclosure on fraud:

Comerica may incur losses due to fraud.

Fraudulent activity can take many forms and has escalated as more
tools for accessing financial services emerge, such as real-time
payments. Fraud schemes are broad and continuously evolving.
Examples include but are not limited to: debit card/credit card fraud,
check fraud, mechanical devices attached to ATM machines, social

1 engineering and phishing attacks to obtain personal information,
2 impersonation of our clients through the use of falsified or stolen
3 credentials, employee fraud, information theft and other malfeasance.
4 Increased deployment of technologies, such as chip card technology,
5 defray and reduce aspects of fraud; however, criminals are turning to
6 other sources to steal personally identifiable information in order to
7 impersonate the consumer to commit fraud. Many of these data
8 compromises have been widely reported in the media. Further, as a
9 result of the increased sophistication of fraud activity, Comerica
10 continues to invest in systems, resources, and controls to detect and
11 prevent fraud. This will result in continued ongoing investments in
12 the future.

13 22. This statement was materially false and misleading because it only
14 discussed fraud in general terms rather than as a pressing issue as it related to the
15 Direct Express program. By the time the 2020 Annual Report was filed, Company
16 executives were raising internal concerns regarding potential Company violations
17 of Regulation E due to inadequate fraud prevention and responses relating to the
18 Direct Express program.

19 23. The 2020 Annual Report included the following disclosure on the
20 Company's reputational risk:

21 **Damage to Comerica's reputation could damage its businesses**

22 Reputational risk is an increasing concern for businesses as customers
23 are interested in doing business with companies they admire and trust.
24 Such risks include compliance issues, operational challenges, or a
25 strategic, high profile event. Comerica's business is based on the trust
26 of its customers, communities, and entire value chain, which makes
27 managing reputational risk extremely important. News or other
28 publicity that impairs Comerica's reputation, or the reputation of the
financial services industry generally, can therefore cause significant
harm to Comerica's business and prospects. Further, adverse publicity
or negative information posted on social media websites regarding
Comerica, whether or not true, may result in harm to Comerica's
prospects.

29 24. This disclosure was materially false and misleading because it
discussed reputational risk in general terms, rather than disclosing that the

1 Company was at a heightened risk of reputational damage because of, among other
2 issues, the Company's noncompliance with the Federal Contract due to a vendor
3 conducting operations out of an office in Lahore, Pakistan rather than, as was
4 required, in the United States.

5 25. On April 28, 2021, July 29, 2021, and October 29, 2021, the Company
6 filed with the SEC its quarterly reports on Form 10-Q for the periods that ended on
7 March 31, 2021 (the "1Q21 Report"), June 30, 2021 (the "2Q21 Report") and
8 September 30, 2021 (the "3Q21 Report"). Attached to the 1Q21, 2Q21, and 3Q21
9 Reports were signed certifications pursuant to SOX signed by Defendants Farmer
10 and Herzog attesting to the accuracy of financial reporting, the disclosure of any
11 material changes to the Company's internal controls over financial reporting, and
12 the disclosure of all fraud.

13 26. The 1Q21, 2Q21, and 3Q21 Reports incorporated by reference the
14 materially false and misleading risk disclosures from its 2020 Annual Report.

15 27. Then, on February 16, 2022, the Company filed with the SEC its
16 Annual Report on Form 10-K for the year ended December 31, 2021 (the "2021
17 Annual Report"). Attached to the 2021 Annual Report were signed certifications
18 pursuant to SOX signed by Defendants Farmer and Herzog attesting to the
19 accuracy of financial reporting, the disclosure of any material changes to the
20 Company's internal controls over financial reporting, and the disclosure of all
21 fraud.

22 28. The 2021 Annual Report included the following disclosure regarding
23 its reliance on other companies as vendors:

24 **Comerica relies on other companies to provide certain key**
25 **components of its delivery systems, and certain failures could**
26 **materially adversely affect operations.**

27 Comerica faces the risk of operational disruption, failure or capacity
28 constraints due to its dependency on third party vendors for

1 components of its delivery systems. Third party vendors provide
2 certain key components of Comerica's delivery systems, such as
3 cloud-based computing, networking and storage services, payment
4 processing services, recording and monitoring services, internet
5 connections and network access, clearing agency services, card
6 processing services and trust processing services. While Comerica
7 conducts due diligence prior to engaging with third party vendors and
8 performs ongoing monitoring of vendor controls, it does not control
9 their operations. Further, while Comerica's vendor management
10 policies and practices are designed to comply with current
11 regulations, these policies and practices cannot eliminate this risk. In
12 this context, any vendor failure to properly deliver these services
13 could adversely affect Comerica's business operations, and result in
14 financial loss, reputational harm, and/or regulatory action.

15 29. This statement was materially false and misleading because, as
16 discussed in paragraph 20, at the time this report was filed with the SEC, the
17 Company knew that it was not in compliance with the Federal Contract because a
18 Company vendor was conducting certain operations from Lahore, Pakistan rather
19 than, as was required, in the United States.

20 30. The 2021 Annual Report included the following disclosure regarding
21 fraud:

22 **Comerica may incur losses due to fraud.**

23 Fraudulent activity can take many forms and has escalated as more
24 tools for accessing financial services emerge, such as real-time
25 payments. Fraud schemes are broad and continuously evolving.
26 Examples include but are not limited to: debit card/credit card fraud,
27 check fraud, mechanical devices attached to ATM machines, social
28 engineering and phishing attacks to obtain personal information,
impersonation of our clients through the use of falsified or stolen
credentials, employee fraud, information theft and other malfeasance.
Increased deployment of technologies, such as chip card technology,
defray and reduce aspects of fraud; however, criminals are turning to
other sources to steal personally identifiable information in order to
impersonate the consumer to commit fraud. Many of these data
compromises have been widely reported in the media. Further, as a
result of the increased sophistication of fraud activity, Comerica

1 continues to invest in systems, resources, and controls to detect and
2 prevent fraud. This will result in continued ongoing investments in
the future.

3 31. This statement was materially false and misleading because, as
4 discussed in paragraph 22, the Company knew that fraud against recipients of
5 federal funds through the Direct Express program was a serious issue. Further,
6 Company executives had internally raised concerns about its lack of legal
7 compliance with Regulation E due to its inadequate fraud prevention and
8 responses.

9 32. The 2021 Annual Report included the following disclosure on the
10 Company's reputational risk:

11 **Damage to Comerica's reputation could damage its businesses.**

12 Reputational risk is an increasing concern for businesses as customers
13 are interested in doing business with companies they admire and trust.
14 Such risks include compliance issues, operational challenges, or a
strategic, high profile event. Comerica's business is based on the trust
15 of its customers, communities, and entire value chain, which makes
managing reputational risk extremely important. News or other
16 publicity that impairs Comerica's reputation, or the reputation of the
financial services industry generally, can therefore cause significant
17 harm to Comerica's business and prospects. Further, adverse publicity
18 or negative information posted on social media websites regarding
Comerica, whether or not true, may result in harm to Comerica's
19 prospects.

20 33. This disclosure was materially false and misleading because it
21 discussed reputational risk in general terms, rather than disclosing that the
22 Company was at a heightened risk of reputational damage because of, among other
23 issues, the Company's noncompliance with the Federal Contract due to a vendor
24 conducting operations out of an office in Lahore, Pakistan rather than, as was
25 required, in the United States.

26 34. Then, on April 27, 2022, July 28, 2022, and October 28, 2022, the
27 Company filed with the SEC its quarterly reports for the periods that ended on
28

1 March 31, 2022 (the “1Q22 Report”), June 30, 2022 (the “2Q22 Report”), and
2 September 30, 2022 (the “3Q22 Report”). Attached to the 1Q22, 2Q22, and 3Q22
3 Reports were signed certifications pursuant to SOX signed by Defendants Farmer
4 and Herzog attesting to the accuracy of financial reporting, the disclosure of any
5 material changes to the Company’s internal controls over financial reporting, and
6 the disclosure of all fraud.

7 35. The 1Q22, 2Q22, and 3Q22 Reports incorporated by reference the
8 materially false and misleading risk disclosures from its 2021 Annual Report.

9 36. Then, on February 14, 2023, the Company filed with the SEC its
10 Annual Report on Form 10-K for the year ended December 31, 2022 (the “2022
11 Annual Report”). Attached to the 2022 Annual Report were signed certifications
12 pursuant to SOX signed by Defendants Farmer and Herzog attesting to the
13 accuracy of financial reporting, the disclosure of any material changes to the
14 Company’s internal controls over financial reporting, and the disclosure of all
15 fraud.

16 37. The 2022 Annual Report contained the following risk disclosure
17 regarding its reliance on other Companies as vendors:

18 **Comerica relies on other companies to provide certain key**
19 **components of its delivery systems, and certain failures could**
20 **materially adversely affect operations.**

21 Comerica faces the risk of operational disruption, failure or capacity
22 constraints due to its dependency on third party vendors for
23 components of its delivery systems. Third party vendors provide
24 certain key components of Comerica's delivery systems, such as
25 cloud-based computing, networking and storage services, cash
26 services, payment processing services, recording and monitoring
27 services, internet connections and network access, clearing agency
28 services, card processing services and trust processing services. *While
Comerica conducts due diligence prior to engaging with third party
vendors and performs ongoing monitoring of vendor controls, it
does not control their operations. Further, while Comerica's vendor*

1 *management policies and practices are designed to comply with*
2 *current regulations, these policies and practices cannot eliminate*
3 *this risk.* In this context, any vendor failure to properly deliver these
4 services could adversely affect Comerica's business operations, and
5 result in financial loss, reputational harm, and/or regulatory action.

6 (Emphasis added.)

7 38. This statement was materially false and misleading because, as
8 discussed in paragraph 20, at the time this report was filed with the SEC, the
9 Company knew that it was not in compliance with the Federal Contract because a
10 Company vendor was conducting certain operations from Lahore, Pakistan rather
11 than, as was required, in the United States.

12 39. The 2022 Annual Report included the following disclosure relating to
13 fraud:

14 **Comerica may incur losses due to fraud.**

15 Fraudulent activity can take many forms and has escalated as more
16 tools for accessing financial services emerge, such as real-time
17 payments. Fraud schemes are broad and continuously evolving.
18 Examples include but are not limited to: debit card/credit card fraud,
19 check fraud, mechanical devices attached to ATM machines, social
20 engineering and phishing attacks to obtain personal information,
21 impersonation of clients through the use of falsified or stolen
22 credentials, employee fraud, information theft and other malfeasance.
23 Increased deployment of technologies, such as chip card technology,
24 defray and reduce aspects of fraud; however, criminals are turning to
25 other sources to steal personally identifiable information in order to
26 impersonate the consumer to commit fraud. Many of these data
27 compromises have been widely reported in the media. Further, as a
28 result of the increased sophistication of fraud activity, Comerica
continues to invest in systems, resources, and controls to detect and
prevent fraud. This will result in continued ongoing investments in
the future.

40. This statement was materially false and misleading because, as
discussed in paragraph 22, the Company knew that fraud against recipients of
federal funds through the Direct Express program was a serious issue. Further,

1 Company executives had internally raised concerns about its lack of legal
2 compliance with Regulation E due to its inadequate fraud prevention and
3 responses.

4 41. The 2022 Annual Report contained the following disclosure on the
5 Company's reputational risk:

6 **Damage to Comerica's reputation could damage its businesses.**

7 Reputational risk is an increasing concern for businesses as customers
8 are interested in doing business with companies they admire and trust.
9 Such risks include compliance issues, operational challenges, or a
10 strategic, high profile event. Comerica's business is based on the trust
11 of its customers, communities, and entire value chain, which makes
12 managing reputational risk extremely important. News or other
13 publicity that impairs Comerica's reputation, or the reputation of the
14 financial services industry generally, can therefore cause significant
15 harm to Comerica's business and prospects. Further, adverse publicity
16 or negative information posted on social media websites regarding
17 Comerica, whether or not true, may result in harm to Comerica's
18 prospects.

19 42. This disclosure was materially false and misleading because it
20 discussed reputational risk in general terms, rather than disclosing that the
21 Company was at a heightened risk of reputational damage because of, among other
22 issues, the Company's noncompliance with the Federal Contract due to a vendor
23 conducting operations out of an office in Lahore, Pakistan rather than, as was
24 required, in the United States.

25 43. Then, on April 28, 2023, the Company filed with the SEC its quarterly
26 report on Form 10-Q for the period ended March 31, 2023 (the "1Q23 Report").
27 Attached to the 1Q23 Report were signed certifications pursuant to SOX signed by
28 Defendants Farmer and Herzog attesting to the accuracy of financial reporting, the
disclosure of any material changes to the Company's internal controls over
financial reporting, and the disclosure of all fraud.

1 44. The 1Q23 Report incorporated by reference the materially false risk
2 disclosures from the 2022 Annual Report.

3 45. The statements contained in ¶¶ 18-21, 23, 25-28, 30, 32, 34-37, 39,
4 41, and 43 were materially false and/or misleading because they misrepresented
5 and failed to disclose the following adverse facts pertaining to the Company’s
6 business, operations and prospects, which were known to Defendants or recklessly
7 disregarded by them. Specifically, Defendants made false and/or misleading
8 statements and/or failed to disclose that: (1) Comerica failed to provide meaningful
9 oversight over the vendors to whom it contracted out day-to-day operations of the
10 Direct Express program, a system through which it is contracted to provide federal
11 benefits on debit cards to millions of Americans without bank accounts; (2) as a
12 result of violations in the day-to-day operations of Direct Express, including
13 handling fraud disputes and allowing sensitive data to be handled out of a vendor’s
14 office in Pakistan, Comerica was not in compliance with the Federal Contract, and
15 knew it was not in compliance; (3) Comerica knew and failed to disclose that it
16 was in potential violation of Regulation E due to inadequate fraud prevention in
17 the Direct Express program and responses to instances of fraud, and; (4) as a result,
18 Defendants’ statements about its business, operations, and prospects, were
19 materially false and misleading and/or lacked a reasonable basis at all relevant
20 times.

21 **THE TRUTH BEGINS TO EMERGE**

22 46. On May 29, 2023, after trading hours, *American Banker* released an
23 article entitled “Comerica in ‘serious violation’ of Treasury’s Direct Express
24 program.” The article discussed significant issues with i2c and Conduent Inc., two
25 vendors to whom Comerica contracts out the day-to day operations of Direct
26 Express, a federal government program which deposits “roughly \$3 billion a month
27
28

1 electronically on prepaid cards to millions federal government beneficiaries who
2 do not have a bank account.” The article stated, in pertinent part:

3 Comerica Bank officials privately acknowledged significant
4 compliance failures in their operation of a Treasury Department
5 program that provides federal benefits on prepaid cars to millions of
6 unbanked Americans, according to internal documents obtained by
7 American Banker.

8 *A Comerica executive said the Dallas bank faced a “serious contract*
9 *violation” for allowing fraud disputes and data on Direct Express*
10 *cardholders to be handled out of a vendor’s office in Lahore,*
11 *Pakistan, the documents show.*

12 *Personally identifiable information on veterans, Social Security and*
13 *disability recipients were routinely shared and handled by i2c Inc.,*
14 *a vendor based in Redwood City, Calif., with an office in Lahore,*
15 *Pakistan—in violation of the government contract, the Comerica*
16 *executive said. The Treasury’s agreement with the bank states that*
17 *all services provided “shall be performed in the United States or its*
18 *territories.”*

19 Paul Lawrence, who served as under secretary for benefits in the
20 Department of Veterans Affairs from 2018 to 2021, said he was in
21 "complete shock and disgust" after being told of the information
22 contained in the internal Comerica documents.

23 *"All of these government contracts basically say you have to be in*
24 *the U.S. and the program has to be run by U.S. citizens," Lawrence,*
25 *a longtime government consultant, said in an interview. "This has*
26 *all the makings for a really, really bad situation."*

27 The internal documents, in addition to court documents filed in a class
28 action last year, paint a broader picture of the \$91.2 billion-asset
Comerica's strategy and third-party oversight of Treasury's Direct
Express program, which serves 4.5 million Americans.

Comerica has been mired in litigation and yearslong disputes over
Direct Express, which it has operated under a contract with the

1 Treasury since 2008. Direct Express deposits roughly \$3 billion a
2 month electronically on prepaid cards to millions of federal
3 government beneficiaries who do not have a bank account. The
4 program is part of a government effort to reduce potential fraud and
5 costs by weaning people off paper checks.

6 Comerica has contracted out the day-to-day operations of Direct
7 Express to two vendors: i2c and Conduent Inc., a publicly-traded
8 conglomerate based in Florham Park, N.J.

9 *The internal documents include a 2020 email from a Comerica*
10 *executive, who described sweeping violations of Regulation E,*
11 *which governs how a financial institution addresses errors reported*
12 *by consumers including for theft or fraud.* Nora Arpin, Comerica's
13 then-senior vice president and director of government electronic
14 solutions, said the bank was in breach of its Treasury contract but that
15 it was unable to get its third-party vendor to make changes.

16 *"Management for Reg E dispute processing is in Lahore which*
17 *means that cardholder information is being shared with/sent to*
18 *Lahore, which is a serious contract violation,"* Arpin wrote.

19 * * *

20 David P. Weber, a clinical assistant professor of accounting at
21 Salisbury University and a former supervisory counsel and
22 enforcement chief at the Federal Deposit Insurance Corp., said the
23 bank would need to inform its regulator about the activities of third-
24 party service providers.

25 *"It was a clear violation of the contract Comerica held with the*
26 *Department of the Treasury to locate the vendor in a foreign country*
27 *when part of the consideration for them being awarded this federal*
28 *contract was to use American employees and vendors,"* said Weber,
who served as special counsel for enforcement for more than 10 years
at the Office of the Comptroller of the Currency.

"Separate and aside from contract fraud, it is inappropriate for a
federally-insured depository institution to locate third-party service
provider activities in a foreign nation without informing their
regulator, and locating the operations in a country in which there
are questions about rule of law, which would make supervisory and

1 *exam activities as well as protections of American consumers*
2 *questionable."*

3 The bank previously had been criticized by the Federal Reserve Bank
4 of Dallas in a "matters requiring attention" order a year earlier, which
5 described "weaknesses" in Comerica's risk monitoring of Direct
6 Express, according to court documents. Examiners said Conduent, the
7 bank's primary vendor, did not provide cardholders reporting fraud on
8 their cards with information on how to receive a provisional credit,
9 documents show.

10 Comerica was paid \$151 million in 2020 to operate Direct Express,
11 and received roughly \$770 million in total gross revenue over a six-
12 year period, from 2015 to 2020, to run the program, Albert Taylor, a
13 Comerica senior vice president and director of National Bankcard
14 Services, said in court documents.

15 * * *

16 **Inadequate fraud reporting**

17 *In a key internal 2020 email, Arpin, the former Comerica executive,*
18 *listed 13 bullet points describing the practices of i2c.* Among the
19 bank's "serious concerns," she wrote:

- 20 • "We are having significant difficulty getting adequate fraud
21 reporting."
- 22 • "We can't get the Call Center statistics we need."
- 23 • "Reg E adjudication is an issue"
- 24 • "Fraud prevention is a serious issue"
- 25 • "Reporting in general is an issue – we aren't getting the
26 reporting that the [Treasury's Bureau of] Fiscal Services
27 requires."

28 Cardholders have complained for years about fraud, poor customer
service and high fees in the Direct Express program.

Last year, a federal judge certified a class action against Comerica and
Conduent brought by Direct Express cardholders who claimed their
accounts were drained of thousands of dollars from 2015 to 2022 due
to fraud. The class action, filed in the U.S. District Court for the
Western District of Texas, alleges that Comerica and Conduent
denied refunds to cardholders who alleged fraud on their accounts.

1 The court documents, combined with internal documents that
2 American Banker received anonymously in the mail, provide a better
3 understanding of Comerica's private and public responses to various
4 inquiries.

5 *Comerica executives were repeatedly warned about vendor*
6 *oversight, potential breaches of the Treasury contract and*
7 *deficiencies in the bank's compliance management system, said*
8 *sources familiar with the matter who asked that they remain*
9 *anonymous out of fear of retaliation. In-house lawyers escalated*
10 *their concerns to the bank's senior leadership, including Susan*
11 *Joseph, Comerica's head of compliance; Jay Oberg, senior*
12 *executive vice president and chief risk officer; and Peter L. Sefzik,*
13 *senior executive vice president and chief banking officer.*

14 * * *

15 In August 2018, Sen. Elizabeth Warren, D-Mass., launched an
16 investigation into Direct Express after cardholders complained about
17 not being reimbursed for fraud. In a letter to the Veterans
18 Administration, Warren said fraudsters had used "stolen data to
19 impersonate benefit recipients, made fraudulent purchases, and
20 drained the prepaid cards of the federal benefits."

21 Comerica's Executive Chairman Ralph W. Babb responded to Warren
22 by stating that Comerica has taken appropriate steps to root out fraud.

23 Comerica "follows all laws and regulations including the [Federal
24 Financial Institutions Examination Council] guidelines for supplier
25 oversight," Babb said in a 21-page response in October 2018.

26 **'Reg E Lite'**

27 Yet, within a month of Sen. Warren's inquiry, a Comerica lawyer tried
28 to convince a Texas bank examiner that Regulation E does not apply
to the bank or to federal government beneficiaries, the internal
documents show.

The Comerica lawyer was responding to a query from the Texas
Department of Banking by claiming that the bank was not fully

1 required to abide by the Electronic Fund Transfer Act, which is
2 implemented by Regulation E. The regulation sets strict timelines for
3 banks to resolve errors including investigating fraud and reimbursing
4 harmed consumers with provisional credit when money is stolen.

5 ***"Program customers only get 'Regulation E Lite,' benefits,"*** a
6 Comerica executive in the bank's legal department wrote in 2018.
7 That lawyer described "why [the] program's customers are not entitled
8 to all of the provisions and benefits of Regulation E."

9 In the email, the Comerica lawyer wrote that "...neither the Federal
10 Electronic Funds Transfer nor its Regulation E applies to the
11 Comerica Bank under the Program as a 'financial institution.'"

12 Comerica argued that the Treasury, not the bank, was considered to
13 be the financial institution for Direct Express, "which is why we
14 generally state that Program customers are only entitled to 'Regulation
15 E lite' benefits."

16 By August 2019, Joseph, the head of compliance, had forwarded the
17 email about 'Reg E Lite,' to another Comerica lawyer.

18 Comerica submitted a glossy, 67-page application to the Treasury in
19 early 2019 in which *it described the vendor, i2c, "as a leader in
20 transaction processing, security, fraud prevention and innovation."*

21 In 2020, Treasury renewed Comerica's contract after i2c was hired to
22 handle new cardholders. The agreement with the Treasury was signed
23 by Babb, who retired in 2019. Babb was succeeded by Curt C. Farmer,
24 Comerica's chairman and CEO.

25 Experts say banks have a general obligation to act in good faith when
26 dealing with customers.

27 ***Weber, the accounting professor and former regulator, said the
28 bank's legal and compliance obligations far exceed Regulation E.
He also called into question Comerica's third-party risk
management and operational risk standards.***

1
2 ***"The unbanked people already are more vulnerable than ordinary***
3 ***bank customers because they don't have the skill set or financial***
4 ***acumen to know what their rights are, and it's compounded when***
5 ***they are victims of fraud,"*** Weber said. ***"At the end of the day,***
6 ***federally insured depository institutions are required to have***
appropriate third-party risk management processes in place, and it
isn't new to prepaid cards or benefits."

7
8 Weber noted that Bank of America was hit with a \$225 million
9 consent order last year for failing to investigate fraud claims in
unemployment benefits.

10 ***"The idea in a perfect world is that somehow the third-party vendor***
11 ***can do it faster and cheaper than the bank because they think***
12 ***they're not obligated to follow the same rules,"*** said Weber, who
13 ***analyzes counterproductive work behavior. "It's an operational risk***
14 ***issue if the third-party doesn't have the policies, procedures and***
controls to identify systemic issues."

15 **VA finds a way out**

16 ***The myriad problems in the Direct Express program, which***
17 ***Comerica manages, forced the Veterans Administration to devote***
18 ***resources to helping veterans find an alternative.*** By 2019, the VA
19 helped create the Veterans Benefit Banking Program, a consortium of
20 banks and credit unions that offer free checking accounts so veterans
can receive their monthly payments via direct deposit.

21
22 ***"We made a super-conscientious effort to get veterans off Direct***
23 ***Express because the bad experiences were just gut-wrenching,"*** said
24 Lawrence, the VA's under secretary for benefits.

25 Steve Lepper, a retired U.S. Air Force Major General who is president
26 and CEO of the Association of Military Banks of America, a trade
27 group, worked with the VA to create the program.

1 ***"The complaints the VA was getting finally pushed them to the point***
2 ***where we needed to create an alternative to the Direct Express***
3 ***program,"*** Lepper said. ***"Veterans were apoplectic about all of the***
4 ***problems that they were experiencing with the Direct Express***
5 ***program and, of course, Comerica was responsible for all of the***
6 ***management of the program — including the fraud investigation***
7 ***and resolution processes."***

8 Roughly 240,000 veterans have migrated away from Direct Express
9 and now have bank accounts with direct deposit, Lepper said. About
10 80,000 unbanked or underbanked veterans still receive their benefits
11 on Direct Express prepaid cards or paper checks.

12 Lepper credited J.B. Simms, an author and private investigator in
13 Brighton, Tenn., who recently published a book titled, "Comerica,
14 Conduent and the U.S. Treasury Betrayed Veterans and Other
15 Victims." Simms says he first discovered fraudulent charges on his
16 Direct Express account in January 2017 and a second time later that
17 year. He then sought to help other veterans recover money that was
18 stolen due to fraud, including those in which veterans' claims were
19 denied.

20 **Alleged violations**

21 Simms and others say Comerica's failure to address problems with
22 Direct Express should get a public airing.

23 ***"The Direct Express cardholders are the most vulnerable***
24 ***population of all Social Security recipients, and most do not have***
25 ***bank accounts and lack the sophistication to challenge any***
26 ***authority,"*** said Simms. He is one of just eight named plaintiffs in the
27 case.

28 Another plaintiff, Harold McPhail, a Vietnam veteran, reported that
 \$30,000 was stolen from his Direct Express account in 2018. But he
 died before getting a resolution, said his daughter Martisha McPhail,
 who said Conduent initially denied her father's fraud claim.

1 Some Social Security recipients who reported fraud have lost hope
2 that they will ever be reimbursed for thousands of dollars they say was
3 stolen off their prepaid cards. Some said they have not been notified
4 of the class action or any efforts by the bank to reimburse them.

5 Mike Colburn, a retired Las Vegas businessman, alleged that \$5,500
6 was stolen from his Direct Express account in 2018. Colburn said he
7 was unable to make his mortgage payment and had to borrow money
8 from relatives to avoid defaulting. He ultimately was reimbursed \$500
9 by Conduent but was never able to get all of his money back.

10 "I gave up on talking to that bank," Coburn said. ***"They don't return
11 phone calls, they don't return emails and Conduent accused me of
12 stealing the money from myself."***

13 After money was allegedly stolen from his Direct Express account,
14 Colburn called the Social Security Administration to sign up for paper
15 checks. Now his monthly Social Security check comes with an insert
16 stating that he is breaking the law for not using Direct Express, he
17 said.

18 Cardholders allege in the class action that they were not given
19 provisional credit when errors were reported and were not sent the
20 results of investigations in a timely manner. Regulation E requires that
21 a financial institution investigate fraud within 10 days of being
22 notified by a cardholder, but the bank can take up to 45 days to
23 investigate if they provide provisional credit in the amount of the
24 alleged error.

25 "Nobody could get through to the call center and most of the time
26 people never filed a claim because they got locked out of their
27 accounts," said Jackie Densmore, a plaintiff in the class action, who
28 is a caregiver for her brother-in-law, Derek Densmore, a disabled
29 Marine. She alleged \$800 was stolen from his Direct Express card in
30 2018 and described hours spent trying to get through to Conduent on
31 the phone and being told to submit a claim in writing.

32 "There are all these people out there who were never able to complete
33 a fraud packet and actually file a claim," Densmore said.

1 The vendor had run into problems before with government oversight.
2 Conduent was fined by the Consumer Financial Protection Bureau in
3 2019 for unfair student loan practices, and in 2017 for sending
4 incorrect information to credit reporting agencies. In 2019, Conduent,
5 which at the time was owned by Xerox Corp., agreed to a \$235 million
6 settlement with the Texas attorney general for Medicaid-related
7 claims.

7 Densmore also switched to paper checks for her brother-in-law, who
8 has post-traumatic stress disorder. Symptoms resurface every month,
9 she said, when he sees the insert from Social Security that states:
10 "Notice of noncompliance. You are required by law to convert your
11 paper check to direct deposit or the Direct Express card."

11 "Every month we relive the nightmare from five years ago," she said.
12 "Since Derek has a medical condition, I have to explain to him every
13 month about the situation that we have gone through with Direct
14 Express and that he is allowed to get a paper check."

15 **What's next for Comerica customers?**

16 *Court documents show that in May 2019 alone, Comerica received*
17 *15,712 fraud disputes, according to Taylor, Comerica's director of*
18 *National Bankcard Services.* Taylor said in court documents that
19 Comerica did not have any data to identify cardholders that reported
20 fraud, and the bank didn't keep track of money refunded or denied for
21 fraud.

21 The supervisory letter from the Federal Reserve Bank of Dallas in
22 early 2019 identified potential consumer harm, program deficiencies
23 and customer service issues in Comerica's handling of Direct Express.
24 Specifically, examiners at the Dallas Fed said that Conduent's call
25 centers were not trained in Regulation E and did not tell cardholders
26 who reported fraud that they could receive provisional credit as part
27 of the process of filing a dispute.
28

1 "Only those callers who specifically asked for instructions or inquired
2 about the provisional credit process received any guidance," the
3 Dallas Fed stated in the supervisory letter sent to Joseph, Comerica's
4 head of compliance.

5 In addition, Conduent required that cardholders provide documents
6 and a written statement but did not state that cardholders had 10 days
7 to do so or they may not receive provisional credit.

8 "While [an] explanation of provisional credit is not a regulatory
9 requirement, the recurring consumer complaints regarding
10 provisional credit indicate consumers are adversely affected," the
11 Dallas Fed stated.

12 It also noted more systemic problems in the collection of data.

13 "There is no root cause analysis of complaints to identify systemic
14 issues and trends that warrant immediate correction," according to the
15 supervisory letter. "Comerica must establish a method of identifying
16 root causes of complaints originating at Conduent and track
17 complaints with serious allegations or high compliance risk, such as
18 [unfair, deceptive acts and practices.]"

19 **A problem of incentives**

20 In its bid for the Treasury contract, Comerica said it is "committed to
21 delivering a low-cost solution, while providing ready access to funds
22 and protecting both the Direct Express cardholder and the overall
23 program."

24 Comerica receives fees, interchange revenue and annual payments
25 from the Treasury that rose to \$151 million in 2020, the most recent
26 data available, according to court documents. Of that total, Conduent
27 received \$105 million in 2020 from Comerica, Mitch Raymond, a
28 senior director in account management at Conduent, said in court
documents.

Comerica also benefits from an estimated \$3 billion a month in low-
cost, non-interest-bearing deposits from the Direct Express program,

1 sources familiar with the program said. The deposits boost the bank's
2 liquidity at little cost and can be leveraged, allowing the bank to lend
3 to more customers, sources said.

4 Last year, Comerica disclosed that the Consumer Financial Protection
5 Bureau is investigating some of its business practices. The Texas bank
6 stated in a regulatory filing in February 2022: "Remedies in these
7 proceedings or settlements may include fines, penalties, restitution or
8 alterations in the corporation's business practices and may result in
9 increased operating expenses or decreased revenues."

10 Weber, the former FDIC enforcement chief, said that regulators
11 typically take into account whether information exists to indicate that
12 a bank "is willfully in noncompliance with the law." To deter
13 misconduct, regulators may factor into a civil money penalty whether
14 a bank's executives and board directors believed a potential fine
15 would be lower than the cost of compliance.

16 "It's a mixture of misplaced financial incentives combined with failing
17 to have appropriate board and management oversight over different
18 operational areas of the bank," said Weber, who also served as a
19 former assistant inspector general for investigations at the Securities
20 and Exchange Commission. "When evidence indicates that individual
21 officers or directors have made decisions to allow misconduct and
22 violations of the law to occur, it is well past time to not only hold the
23 bank accountable but to hold the individual officers and directors and
24 the entire board personally accountable."

25 Simms, one of the plaintiffs in the class action, lays the blame for the
26 problems on shoddy third-party oversight by the Treasury.

27 ***"The Bureau of Fiscal Service, as a part of the U.S. Treasury,
28 allowed Comerica Bank to continue violating federal banking laws
and endorsed the contract with Comerica knowing inaccurate
information was submitted by Comerica to obtain the contract,"***
29 Simms said, citing the OIG reports.

30 Lepper, who helped create the alternative option for veterans, said he
31 didn't understand why the most vulnerable citizens were not getting
32 the attention of Comerica top executives.

1 "Why didn't they make the obvious improvements to their program to
2 avoid all of this?" Lepper said.

3 (Emphasis added).
4

5 47. On this news, the price of Comerica stock declined by \$1.40 per share
6 compared to the prior closing price, or 3.59%, to close at \$37.59 on May 30, 2023,
7 on high trading volume. The next day, the price of Comerica stock declined another
8 \$1.49, or 3.96%, to close at \$36.10 on May 31, 2023.

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

12 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

13 49. Plaintiff brings this action as a class action pursuant to Federal Rule
14 of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons
15 other than defendants who acquired the Company's securities publicly traded on
16 NYSE during the Class Period, and who were damaged thereby (the "Class").
17 Excluded from the Class are Defendants, the officers and directors of the Company,
18 members of the Individual Defendants' immediate families and their legal
19 representatives, heirs, successors or assigns and any entity in which Defendants
20 have or had a controlling interest.
21

22 50. The members of the Class are so numerous that joinder of all members
23 is impracticable. Throughout the Class Period, the Company's securities were
24 actively traded on NYSE. While the exact number of Class members is unknown
25 to Plaintiff at this time and can be ascertained only through appropriate discovery,
26 Plaintiff believes that there are hundreds, if not thousands of members in the
27 proposed Class.
28

1 51. 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 52. 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 53. 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 54. 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 55. 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 56. 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 57. 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 58. Plaintiff repeats and realleges each and every allegation contained
12 above as if fully set forth herein.

13 59. 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 60. 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 61. 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 62. 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 63. 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 64. 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
27
28

1 securities at prices that were artificially inflated as a result of Defendants' false and
2 misleading statements.

3 65. 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 66. 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 67. 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 68. Plaintiff repeats and realleges each and every allegation contained in
19 the foregoing paragraphs as if fully set forth herein.

20 69. 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 false financial statements.

25 70. 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
28

1 any public statements issued by the Company which had become materially false
2 or misleading.

3 71. 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 72. 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
27
28

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

3
4 **JURY TRIAL DEMANDED**

5 Plaintiff hereby demands a trial by jury.
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