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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL STRADFORD,  
Individually and on behalf of all others  
similarly situated,  
  
Plaintiff,  
  
v.  
  
CHIPOTLE MEXICAN GRILL, INC.,  
BRIAN NICCOL, and JOHN R.  
HARTUNG,  
  
Defendants.

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

1 Plaintiff Michael Stradford (“Plaintiff”), individually and on behalf of all  
2 other 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 Chipotle Mexican Grill, Inc. (“Chipotle” 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 Chipotle common stock between February  
16 8, 2024 and October 29, 2024, inclusive (the “Class Period”) and those who  
17 purchased Chipotle call options or sold put options during the class period. Plaintiff  
18 seeks to recover compensable damages caused by Defendants’ violations of the  
19 federal securities laws under the Securities Exchange Act of 1934 (the “Exchange  
20 Act”).

21 **JURISDICTION AND VENUE**

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

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

28

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 Chipotle securities during the Class Period and was  
13 economically damaged thereby.

14 7. Chipotle “owns and operates Chipotle Mexican Grill restaurants,  
15 which feature a relevant menu of burritos, burrito bowls (a burrito without the  
16 tortilla), quesadillas, tacos, and salads.”

17 8. The Company is incorporated in Delaware and its principal place of  
18 business is located at 610 Newport Center Drive, Suite 1100, Newport Beach,  
19 California. Chipotle’s common stock trades on the New York Stock Exchange (the  
20 “NYSE”) under the ticker symbol “CMG.”

21 9. Defendant Brian Niccol (“Niccol”) was the Company’s Chief  
22 Executive Officer until August 31, 2024. He also served as the Chairman of the  
23 Company’s Board of Directors.

24 10. Defendant John R. Hartung (“Hartung”) serves as the Company’s  
25 Chief Financial and Administrative Officer.

26 11. Defendants Niccol and Hartung are collectively referred to herein as  
27 the “Individual Defendants.”

28

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

16 13. The Company is liable for the acts of the Individual Defendants and

17 its employees under the doctrine of *respondeat superior* and common law

18 principles of agency because all of the wrongful acts complained of herein were

19 carried out within the scope of their employment.

20 14. The scienter of the Individual Defendants and other employees and

21 agents of the Company is similarly imputed to Chipotle under *respondeat superior*

22 and agency principles.

23 15. Defendant Chipotle and the Individual Defendants are collectively

24 referred to herein as "Defendants."

25 **SUBSTANTIVE ALLEGATIONS**

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

27

28

1           16. On February 8, 2024, the Company filed with the SEC its annual  
2 report on Form 10-K for the period ended December 31, 2023 (the “2023 Annual  
3 Report”). Attached to the 2023 Annual Report were certifications pursuant to the  
4 Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Niccol and Hartung  
5 attesting to the accuracy of financial reporting, the disclosure of any material  
6 changes to the Company’s internal control over financial reporting, and the  
7 disclosure of all fraud.

8           17. The 2023 Annual Report contained the following risk disclosure:

9           ***The restaurant industry is highly competitive. If we are not able to compete***  
10 ***successfully, our business, financial condition and results of operations***  
11 ***would be adversely affected.***

12           The restaurant industry is highly competitive with respect to taste  
13 preferences, price, food quality and selection, ***customer service, brand***  
14 ***reputation***, digital engagement, advertising and promotional initiatives, and  
15 the location, attractiveness and maintenance of restaurants. We also compete  
16 with non-traditional market participants, such as “convenience meals” in the  
17 form of entrées, side dishes or meal preparation kits from the deli or prepared  
18 foods sections of grocery stores, meal kit delivery services, and “ghost” or  
19 “dark” kitchens, where meals are prepared at separate takeaway premises  
20 rather than a restaurant. Increased competition could have an adverse effect  
21 on our sales, profitability and development plans. If guest or dietary  
22 preferences change, if our marketing efforts are unsuccessful, or if our  
23 restaurants are unable to compete successfully with other restaurant outlets,  
24 our business could be adversely affected.

25           We continue to believe that our commitment to higher-quality and  
26 responsibly sourced ingredients resonates with guests and gives us a  
27 competitive advantage; however, many of our competitors also make claims  
28 related to the quality of their ingredients and lack of artificial flavors, colors  
and preservatives. The increasing use of these claims by competitors,  
regardless of the accuracy of such claims, may lessen our differentiation and  
make it more difficult for us to compete. ***If we are unable to continue to***  
***maintain our distinctiveness and compete effectively, our business,***  
***financial condition and results of operations could be adversely affected.***

1 (Emphasis added).

2  
3 18. The statement in ¶ 17 was materially false and misleading because  
4 the Company understated how difficult it would be to compete given that the  
5 Company provided customers with highly inconsistent (and in the view of some  
6 customers, lacking) portion sizes.

7 19. The 2023 Annual Report contained the following risk disclosure:  
8 *If we do not continue to persuade guests of the benefits of paying higher*  
9 *prices for our higher-quality food, our sales and results of operations*  
10 *could be hurt.*

11 Our success depends in large part on our ability to persuade guests that food  
12 made with ingredients that were raised or grown according to our Food with  
13 Integrity principles are worth paying a higher price relative to prices of some  
14 of our competitors, particularly quick-service restaurants. Under our Food  
15 with Integrity principles, for example, animals must be responsibly raised,  
16 and the milk in our sour cream, cheese and queso must come from cows that  
17 have not been treated with rBGH, practices which typically are more costly  
18 than conventional farming. If we are not able to successfully persuade guests  
19 that consuming food made in accordance with our Food with Integrity  
20 principles is better for them and the environment, *or if guests do not agree*  
21 *with the overall value proposition of our menu*, our sales could be adversely  
22 affected, which would negatively impact our results of operations.

23 (Emphasis added).

24 20. The statement in ¶ 19 was materially false and misleading because the  
25 Company understated how difficult it would be to convince customers of the  
26 “overall value proposition of its menu” given that the Company provided  
27 customers with highly inconsistent (and in the view of some customers, lacking)  
28 portion sizes.

21. On April 25, 2024, the Company filed with the SEC its annual report  
on Form 10-Q for the period ended March 31, 2024 (the “1Q24 Report”). Attached  
to the 2023 Annual Report were certifications pursuant to SOX signed by

1 Defendants Niccol and Hartung attesting to the accuracy of financial reporting, the  
2 disclosure of any material changes to the Company’s internal control over financial  
3 reporting, and the disclosure of all fraud.

4 22. The 1Q24 Report incorporated the risk disclosures from the 2023  
5 Annual Report, certain of which were false for the reasons stated in ¶¶ 18 and 20.

6 23. Over the spring and summer of 2024, Chipotle customers began to air  
7 grievances on social media about portion sizes at Chipotle restaurants being  
8 inconsistent or lacking.

9 24. On May 29, 2024, The Washington Post published an article entitled  
10 “Chipotle portions haven’t shrunk, company says after TikTok backlash.” This  
11 article stated that there has been “*increasingly vocal online complaints in recent*  
12 *months from diners about the perceived stinginess of the burrito chain’s*  
13 *portions*, once thought to be so generous that a crafty ordered could feed  
14 themselves for days from a single bowl.” (Emphasis added). It then stated the  
15 following:

16 *But things took a turn when massively influential food reviewer Keith Lee*  
17 *echoed those laments* – and added a few dings of his own – in a May 3  
18 TikTok review.

19 Lee, whose mild-mannered delivery and efforts to avoid getting special  
20 treatment have distinguished him from a sea of online food reviewers, wields  
21 considerable influence, even beyond his 16.3 million TikTok followers. (It’s  
22 called the Keith Lee effect, and it’s real.)

23 “I used to love Chipotle,” he said at the start of the segment, in which he  
24 ordered several menu items. “Lately, Chipotle has not hit the same, in my  
25 opinion.” Things did not get better from there. *He struggled to find bits of*  
26 *chicken in his bowl. “See, I don’t see no chicken at all,”* he said as dug  
27 around in disappointment, ultimately giving it a 2 out of 10 rating after  
28 locating a few lonely chunks. His formerly favorite steak quesadilla got a  
2.5 (“tastes like Steak-umms”).

1 *What made the criticism sting — and no doubt ring true to viewers — was*  
2 *that Lee was previously known to his followers as an enthusiastic Chipotle*  
3 fan. He even collaborated with the brand last year, with Chipotle introducing  
4 a special menu item, the “Keithadilla,” which was inspired by a custom  
5 order that Lee and fellow TikTok celebrity Alexis Frost had popularized in  
6 a viral video series.

7 \* \* \*

8 *Chipotle, the virtual pile-on intensified. Some people called for users to*  
9 *register their displeasure with the company by leaving one-star reviews on*  
10 *its app.* Others took their grievances to their local locations, posting videos  
11 of themselves starting an order, but walking out of the restaurant midway if  
12 they thought the workers behind the counter were not doling out sufficiently  
13 generous scoops.

14 (Emphasis added).

15 25. The Washington Post’s article pointed out that this consumer  
16 frustration with Chipotle was “playing out against a backdrop of customer  
17 frustration with rising food costs across the board: at the grocery store, in fast-food  
18 drive-throughs and at white-tablecloth restaurants.”

19 26. The Washington Post quoted the Company’s chief corporate affairs  
20 and food safety officer said that “[t]here have been no changes in our portion  
21 sizes, and we have reinforced proper portioning with our employees. If we did  
22 not deliver on our value, we want our guests to reach out so we can make it right.”  
23 (Emphasis added).

24 27. On May 30, 2024, Fortune published an article entitled “Chipotle  
25 CEO: our portion sizes aren’t getting smaller—but you can get more food with a  
26 special look.”

27 28. This Fortune article discussed certain social media posts about  
28 Chipotle. In one post, a person stated that “I used to eat Chipotle 2-3x a week. I  
haven’t been in a year. *It’s inconsistent, expensive, and the portions are terrible.*”  
(Emphasis added).



1 29. Another said “[a]t least skimping on chicken/meat may make  
2 financial sense to them. *They are skimping on rice and beans on veggie bowls.*  
3 That’s crazy.” (Emphasis added).

4 30. In the same Fortune article, Brian Niccol was quoted as saying that  
5 “portions have not gotten smaller.” He further stated the following:

6 *We always want to give people big portions that get them excited about the*  
7 *food.* If you want to double the amount of meat, you gotta pay for it, but our  
8 goal is to get people really excited about what I believe is really delicious  
9 food.

10 (Emphasis added).

11 31. The statements in ¶¶ 26 and 30 were materially false and misleading  
12 when made because portions had in fact gotten smaller in many cases.

13 32. On July 4, 2024, Fox Business published an article entitled “Wells  
14 Fargo analysts ‘weigh in’ on Chipotle portion sizing after restaurant chain faces  
15 backlash online.”

16 33. This article referenced how Chipotle had been facing consumer  
17 criticism for decreased portion sizes in items such as burrito bowls. It then  
18 discussed how a Wells Fargo analyst started recording data on Chipotle portion  
19 sizes to see if the Company did in fact have inconsistent portions.

20 34. The Wells Fargo analyst ordered “75 like-for-like” burrito bowls  
21 across eight locations in New York City, and found that the smallest burrito bowl  
22 was 13.8 ounces, and the largest was 26.8 ounces.

23 35. In response to these findings, Chipotle’s chief corporate affairs officer  
24 made the following statement to Fox Business:

25 Similar to others in the fast casual industry, our completely customizable  
26 meals may have variability in their size or weight depending upon the  
27 number of ingredients a guest selects or if they choose to make an ingredient  
28 extra or light when ordering from our list of real ingredients in-person or

1           digitally[.] *There have been no changes in our portion sizes, and we aim*  
2           *to provide a great guest experience every time.*

3           (Emphasis added).

4           36.   The statement in ¶ 35 was materially false and misleading at the time  
5           it was made because portions had in fact gotten smaller in many cases.

6           37.   The statements contained in ¶¶ 17, 19, 26, 30, and 35 were materially  
7           false and/or misleading because they misrepresented and failed to disclose the  
8           following adverse facts pertaining to the Company’s business, operations and  
9           prospects, which were known to Defendants or recklessly disregarded by them.  
10          Specifically, Defendants made false and/or misleading statements and/or failed to  
11          disclose that: (1) Chipotle’s portion sizes were inconsistent and left many  
12          customers dissatisfied with the Company’s offerings; (2) in order to address the  
13          issue and retain customer loyalty, the Company would have to ensure more  
14          generous portion sizes, which would increase cost of sales; and (3) as a result,  
15          Defendants’ statements about its business, operations, and prospects, were  
16          materially false and misleading and/or lacked a reasonable basis at all relevant  
17          times.

18                                 **THE TRUTH BEGINS TO EMERGE**

19          38.   On July 24, 2024, after market hours, Chipotle conducted its Q2 2024  
20          earnings call (the “Q2 Call”). On the Q2 call, Brian Niccol made the following  
21          statement, acknowledging that portion inconsistency was an issue at Chipotle, and  
22          that it had caused customers to feel justifiably unhappy with the Company:

23                                 *Before I give an update on our five key strategies, I want to take a minute*  
24                                 *to address the portion concerns that have been brought up in social media.*  
25          First, there was never a directive to provide less to our customers. Generous  
26          portion is a core brand equity of Chipotle. It always has been, and it always  
27          will be.

1 *With that said, getting the feedback caused us to relook at our execution*  
2 *across our entire system with the intention to always serve our guests*  
3 *delicious, fresh, custom burritos, and [bowls] with generous portions.*

4 To be more consistent across all 3,500 restaurants, we have focused in on  
5 those with outlier portion scores based on consumer surveys, and we are  
6 reemphasizing training and coaching around ensuring we are consistently  
7 making bowls and burritos correctly.

8 We have also leaned in and reemphasized generous portions across all of our  
9 restaurants as it is a core brand equity of Chipotle. Our guests expect this  
10 now more than ever, and we are committed to making this investment to  
11 reinforce that Chipotle stands for a generous amount of delicious, fresh food  
12 at fair prices for every customer, every visit.

13 The good news is that we are already beginning to see our actions positively  
14 reflected in our consumer scores and our value proposition remains very  
15 strong. We believe our focus on operations, including throughput as well as  
16 terrific marketing and menu innovation, have strengthened the brand and our  
17 value proposition. And we will continue to listen to and treasure our guests  
18 to earn every transaction.

19 (Emphasis added).

20 39. Brian Niccol further revealed that that the company would have  
21 higher cost of sales in the third quarter of 2024, partially as a result of giving  
22 customers more generous portions. He stated the following:

23 For Q3, we expect our cost of sales to be just below 31%. About one-third  
24 of the step-up is due to the higher protein costs as we roll out Chicken al  
25 Pastor and then launched Smoke Brisket later in the quarter.

26 About one-third is due to an uptick in dairy and avocado prices and the final  
27 one-third are about *40 to 60 basis points [SIC] is an investment we are*  
28 *making as we focus on outlier restaurants to ensure correct and generous*  
*portion.* We expect this investment will ease from these levels somewhat.  
We also believe that we can offset the remaining investment with  
efficiencies and innovation over time.

1 While avocado prices are higher than the very favorable levels we have seen  
2 over the past several quarters, this is in line with our expectations from  
3 earlier this year. Additionally, we are less impacted by the recent volatility  
4 in the Mexican avocado market, as our supply chain team has done a  
5 fantastic job of diversifying our exposure, and in the third quarter, the  
6 majority of our avocados come from Peru.

7 Outside of avocados and the protein mix shift, we anticipate underlying cost  
8 of sales inflation will be in the low single-digits range for the remainder of  
9 the year.

10 (Emphasis added).

11 40. On this news, the price of Chipotle stock fell \$0.96 per share, or  
12 1.85%, to close at \$50.82 on July 25, 2024. It fell a further \$0.99 per share, or 1.9%,  
13 to close at \$49.83 on July 26, 2024.

14 41. On October 29, 2024, after market hours, the Company held its Q3  
15 2024 earnings call. In this earnings call, interim Chief Executive Officer Scott  
16 Boatwright stated that the following:

17 Cost of sales in the quarter were 30.6%, an increase of about 90 basis points  
18 from last year. The benefit of last year's menu price increase was more than  
19 offset by inflation across several items, most notably avocados and dairy, as  
20 well as higher usage as we focused on ensuring consistent and generous  
21 portions, and the mixed impact from our premium Smoked Brisket LTO.

22 42. On October 30, 2024, during market hours, *Business Insider*  
23 published an article entitled “Chipotle says ensuring ‘consistent and generous  
24 portions’ has taken a toll on its profitability.” It stated the following:

25 It has been a big year for the humble scoop – at Chipotle, at least.

26 ***Profit margins for the chain suffered last quarter because of a concerted  
27 effort to provide “consistent and generous portions” in every order, the  
28 company said Tuesday.***

The issue was first highlighted when dissatisfied customers – protesting  
against what they saw as skimpy or inconsistent serving sizes at the

1 restaurant chain – used social media this summer to complain about their  
2 scoops of protein and to try to maximize their meals.

3 Investors noticed, with one analyst going so far as to order 75 chicken and  
4 rice bowls from eight New York City Chipotle locations and finding that the  
5 total weight of each varied considerably.

6 *All the scrutiny has prompted the burrito and bowl chain to embark on an*  
7 *initiative to ensure everyone gets a consistent meal every visit.*

8 (Emphasis added).

9 43. The article further stated that while ensuring the right portion might  
10 be “good news for Chipotle diners, *the chain said it was partly the reason for a*  
11 *hit to profitability in the last fiscal quarter.*” (Emphasis added).

12 44. On this news, the price of Chipotle stock fell \$4.76 per share, or  
13 7.86%, to close at \$55.73 on October 30, 2024.

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

17 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

18 46. Plaintiff brings this action as a class action pursuant to Federal Rule  
19 of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons  
20 other than defendants who purchased Chipotle’s common stock or purchased  
21 Chipotle call options or sold put options during the Class Period, and who were  
22 damaged thereby (the “Class”). Excluded from the Class are Defendants, the  
23 officers and directors of the Company, members of the Individual Defendants’  
24 immediate families and their legal representatives, heirs, successors or assigns and  
25 any entity in which Defendants have or had a controlling interest.

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

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

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

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

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

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

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

14 52. Plaintiff will rely, in part, upon the presumption of reliance  
15 established by the fraud-on-the-market doctrine in that:

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

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

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

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

#### 14 **COUNT I**

#### 15 **For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder** 16 **Against All Defendants**

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

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

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



1 58. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that  
2 they:

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

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

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

28

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

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

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

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

## 20 **COUNT II**

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

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

23 65. Plaintiff repeats and realleges each and every allegation contained in  
24 the foregoing paragraphs as if fully set forth herein.

25 66. During the Class Period, the Individual Defendants participated in the  
26 operation and management of the Company, and conducted and participated,  
27 directly and indirectly, in the conduct of the Company's business affairs. Because  
28

1 of their senior positions, they knew the adverse non-public information about the  
2 Company's business practices.

3 67. As officers of a publicly owned company, the Individual Defendants  
4 had a duty to disseminate accurate and truthful information with respect to the  
5 Company's financial condition and results of operations, and to correct promptly  
6 any public statements issued by the Company which had become materially false  
7 or misleading.

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

18 69. By reason of the above conduct, the Individual Defendants are liable  
19 pursuant to Section 20(a) of the Exchange Act for the violations committed by the  
20 Company.

21 **PRAYER FOR RELIEF**

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

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

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

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

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

7 **JURY TRIAL DEMANDED**

8 Plaintiff hereby demands a trial by jury.

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10 Dated: November 11, 2024

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