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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SÉBASTIEN MESLAGE, Individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

MATCH GROUP, INC., BERNARD
KIM, and GARY SWIDLER,

Defendants.

No.

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

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiff Sébastien Meslage (“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 Match Group, Inc. (“Match Group” 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 Match Group securities between May 2,
16 2023 and November 6, 2024, inclusive (the “Class Period”). Plaintiff seeks to
17 recover compensable damages caused by Defendants’ violations of the federal
18 securities 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 Match Group securities during the Class Period and
11 was economically damaged thereby.

12 7. Match Group describes itself as follows:

13 Match Group, Inc., through its portfolio companies, is a leading provider of
14 digital technologies designed to help people make meaningful connections.
15 Our global portfolio of brands includes Tinder®, Hinge®, Match®,
16 Meetic®, OkCupid®, Pairs™, Plenty Of Fish®, Azar®, BLK®, and more,
17 each built to increase our users' likelihood of connecting with others.
18 Through our trusted brands, we provide tailored services to meet the varying
19 preferences of our users.

20 8. Pertinent to this action is the Company's Tinder app. After instituting
21 policies which led to the removal of at least two million Tinder users, which in part
22 contributed to the number of monthly active users ("MAU" or "MAUs") declining,
23 the Company assured the market that it was on a path to positive MAU growth on
24 the Tinder app when in fact it was not.

25 9. The Company is incorporated in Delaware and its principal executive
26 offices are in Dallas, Texas. Tinder's headquarters is in Los Angeles, California.

27 10. The Company's stock trades on the NASDAQ under the ticker symbol
28 "MTCH."

11. Defendant Bernard Kim ("Kim") was the Company's Chief Executive
Officer ("CEO") throughout the Class Period.

1 12. Defendant Gary Swidler (“Swidler”) was the Company’s Chief
2 Financial Officer (“CFO”) and President throughout the Class Period.

3 13. Defendants Kim and Swidler are collectively referred to herein as the
4 “Individual Defendants.”

5 14. Each of the Individual Defendants:

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

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

9 (c) was privy to confidential proprietary information concerning the
10 Company and its business and operations;

11 (d) was directly or indirectly involved in drafting, producing, reviewing
12 and/or disseminating the false and misleading statements and information
13 alleged herein;

14 (e) was directly or indirectly involved in the oversight or implementation
15 of the Company’s internal controls;

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

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

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

24 16. The scienter of the Individual Defendants and other employees and
25 agents of the Company is similarly imputed to the Company under *respondeat*
26 *superior* and agency principles.

1 17. Defendant Match Group and the Individual Defendants are
2 collectively referred to herein as “Defendants.”

3
4 **SUBSTANTIVE ALLEGATIONS**

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

6 18. On May 2, 2023, the Company published its Q1 2023 shareholder
7 letter. The letter stated, in pertinent part, the following:

8
9 While Tinder is an iconic brand used by many, our data shows that
10 approximately 40% of eligible singles age 18 to 34 in North America and
11 Europe are still not using Tinder, and an additional approximately 35% have
12 used Tinder previously, but not in the last year (“lapsed users”). This
13 provides amply opportunity for Tinder to bring both singles who have never
14 tried the app and lapsed users into the fold. *Tinder has a strong history of*
15 *reactivating lapsed users, and the large pool of lapsed users provides*
16 *significant opportunity to increase reactivations. The way for Tinder to*
17 *attract new and lapsed users is to deliver exciting features and a product*
18 *experience that resonates. We’re confident that as Tinder does so, it can*
19 *both return to stronger new user growth and reactivate the large*
20 *population of lapsed users, which will ultimately drive revenue growth.*

21 (Emphasis added.)

22 19. The statement in ¶ 18 was materially false and misleading at the time
23 it was made because it understated the difficulty of driving meaningful user growth
24 in the future, considering the Company’s pool of lapsed users to reactivate.

25 20. On February 23, 2024, the Company filed with the SEC its annual
26 report on Form 10-K for the year ending December 31, 2023 (the “2023 Annual
27 Report”). Attached to the 2023 Annual Report were certifications pursuant to the
28 Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Kim and Swidler
attesting to the accuracy of financial reporting, the disclosure of any material

1 changes to the Company's internal control over financial reporting, and the
2 disclosure of all fraud.

3 21. The 2023 Annual Report included the following risk disclosure:

4 ***If we fail to retain existing users or add new users, our revenue, financial***
5 ***results, and business may be significantly harmed.***

6 ***Our financial performance has been and will continue to be significantly***
7 ***determined by our success in adding and retaining users of our services.***
8 In the past we have experienced, and expect to continue to experience,
9 fluctuations in the size of our user base in one or more markets from time to
10 time, particularly in markets where we have achieved higher penetration
11 rates. The size of our user base is also impacted by a number of other factors,
12 including competitive products and services and global and regional
13 business, macroeconomic, and geopolitical conditions. For example, wars in
the Middle East and Ukraine have led to reduced supply as well as the
decision to suspend our services in Russia.

14 ***Further, if people do not perceive our services to be useful, we may not be***
15 ***able to attract or retain users.*** In recent years, some users, particularly
16 younger generations, have shown a decreased appetite for our services and
17 those of our competitors due potentially to a number of factors. ***With each***
18 ***new generation of users, expectations of our services change and user***
19 ***behaviors and priorities shift.*** As a result, we may need to further leverage
20 our existing capabilities or advances in technologies like artificial
21 intelligence ("AI"), or adopt new technologies, to improve our existing
22 services or introduce new services in order to better satisfy existing users
23 and to expand our penetration of what continues to be a large available new
24 user market. However, there can be no assurances that further
25 implementation of technologies like AI will enhance our services or be
26 beneficial to our business and the introduction of new features or services to
27 our existing services may have unintended consequences on our ecosystem,
28 which could lead to fluctuations in the size of our user base. Additionally, in
2023 we began consolidating some of our legacy brands' platforms in order
to decrease operating costs, which may result in changes to the user
experience for some of our brands that some existing users may perceive
negatively.

1 If we are unable to maintain or increase the size of our user base, our revenue
2 and other financial results may be adversely affected. Further, as the size of
3 our user base fluctuates in one or more markets from time to time, we may
4 become increasingly dependent on our ability to maintain or increase levels
5 of monetization in order to grow revenue. Any significant decrease in user
6 retention or growth could render our services less attractive to users, which
7 is likely to have a material and adverse impact on our business, financial
8 condition, and results of operations.

9 (Emphasis added).

10 22. The statement in ¶ 21 was materially false and misleading because it
11 understated the difficulty of retaining existing users or adding new MAUs on the
12 Company's Tinder app, and omitted risks relating to gaining new users after the
13 Company had instituted policies which led to the removal of at least two million
14 Tinder users.

15 23. On May 8, 2024, the Company filed with the SEC its report on Form
16 10-Q for the period ending March 31, 2024 (the "1Q24 Report"). Attached to the
17 1Q24 Report were certifications pursuant to SOX signed by Defendants Kim and
18 Swidler attesting to the accuracy of financial reporting, the disclosure of any
19 material changes to the Company's internal control over financial reporting, and
20 the disclosure of all fraud.

21 24. The 1Q24 Report incorporated by reference the risk disclosures in the
22 2023 Annual Report, one of which was materially false and misleading when made
23 for the reasons discussed in ¶ 22.

24 25. On May 8, 2024, Match Group had its Q1 2024 earnings call. In this
25 call, Defendant Kim made the following statement:

26 Tinder's international scale and reach has never been matched by any other
27 dating app. And it's critical that we keep the ecosystem vibrant. *For
28 example, Tinder took decisive action by changing its community
guidelines and moderation practices mid-last year, which better enabled
the removal of users who are not on the app for its intended purposes.
While the improvements to the ecosystem and benefits to the brand are*

1 ***undeniable, these actions did contribute to some of Tinder's MAU declines***
2 ***over the past nine months.***

3 We believe that actions like these are in the best interest of Tinder's long-
4 term success. ***So we are willing to accept fewer MAU in the short-term*** to
5 create a safer ecosystem and better outcomes for our daters. Diving a little
6 deeper into Tinder, we have heard loud and clear that some users, especially
7 the Gen Z cohort, are looking for more from their dating apps. We have been
8 in this business a long time, and we have consistently adapted our offerings
9 to best serve the needs of different generations and we understand and
10 recognize that expectations of apps are changing.

11 ***Tinder is working tirelessly to execute against their strategy, and I'm***
12 ***incredibly confident in the team's ability to satisfy these evolving***
13 ***expectations that users have. By the end of the year, we expect to have a***
14 ***significantly improved product.*** Similarly, pressures on discretionary
15 consumer spending, especially among Tinder's younger user base, have
16 negatively impacted Tinder's a la carte revenue. The team is doubling down
17 on its efforts to improve the efficacy of its current ALC features and
18 introduce new offerings at affordable price points. We expect to see
19 improvements in ALC trends by the back half of the year. We know we have
20 work to do to satisfy every new generation of daters. The Tinder team is
21 working to improve the dating journey at every point of the experience.
22 ***Through innovation, especially with AI, we believe we can improve the***
23 ***quality of profiles, matching outcomes, safety features, and the post-match***
24 ***experience to make the entire Tinder platform more modern and deliver***
25 ***on their brand promise.***

26 I've asked our Chief Technology Officer and his central innovation team to
27 work even more closely with Tinder's product team to expedite all these
28 efforts which are underway. ***And given Tinder's vast scale and knowledge***
about relationships and dating, there is no dating app better positioned to
take advantage of these advances in technology. Tinder has become an
industry defining highly profitable business over the past decade. We have
been innovating to solve some of the user pain points. As a result, we will
have a healthier, more satisfying, and ultimately more valuable experience
for daters to enjoy.

And I am confident that Tinder's momentum will come back. We believe
we have real market opportunity and the right teams and strategies in

1 *place to get to that next level of growth.* And we are determined to deliver
2 that for all of our stakeholders. We continue to see significant growth
3 runway at Hinge and our emerging brands portfolio. *We're executing on our*
4 *turnaround plan for Tinder and our central innovation teams are bringing*
5 *renewed vigor to product innovation.* We are excited to continue this work
6 as giving people new, exciting ways to connect is what motivates us every
7 day. And with that, let me turn it over to Gary.

8 (Emphasis added).

9 26. The statement in ¶ 25 was materially false and misleading because it
10 understated the extent of Match Group's challenge with gaining monthly active
11 users on the Tinder app, after it instituted policies which led to the removal of at
12 least two million Tinder users.

13 27. On July 31, 2024, the Company held its Q2 2024 earnings call.

14 28. On the Q2 2024 earnings call, Defendant Swidler made the following
15 statement:

16 Focusing on user trends, we saw sequential stability in Tinder's MAU, which
17 were down 9% year-over-year in Q2, as was the case in Q1. MAU at Tinder
18 have now been relatively stable since March. *A large decline in MAU began*
19 *in July of last year, driven in large part by changes we made to Tinder's*
20 *trust and safety policies to remove people who are not truly on the app to*
21 *connect that has now begun to stabilize.*

22 With much of this impact now behind us and given Tinder's various ongoing
23 product and marketing initiatives, *we're confident Tinder's year-over-year*
24 *MAU declines should continue to moderate as this year passes.*

25 (Emphasis added).

26 29. The statement in ¶ 28 was materially false and misleading at the time
27 it was made because Tinder's MAU issues had not yet begun to materially stabilize.

28 30. On the Q2 2024 earnings call, Defendant Kim made the following
statement:

Over the last several quarters, Tinder has been working hard to improve the
user experience, and we're now starting to see initial signs of progress. User
and payer trends are stabilizing, and we expect them to continue to improve

1 from here. *We expect strong sequential payer growth in Q3 and better year-*
2 *over-year MAU trends in the second half of the year.*

3 As the largest dating app in the world, it's Tinder's job to deliver for its users,
4 which in turn helps attract new users. *Tinder is building on its fun legacy*
5 *and its iconic swipe experience by continuing to increase authenticity and*
6 *realness and by setting the industry standard for trust and safety.* We
7 believe this will address some of the concerns that users have been vocal
8 about more recently.

(Emphasis added).

9 31. The statement in ¶ 30 was materially false and misleading at the time
10 it was made because Tinder's MAU issues had not begun to stabilize.

11 32. The Q2 2024 earnings call included the following exchange between
12 Defendant Kim and Nathan Feather, a Morgan Stanley analyst:

13 **Feather:** Hey, everyone. *Congrats on the stabilization and Tinder user*
14 *growth in the quarter.* Is there anything outsized that led to that stabilization
15 or more so stacking of a variety of individual improvements? And can you
16 help us contextualize how much of that is due to new user trends versus
17 retention? Thank you.

18 **Kim:** Thanks, Nathan, for that question. I really like how you framed it
19 around stacking Tinder product improvements. Our work is really a
20 combination of product initiatives building on each other over time. And this
21 is reinforced with really strong marketing that is helping drive stabilization
22 and start contributing to improvements on the back half of this year. The
23 trust and safety moves that we made last year are one of -- is a great example
24 of stacking initiatives, which we know were the right decisions. And the
25 good news is we've worked through a lot of those -- a lot of that noise and
26 has led to better user outcomes and say that the user base has stabilized,
27 retention is improving and growing and we're making strides in top of funnel
28 again. It's a really exciting time period for Tinder.

(Emphasis added).

1 33. The statement from Defendant Kim in ¶ 32 was materially false and
2 misleading at the time it was made because Tinder’s MAU issues had not begun to
3 stabilize.

4 34. On August 1, 2024, the Company filed with the SEC its report on
5 Form 10-Q for the period ending June 30, 2024 (the “2Q24 Report”). Attached to
6 the 2Q24 Report were certifications pursuant to SOX signed by Defendants Kim
7 and Swidler attesting to the accuracy of financial reporting, the disclosure of any
8 material changes to the Company’s internal control over financial reporting, and
9 the disclosure of all fraud.

10 35. The 2Q24 Report incorporated by reference the risk disclosures in the
11 2023 Annual Report, one of which was materially false and misleading when made
12 for the reasons discussed in ¶ 22.

13 36. The statements contained in ¶¶ 18, 21, 24, 25, 28, 30 and 32 were
14 materially false and/or misleading because they misrepresented and failed to
15 disclose the following adverse facts pertaining to the Company’s business,
16 operations and prospects, which were known to Defendants or recklessly
17 disregarded by them. Specifically, Defendants made false and/or misleading
18 statements and/or failed to disclose that: (1) Match Group materially understated
19 the challenges affecting Tinder and, as a result, understated the risk that Tinder’s
20 monthly active user count would not recover by the time the Company reported its
21 financial results for the third quarter of 2024; and (2) as a result, defendants’
22 statements about Match Group’s business, operations, and prospects were
23 materially false and misleading and/or lacked a reasonable basis at all relevant
24 times.

25 **THE TRUTH BEGINS TO EMERGE**

26 37. On November 6, 2024, Match Group published its Q3 2024
27 shareholder letter. The shareholder letter included the following disclosure:
28

1 Tinder MAU was down 9% Y/Y in Q3, which was the same rate of decline
2 as in Q2, falling short of our expectations for continued improvement in Y/Y
3 trends. From mid-September through October, we saw more pressure on
4 new users (registrations and reactivations) than we expected, which has led
5 to pressure on MAU.

6 Tinder's primary focus remains driving its product transformation efforts
7 forward to improve ecosystem health and user outcomes, which we believe
8 are necessary for durable improvements in user, Payer, and revenue trends.

9 38. On November 7, 2024, Investopedia published an article entitled
10 "Match Group Stock Slips as Fourth Quarter Outlook Disappoints." This article
11 stated, in pertinent part, the following:

12 Shares of online dating giant [Match] tumbled Thursday morning despite a
13 third-quarter earnings beat released after the bell Wednesday.

14 * * *

15 Revenue and downloads of Hinge continued to grow, *but Match said Tinder*
16 *Direct revenue came in below its own expectations, as the app's monthly*
17 *active users (MAUs) declined 9% from the same time last year and its*
18 *revenue per payer (RPP) grew less than expected. Some new features*
19 *tested with Tinder users in the quarter negatively impacted subscription*
20 *revenue, which the company said will likely also have an impact on fourth*
21 *quarter revenue.*

22 (Emphasis added).

23 39. On the accompanying Q3 2024 earnings call on November 7, 2024,
24 Bernard Kim made the following statement about Tinder:

25 As I mentioned during our last call, shareholders rightfully expect both short
26 and long-term results. In the short-term, Tinder's direct revenue was slightly
27 below our expectations driven by the under delivery of certain optimizations.
28 However, Tinder added 311,000 payers sequentially and declined by only
4% year-over-year. This was well above our outlook provided in late July.

While we're pleased with the results on payers, we saw less progress on
Tinder MAU than we expected. Tinder remains focused on the long-term

1 testing several important new features aimed at cleaning up its ecosystem
2 and improving user outcomes. This includes testing mandated face photos in
3 several markets.

4 * * *

5 We're pleased with the progress we've seen recently at Tinder on product
6 execution, but are far from done. The team is working tirelessly pushing
7 forward with initiatives to drive Tinder's transformation forward. *At the
8 same time, we're clear eyed that Tinder's progress will not always be linear
because we know that transformation, such as these, take time.*

9 (Emphasis added).

10 40. On the same earnings call, Defendant Swidler stated the following:

11 Tinder MAU were down 9% in the quarter consistent with Q2 trends. *We
12 had expected to see improvement in year-over-year MAU trends in the
13 quarter. However, in mid-September, we began to see weaker new user
14 trends, which includes new registrations and reactivations of lapsed users
than is typical at this time of year*, a trend that has stabilized in October.

15 The pressure on new users was largely confined to iOS. We are working
16 collaboratively with Apple to investigate whether it's related to the
17 introduction of iOS 18 in mid-September, certain trust and safety
18 enhancements we made or another cause. *This in turn has caused pressure
19 on Tinder MAU.* We are working on a number of initiatives to improve this
20 trend.

21 (Emphasis added).

22 41. The Q3 2024 earnings call included the following exchange,
23 illustrating the number of challenges continuing to affect Tinder:

24 **Analyst:** Great. So I guess, Gary, starting with the Tinder top of funnel
25 trends, could you just elaborate a little bit more on what's going on? You
26 mentioned iOS and a few other things around top of funnel and the weaker
27 MAU at the end of 3Q and then what's happening right now in 4Q? And as
28 we turn ahead to '25, other than cranking on marketing, what other trends
might help drive top of funnel at Tinder? And I guess it's related to this, did

1 you feel like Tinder's operating margin at 52% is at the right level or how do
2 we think about that long-term? Thank you.

3 **Bernard Kim:** Thanks, Ross. This is BK. I'm going to handle the first part
4 of that question and Gary can jump in on the margin side. So we did see a
5 step back in Tinder's MAU growth starting in mid-September. And as Gary
6 mentioned in his comments, we're investigating several possible causes.
7 This includes the introduction of iOS 18 and some recent trust and safety
8 enhancements that may have added to friction for daters. While I believe this
9 step back isn't what we wanted, we don't see this as a long-term structural
10 shift. Our team's top priority remains driving product innovation and that's
11 where Tinder's focus is. We know we need to clean up the ecosystem and
12 create better experiences, especially for younger users and women and we're
13 working on it, but meaningful changes do take time. Now you mentioned
14 marketing and it's definitely key to reinforce Tinder's brand and promoting
15 new products. But marketing alone will not drive top of funnel growth.
16 That's why our focus is on product-led strategies to build sustainable
17 engagement. We're excited for Investor Day, so we can lay out our product
18 roadmap and discuss our plans to get Tinder back on track. We're confident
19 in these plans.

20 42. On this news, the price of Match stock fell by \$6.77 per share, or
21 17.8%, to close at \$31.11 per share on November 7, 2024.

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

25 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

28

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

4 51. 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 52. 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 53. Plaintiff repeats and realleges each and every allegation contained
18 above as if fully set forth herein.

19 54. 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 55. 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 56. 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 57. 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 58. 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 59. 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 60. 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 61. 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 62. 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 63. Plaintiff repeats and realleges each and every allegation contained in
24 the foregoing paragraphs as if fully set forth herein.

25 64. 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 65. 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 66. 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 67. 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: 11/25/2024

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