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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

____, Individually and on behalf of all
others similarly situated,

Plaintiff,

v.

TOYOTA MOTOR CORPORATION,
KOJI SATO, YOICHI MIYAZAKI,
AKIO TOYODA, and KENTA KON

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 persons
2 similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
3 complaint against Defendants (defined below), alleges the following based upon
4 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and
5 belief as to all other matters, based upon, among other things, the investigation
6 conducted by and through Plaintiff’s attorneys, which included, among other
7 things, a review of the Defendants’ public documents, public filings, wire and press
8 releases published by and regarding Toyota Motor Corporation (“Toyota” 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 Toyota securities between June 23, 2022 and
16 June 2, 2024, inclusive (the “Class Period”). Plaintiff seeks to recover compensable
17 damages caused by Defendants’ violations of the federal securities laws under the
18 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 Toyota securities during the Class Period and was
11 economically damaged thereby.

12 7. Defendant Toyota is a Japanese car company.

13 8. Toyota is incorporated in Japan and its head office located at 1
14 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its American
15 headquarters are located at 6565 Headquarters Drive, Plano, Texas 75024. Toyota
16 has offices at 1630 W. 186th St. Gardena, California 90248-3807.

17 9. Toyota American Depositary Shares (“ADS”) trade on the New York
18 Stock Exchange (the “NYSE”) under the ticker symbol “TM”

19 10. Defendant Koji Sato (“Sato”) has served as the Company’s Chief
20 Executive Officer (“CEO”) since April 2023.

21 11. Defendant Yoichi Miyazaki (“Miyazaki”) has served as the
22 Company’s Chief Financial Officer (“CFO”) since April 2023. He also serves as
23 Chief Competitive Officer and on the Board of Directors (the “Board”)

24 12. Defendant Akio Toyoda (“Toyoda”) is the Chairman of the
25 Company’s Board of Directors and was previously a member of the Board.

26 13. Defendant Kenta Kon (“Kon”) served on the Board through April 1,
27 2023.

28

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

2 19. On June 23, 2022, the Company filed with the SEC its Annual Report
3 on Form 20-F for the fiscal year ended March 31, 2022 (the “2022 Annual
4 Report”). Attached to the 2022 Annual Report were certifications pursuant to the
5 Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Toyoda and Kon
6 attesting to the accuracy of any material changes to the Company’s internal control
7 over financial reporting, and the disclosure of all fraud.

8 20. The 2022 Annual Report contained the following risk disclosure
9 regarding the Company’s brand image:

10 *Toyota’s success is significantly impacted by its ability to maintain and*
11 *develop its brand image.*

12 In the highly competitive automotive industry, it is critical to maintain and
13 develop a brand image. In order to maintain and develop a brand image, it is
14 necessary to further increase customers’ confidence by providing safe, high-
15 quality products that meet customer preferences and demand. If Toyota is
16 unable to effectively maintain and develop its brand image as a result of such
17 reasons as its inability to provide safe, high-quality products or as a result of
18 the failure to promptly implement safety measures such as recalls when
19 necessary, vehicle unit sales and/or sale prices may decrease, and as a result
20 revenues and profits may not increase as expected or may decrease,
21 adversely affecting its financial condition and results of operations.

22 21. The statement in ¶ 20 was materially false and misleading because it
23 omitted that malfeasance relating to certification of the Company’s cars, including
24 for safety, posed a risk to its brand.

25 22. The 2022 Annual Report contained the following risk regarding
26 government regulations and actions:

27 *The automotive industry is subject to various governmental regulations*
28 *and actions.*

 The worldwide automotive industry is subject to various laws and
governmental regulations including those related to vehicle safety and
environmental matters such as emission levels, fuel economy, noise and

1 pollution. In particular, automotive manufacturers such as Toyota are
2 required to implement safety measures such as recalls for vehicles that do
3 not or may not comply with the safety standards of laws and governmental
4 regulations. In addition, Toyota may, in order to reassure its customers of
5 the safety of Toyota's vehicles, decide to voluntarily implement recalls or
6 other safety measures even if the vehicle complies with the safety standards
7 of relevant laws and governmental regulations. If Toyota launches products
8 that result in safety measures such as recalls (including where parts related
9 to recalls or other measures were procured by Toyota from a third party),
10 Toyota may incur various costs including significant costs for free repairs.
11 Many governments also impose tariffs and other trade barriers, taxes and
12 levies, or enact price or exchange controls. Toyota has incurred significant
13 costs in response to governmental regulations and actions, including costs
14 relating to changes in global trade dynamics and policies, and expects to
15 incur such costs in the future. **Furthermore, new legislation or regulations
16 or changes in existing legislation or regulations may also subject Toyota
17 to additional costs in the future. If Toyota incurs significant costs related
18 to implementing safety measures or responding to laws, regulations and
19 governmental actions, Toyota's financial condition and results of
20 operations may be adversely affected.**

(Emphasis added).

21 23. The statement in ¶ 22 was materially false and misleading because it
22 understated the risk of government action affecting the Company, considering its
23 malfeasance relating to certification of its cars.

24 24. The 2022 Annual Report contained the following risk disclosure
25 regarding litigation risk:

26 As an automotive manufacturer, Toyota may become subject to legal
27 proceedings in respect of various issues, including issues relating to the
28 topics discussed in “—The automotive industry is subject to various
governmental regulations and actions,” as well as product liability and
infringement of intellectual property. Toyota may also be subject to legal
proceedings brought by its shareholders and governmental proceedings and
investigations. Toyota is in fact currently subject to a number of pending
legal proceedings and government investigations. A negative outcome in
one or more of these pending legal proceedings could adversely affect
Toyota's reputation, brand image, financial condition and results of
operations. For a further discussion of governmental regulations, see

1 “Information on the Company — Business Overview — Governmental
2 Regulation, Environmental and Safety Standards” and for legal proceedings,
3 please see “Information on the Company — Business Overview — Legal
4 Proceedings.”

5 25. The statement in ¶ 24 was materially false and misleading because it
6 understated the Company’s litigation risk, considering its malfeasance relating to
7 certification of its cars.

8 26. The 2022 Annual Report contained the following statement regarding
9 malfeasance at Hino Motors, Ltd. (“Hino”), of which Toyota owns a majority
10 stake:

11 On March 4, 2022, Hino Motors, Ltd., a publicly traded Japanese company
12 that produces and sells commercial trucks and buses, and of which Toyota
13 owns 50.18% of the voting interests as of March 31, 2022, ***disclosed that it
14 had voluntarily commenced an investigation into potential issues
15 regarding emissions performance and certification in the North American
16 and Japanese markets***, and that it has reported such issues to and is
17 cooperating with the relevant authorities, including the Japanese Ministry of
18 Land, Infrastructure, Transport and Tourism (“MLIT”) and the U.S.
19 Department of Justice. Hino announced that, through such investigation, ***it
20 identified past misconduct in relation to its applications for certification
21 concerning the emissions and the fuel economy performance of certain of
22 its engines for the Japanese market***. Accordingly, Hino disclosed that it
23 decided to suspend the sale of such engine models and their corresponding
24 vehicles in Japan and announced on March 25, 2022 a recall of vehicles
25 equipped with one of the engines. On March 29, 2022, MLIT announced
26 that it had revoked certain of the “type approvals” (that is, approvals that
27 exempt new vehicles or vehicles with certain equipment from individual
28 testing by government inspectors prior to sale) and the fuel consumption
ratings relating to such engine models. Investigations by governmental
authorities related to these matters could result in the imposition of civil or
criminal penalties, fines or other sanctions, or litigation. Toyota cannot
predict the scope, duration, or outcome of these matters at this time.

(Emphasis added).

1 27. The statement in ¶ 26 was materially false and misleading because it
2 gave the impression that malfeasance relating to certification of the Company’s
3 vehicles was isolated to past misconduct at Hino.

4 28. On June 30, 2023, the Company filed with the SEC its Annual Report
5 on Form 20-F for the fiscal year ended March 31, 2023 (the “2023 Annual
6 Report”). Attached to the 2023 Annual Report were certifications pursuant to SOX
7 signed by Defendants Sato and Miyazaki attesting to the accuracy of any material
8 changes to the Company’s internal control over financial reporting, and the
9 disclosure of all fraud.

10 29. The 2023 Annual Report contained the following statement:

11 ***Toyota’s success is significantly impacted by its ability to maintain and***
12 ***develop its brand image and reputation.***

13 In the highly competitive automotive industry, it is critical to maintain and
14 develop a brand image and reputation. In order to do so, it is necessary to
15 further increase stakeholders’ confidence by ensuring that the Toyota group
16 and its suppliers thoroughly comply with laws and regulations, provide safe,
17 high-quality products that meet customer preferences and demand, as well
18 as timely and appropriately disseminate information to stakeholders. It is
19 also becoming increasingly important for companies to contribute to
20 sustainability.

21 However, the Toyota group may not be able to ensure that it or its suppliers
22 do so in all cases. Concerns regarding product safety or our product safety
23 validation processes, whether raised internally, by regulators, or consumer
24 advocates, can lead to product delays, recalls, lost sales, regulatory
25 investigations, legal claims that cause reputational damage. ***For example,***
26 ***on March 4, 2022, Hino Motors, Ltd. (“Hino”), a consolidated subsidiary***
27 ***of Toyota, confirmed and announced misconduct in relation to its***
28 ***applications for certification concerning the emissions and the fuel***
 economy performance of certain of its engines for the Japanese market.
 Additionally, ***Daihatsu Motor Co., Ltd. (“Daihatsu”), a consolidated***
 subsidiary of Toyota, confirmed and announced misconduct in relation to
 its applications for certification concerning safety tests of certain of its
 vehicles for the overseas market on April 28, 2023 for vehicles developed

1 *by Daihatsu.* See “Item 4. Information on the Company — 4.B Business
2 Overview — Selected Initiatives” for further discussion of these and related
3 matters. In addition, actual or perceived failures on the part of Toyota or its
4 suppliers to contribute to sustainability or to meet certain sustainability-
5 related goals or objectives, including those relating to climate change or the
6 protection of human rights in Toyota’s supply chain, may also harm
7 Toyota’s reputation. Any insufficient measures taken by the Toyota group
8 or its suppliers to maintain and develop Toyota’s brand image and reputation
9 may have an adverse effect on Toyota’s financial condition and results of
10 operations.

11 (Emphasis added).

12 30. The statement in ¶ 29 was materially false and misleading because it
13 omitted that Toyota itself had improperly submitted data as part of the Japanese
14 government’s certification process, in addition to two of its subsidiaries.

15 31. The 2023 Annual Report contained the following statement:

16 ***Misconduct of Hino and Daihatsu in Relation to their Applications for***
17 ***Certification***

18 ***On March 4, 2022, Hino, a consolidated subsidiary of Toyota, announced***
19 ***that it identified past misconduct in relation to its applications for***
20 ***certification concerning emissions and the fuel economy performance of***
21 ***its vehicle engines for the Japanese market.*** Hino subsequently received an
22 investigation report from a special investigation committee consisting of
23 outside experts concerning this matter. Hino also was subject to an on-
24 site inspection from the Ministry of Land, Infrastructure, Transport and
25 Tourism (“MLIT”), and received a corrective action order from it. On
26 October 7, 2022, Hino submitted a recurrence prevention report to MLIT.
27 To clarify management responsibility regarding this matter, Hino decided to
28 have four persons who were directors or senior managing officers resign,
reduce the remuneration of directors, and request the voluntary return of part
of the remuneration of certain past representative directors. Further, Hino
formulated and announced “Three Reforms,” namely reforms to
management, corporate culture and vehicle manufacturing, to prevent future
misconduct. Hino is committed to addressing this issue head on and living
out with renewed intent its corporate mission: “We make a better world and
future by helping people and goods get where they need to go.” See “Item
4. Information on the Company — 4.B Business Overview — Legal

1 Proceedings” for a discussion of related legal proceedings, including
2 government investigations and actions.

3 ***Furthermore, on April 28, 2023, Daihatsu announced and disclosed that***
4 ***it had committed procedural irregularities in approval applications for***
5 ***side collision tests for vehicles developed by Daihatsu destined for overseas***
6 ***markets. During the subsequent in-house inspection, it was newly***
7 ***discovered and announced that Daihatsu identified irregularities in the***
8 ***certification procedures for the side impact collision tests of Daihatsu***
9 ***ROCKY HEVs and Toyota RAIZE HEVs.*** The irregularities were promptly
10 reported to, and consultations were undertaken, with the inspection and
11 certification authorities after they were discovered, and shipments and sales
12 of the vehicles at issue were suspended in the countries in which approval
13 had been granted. In addition, Daihatsu has confirmed and reported that the
14 vehicles at issue conform to laws and regulations in in-house re-tests using
15 proper parts. Daihatsu has established a third-party committee consisting of
16 external experts in legal and technical matters to fully clarify the nature of
17 the irregularities and identify their root cause; it has also asked the
18 committee to recommend measures to prevent the recurrence of similar
19 irregularities by examining the company’s organization and development
20 processes.

21 In the wake of the large-scale recalls that occurred in 2009, Toyota promised
22 its customers around the world that it would not “run away, hide, or lie.”
23 Given this, we take very seriously the fact that these problems nevertheless
24 occurred in our group. For this matter, as the chief executive officer,
25 Toyota’s President will further strive to improve the car manufacturing
26 operations of Toyota and the group companies, while the Chairman of the
27 Board of Toyota will lead initiatives to strengthen governance and
28 compliance.

29 ***On May 12, 2023, the top management of each group company gathered***
30 ***to discuss Toyota’s commitment to facing manufacturing with sincerity***
31 ***and renewed our recognition of this goal. We are currently working with***
32 ***all of our group companies to re-examine our past governance structure,***
33 ***including our own, and have begun a thorough review.*** We view this case
34 not as an individual or workplace issue, but rather a company-wide issue
35 where an individual or workplace was forced to commit a wrongdoing.
36 Together with Daihatsu, we are committed to listening to the voices of those
37 on the front lines and carefully responding to the situation.

1 At Toyota worksites, everyone is committed to making better cars. Toyota
2 is a company where, when a problem occurs, everyone always stops, pursues
3 the root cause by going and seeing the location or process where the problem
4 exists, makes improvements, and works to prevent recurrence. This is the
5 Toyota philosophy that has been cherished since the company's founding.
6 We believe that there is no other way to regain the trust of our customers
7 than for all of Toyota and its group companies to return to this philosophy
8 once again, for each group company's top management to confront the
9 problems at their respective workplaces, uncover them, and make
10 improvements one by one, and continue this steady effort. The entire Toyota
11 group will work together to regain trust of our customers as soon as possible.

12 (Emphasis added).

13 32. The statement in ¶ 31 was materially false and misleading because it
14 omitted that Toyota itself had submitted incorrect data during the certification
15 process for certain vehicles, in addition to two of its subsidiaries.

16 33. The statements contained in ¶¶ 20, 22, 24, 26, 29 and 31 were
17 materially false and/or misleading because they misrepresented and failed to
18 disclose the following adverse facts pertaining to the Company's business,
19 operations and prospects, which were known to Defendants or recklessly
20 disregarded by them. Specifically, Defendants made false and/or misleading
21 statements and/or failed to disclose that: (1) Toyota understated its malfeasance
22 relating to certification of its cars and issues relating to overall legal compliance;
23 and (2) as a result, Defendants' statements about its business, operations, and
24 prospects, were materially false and misleading and/or lacked a reasonable basis at
25 all times.

26 **THE TRUTH EMERGES**

27 34. On June 3, 2024, before the market opened, Toyota filed with the SEC
28 a current report on Form 6-K. Attached to this current report was an English
translation of an announcement that Toyota had filed with the Tokyo Stock
Exchange on June 3, 2024. The announcement stated the following:

1 Toyota Motor Corporation (Toyota) *investigated its model certification*
2 *applications as per instructions from the Ministry of Land, Infrastructure,*
3 *Transport and Tourism (MLIT) on January 26 this year.* Although the
4 investigation is still in progress, seven models, including some that have
5 already been discontinued since 2014, were tested using methods that
6 differed from the government standards, and we reported this to MLIT on
7 May 31.

8 The model certification applications in question involve inadequate data in
9 pedestrian and occupant protection tests for three production models
10 (Corolla Fielder/Axio and Yaris Cross) and errors in crash tests and other
11 test methods for four discontinued models (Crown, Isis, Sienta, and RX).

12 We sincerely apologize for any concern or inconvenience this may cause to
13 our customers and stakeholders who have placed their trust in Toyota. *We*
14 *take it seriously that the problem was discovered at Toyota following the*
15 *recent discovery of certification issues at Hino Motors, Ltd. and Daihatsu*
16 *Motor Co., Ltd. and Toyota Industries Corporation.*

17 Following comprehensive internal verifications on the affected vehicles,
18 including those that are no longer in production, we can confirm that there
19 are no performance issues that contravene laws and regulations. Therefore,
20 there is no need to stop using the affected vehicles. However, considering
21 these findings, we have taken action to temporarily halt shipments and sales
22 of three models currently produced in Japan (Corolla Fielder, Corolla Axio,
23 and Yaris Cross), effective today. We will continue to provide detailed
24 explanations to the authorities and expedite appropriate measures, including
25 conducting testing in the presence of witnesses.

26 In January this year, we announced the Toyota Group Vision, “Inventing our
27 path forward, together.” We will continue to work on making “ever-better
28 cars” in a genba where employees have authority, which is a unique Toyota
corporate culture.

Again, we extend our sincere apologies to our customers and stakeholders.

(Emphasis added).

1 But, Mr. Aoyama [a senior director at Fitch Ratings] said, “*there has long*
2 *been a perception of the superior manufacturing and quality of Japanese*
3 *products and with these instances of fraud appearing again and again,*
4 *perceptions may be beginning to change.*”

5 In addition to the problems Toyota found involving three current models, *it*
6 *discovered errors in crash tests and other tests for four models it had*
7 *discontinued.*

8 * * *

9 Mr. Toyoda said he was working with Toyota group companies to identify
10 problems with internal certification processes and work structures, and had
11 made several trips to visit their work sites himself. “We will carry out
12 concrete improvements,” he said.

13 *Japan’s transport ministry said it would conduct an inspection at Toyota*
14 *headquarters on Tuesday to follow up on the latest disclosures.*

15 (Emphasis added).

16 37. On the same day, the Associated Press released an article entitled
17 “Toyota apologizes for cheating on vehicle testing and halts production of three
18 models.” It stated the following:

19 Toyota Chairman Akio Toyoda apologized Monday for massive cheating on
20 certification tests for seven vehicle models as the automaker suspended
21 production of three of them.

22 *The wide-ranging fraudulent testing at Japan’s top automaker involved*
23 *the use of inadequate or outdated data in collision tests, and incorrect*
24 *testing of airbag inflation and rear-seat damage in crashes. Engine power*
25 *tests were also found to have been falsified.*

26 [Toyota] suspended production in the country of the Corolla Fielder, Corolla
27 Axio and Yaris Cross. The deceptive tests were also found on discontinued
28 models.

* * *

1 “We sincerely apologize,” Toyoda told reporters, bowing deeply and
2 holding the position for several seconds, as is customary in Japan at news
3 conferences where companies apologize for misbehavior.

4 (Emphasis added).

5 38. On this news, the price of Toyota American Depositary Shares
6 (“ADSs”) fell by \$5.34 per ADS, or 2.45%, to close at \$212.17 per ADS on June
7 3, 2024.

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

11 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

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

20
21 41. The members of the Class are so numerous that joinder of all members
22 is impracticable. Throughout the Class Period, the Company’s securities were
23 actively traded on NYSE. While the exact number of Class members is unknown
24 to Plaintiff at this time and can be ascertained only through appropriate discovery,
25 Plaintiff believes that there are hundreds, if not thousands of members in the
26 proposed Class.

1 42. 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 43. 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 44. 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 45. 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 46. 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 47. 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

27
28

1 Plaintiff and the members of the Class are entitled to a presumption of reliance
2 upon the integrity of the market.

3 48. 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 49. Plaintiff repeats and realleges each and every allegation contained
12 above as if fully set forth herein.

13 50. 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 51. 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 52. 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 53. 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 54. 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 55. 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
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1 securities at prices that were artificially inflated as a result of Defendants' false and
2 misleading statements.

3 56. 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 57. 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 58. 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 59. Plaintiff repeats and realleges each and every allegation contained in
19 the foregoing paragraphs as if fully set forth herein.

20 60. 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 business practices.

25 61. 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
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1 any public statements issued by the Company which had become materially false
2 or misleading.

3 62. 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 63. 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
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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 **JURY TRIAL DEMANDED**

4 Plaintiff hereby demands a trial by jury.
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