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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Plaintiff,  
  
v.  
  
GDS HOLDINGS LIMITED,  
WILLIAM WEI HUANG, and  
DANIEL NEWMAN,  
  
Defendants.

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

1 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 GDS Holdings Limited ("GDS" or the "Company"),  
9 and information readily obtainable on the Internet. Plaintiff believes that  
10 substantial evidentiary support will exist for the allegations set forth herein after a  
11 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 GDS securities between April 12, 2021 and  
16 April 3, 2023, inclusive (the "Class Period"). Plaintiff seeks to recover  
17 compensable damages caused by Defendants' violations of the federal securities  
18 laws under the Securities Exchange Act of 1934 (the "Exchange Act").

### 19 **JURISDICTION AND VENUE**

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

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

26 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §  
27 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged  
28

1 misstatements entered and the subsequent damages took place in this judicial  
2 district.

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

### 8 PARTIES

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

12 7. GDS purports to be “a leading developer and operator of high-  
13 performance data centers in China and South East Asia.”

14 8. The Company is incorporated in the Cayman Islands and its principal  
15 place of business is located at F4/F4, Building C, Sunland International No. 999  
16 Zhouhai Road, Pudong, Shanghai 200137, People’s Republic of China (“China”).  
17 GDS’s American Depositary Shares (“ADS” or “ADSs”) trade on the NASDAQ  
18 exchange under the ticker symbol "GDS".

19 9. Defendant William Wei Huang (“Huang”) is the Company’s founder,  
20 Chief Executive Officer (“CEO”) and Chairman of the Board of Directors (the  
21 “Board”).

22 10. Defendant Daniel Newman (“Newman”) has served as the  
23 Company’s Chief Financial Officer (“CFO”) since 2011.

24 11. Defendants Huang and Newman are collectively referred to herein as  
25 the “Individual Defendants.”

26 12. Each of the Individual Defendants:

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

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

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

18 14. The scienter of the Individual Defendants and other employees and  
19 agents of the Company is similarly imputed to GDS under *respondeat superior* and  
20 agency principles.

21 15. Defendant GDS and the Individual Defendants are collectively  
22 referred to herein as "Defendants."

23  
24 **SUBSTANTIVE ALLEGATIONS**

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

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1           16. On April 12, 2021, the Company filed with the SEC its Annual Report  
2 on Form 20-F for the year ended December 31, 2020 (the “2020 Annual Report”).  
3 Attached to the 2020 Annual Report were signed certifications pursuant SOX  
4 signed by Defendants Huang and Newman attesting to the accuracy of financial  
5 reporting, the disclosure of any material changes to the Company’s internal  
6 controls over financial reporting, and the disclosure of all fraud.

7           17. The 2020 Annual Report contained the following statement about  
8 Defendant Huang’s Company ownership:

9           ***Our corporate actions are substantially controlled by our principal***  
10 ***shareholders, including our founder, chairman and chief executive***  
11 ***officer, Mr. Huang, who have the ability to control or exert***  
12 ***significant influence over important corporate matters that require***  
13 ***approval of shareholders, which may deprive you of an opportunity***  
14 ***to receive a premium for your ADSs and/or ordinary shares and***  
***materially reduce the value of your investment.***

15           Our amended articles of association provide that Class B ordinary  
16 shares are entitled to 20 votes per ordinary share at general meetings  
17 of our shareholders with respect to the election or removal of a simple  
18 majority of our directors. ***Mr. Huang beneficially owns 100% of the***  
19 ***Class B ordinary shares issued and outstanding, and any additional***  
20 ***Class A ordinary shares which Mr. Huang directly or indirectly***  
21 ***acquires may be converted into Class B ordinary shares.*** In addition,  
22 for so long as there are Class B ordinary shares outstanding, the Class  
23 B shareholders are entitled (i) to nominate one less than a simple  
24 majority, or five, of our directors, and (ii) to have 20 votes per  
25 ordinary share with respect to the election and removal of a simple  
26 majority, or six, of our directors. In addition, our amended articles of  
27 association provide that STT GDC (a wholly owned subsidiary of  
28 STT Communications Ltd., or STTC, which is in turn a wholly owned  
subsidiary of Singapore Technologies Telemedia Pte Ltd, or ST  
Telemedia), has the right to appoint up to three directors to our board  
of directors for so long as they beneficially own certain percentages  
of our issued share capital. Such appointments will not be subject to  
a vote by our shareholders. See “Item 6. Directors, Senior

1 Management and Employees—C. Board Practices—Appointment,  
2 Nomination and Terms of Directors.”

3 Furthermore, as of March 31, 2021, two of our principal  
4 shareholders—*STT GDC and Mr. Huang, our founder, chairman*  
5 *and chief executive officer—beneficially owned approximately*  
6 *34.5% of our outstanding Class A ordinary shares and 100% of our*  
7 *outstanding Class B ordinary shares, respectively.* On matters where  
8 Class A and Class B ordinary shares vote on a 1:1 basis, STT GDC  
9 exercises 32.2% of the aggregate voting power. *On matters where*  
10 *Class A and Class B ordinary shares vote on a 1:20 basis, Mr.*  
11 *Huang exercises 49.3% of the aggregate voting power.*

12 As a result of these appointment rights, nomination rights, dual-class  
13 ordinary share structure and ownership concentration, these  
14 shareholders have the ability to control or exert significant influence  
15 over important corporate matters, investors may be prevented from  
16 affecting important corporate matters involving our company that  
17 require approval of shareholders, including:

- 18 ● the composition of our board of directors and, through it, any  
19 determinations with respect to our operations, business direction and  
20 policies, including the appointment and removal of officers;
- 21 ● any determinations with respect to mergers or other business  
22 combinations;
- 23 ● our disposition of substantially all of our assets; and
- 24 ● any change in control.

25 (Emphasis added).

26 18. This statement was materially false and misleading. By the time the  
27 2020 Annual Report was filed with the SEC, in April 2021, Huang may have  
28 literally owned 34.5% of the outstanding Class A ordinary shares, and 100% of the  
Class B shares, but starting in May 2020 he had started engaging in pre-paid  
forward sale contract transactions which, as the Company later noted, could drive  
his beneficial ownership interest in the Company’s total issued share capital below  
5%.

1           19. On April 28, 2022, and the Company filed with the SEC its Annual  
2 Report on Form 20-F for the year ended December 31, 2021 (the “2021 Annual  
3 Report”). Attached to the 2021 Annual Report were signed certifications pursuant  
4 SOX signed by Defendants Huang and Newman attesting to the accuracy of  
5 financial reporting, the disclosure of any material changes to the Company’s  
6 internal controls over financial reporting, and the disclosure of all fraud.

7           20. The 2021 Annual Report contained the following statement about  
8 Defendant Huang’s equity ownership:

9  
10           ***Our corporate actions are substantially controlled by our principal***  
11           ***shareholders, including our founder, chairman and chief executive***  
12           ***officer, Mr. Huang, who have the ability to control or exert***  
13           ***significant influence over important corporate matters that require***  
14           ***approval of shareholders, which may deprive you of an opportunity***  
                  ***to receive a premium for your ADSs and/or ordinary shares and***  
                  ***materially reduce the value of your investment.***

15           Our Articles of Association provide that Class B ordinary shares are  
16 entitled to 20 votes per ordinary share at general meetings of our  
17 shareholders with respect to the election or removal of a simple  
18 majority of our directors. Mr. Huang beneficially owns 100% of the  
19 Class B ordinary shares issued and outstanding, and any additional  
20 Class A ordinary shares which Mr. Huang directly or indirectly  
21 acquires may be converted into Class B ordinary shares. In addition,  
22 for so long as there are Class B ordinary shares outstanding, the Class  
23 B shareholders are entitled (i) to nominate five of our directors, and  
24 (ii) to have 20 votes per ordinary share with respect to the election  
25 and removal of a simple majority, or six, of our directors. In addition,  
26 our Articles of Association provide that STT GDC (a wholly owned  
27 subsidiary of STT Communications Ltd., or STTC, which is in turn a  
28 wholly owned subsidiary of Singapore Technologies Telemedia Pte  
Ltd, or ST Telemedia), has the right to appoint up to three directors to  
our board of directors for so long as they beneficially own certain  
percentages of our issued share capital. Such appointments will not  
be subject to a vote by our shareholders. See “Item 6. Directors,

1 Senior Management and Employees—C. Board Practices—  
2 Appointment, Nomination and Terms of Directors.”

3 *Furthermore, as of April 15, 2022, two of our principal*  
4 *shareholders—STT GDC and Mr. Huang, our founder, chairman*  
5 *and chief executive officer—beneficially owned approximately*  
6 *36.4% of our outstanding Class A ordinary shares and 100% of our*  
7 *outstanding Class B ordinary shares, respectively.* On matters where  
8 Class A and Class B ordinary shares vote on a 1:1 basis, STT GDC  
9 exercises 31.9% of the aggregate voting power. On matters where  
10 Class A and Class B ordinary shares vote on a 1:20 basis, Mr. Huang  
11 exercises 49.2% of the aggregate voting power. For more details, see  
12 “Item 6. Directors, Senior Management and Employees—E. Share  
13 Ownership.”

14 As a result of these appointment rights, nomination rights, dual-class  
15 ordinary share structure and ownership concentration, these  
16 shareholders have the ability to control or exert significant influence  
17 over important corporate matters, investors may be prevented from  
18 affecting important corporate matters involving our company that  
19 require approval of shareholders, including:

- 20 ● the composition of our board of directors and, through it, any  
21 determinations with respect to our operations, business direction and  
22 policies, including the appointment and removal of officers;
- 23 ● any determinations with respect to mergers or other business  
24 combinations;
- 25 ● our disposition of substantially all of our assets; and
- 26 ● any change in control.

27 (Emphasis added).

28 21. This statement was materially false and misleading. By the time the  
2021 Annual Report was filed with the SEC, in April 2022, Huang may have  
literally owned 36.4% of the outstanding Class A ordinary shares, and 100% of the  
Class B shares, but beginning in May 2020, he had begun engaging in pre-paid  
forward sale contract transactions which, as the Company noted, could drive his



1 beneficial ownership interest in the Company's total issued share capital below  
2 5%.

3 22. The statements contained in ¶¶ 16-17, 19-20 were materially false  
4 and/or misleading because they misrepresented and failed to disclose the following  
5 adverse facts pertaining to the Company's business, operations and prospects,  
6 which were known to Defendants or recklessly disregarded by them. Specifically,  
7 Defendants made false and/or misleading statements and/or failed to disclose that:  
8 (1) Defendant Huang had engaged in undisclosed pre-paid forward sale contract  
9 transactions as early as May 2020; (2) this presented a risk of Defendant Huang's  
10 ownership going below 5% of the Company's outstanding shares; (3) if Huang's  
11 ownership dipped below 5%, it would result in a change of control of the Company  
12 which, as the Company admitted, could result in disastrous consequences; and (4)  
13 as a result, Defendants' statements about its business, operations, and prospects,  
14 were materially false and misleading and/or lacked a reasonable basis at all relevant  
15 times.

### 16 **THE TRUTH EMERGES**

17 23. Then, on April 4, 2023, the Company filed with the SEC its Annual  
18 Report on Form 20-F for the year ended December 31, 2022 (the "2022 Annual  
19 Report"). Attached to the 2022 Annual Report were signed certifications pursuant  
20 to SOX signed by Defendants Huang and Newman attesting to the accuracy of  
21 financial reporting, the disclosure of any material changes to the Company's  
22 internal controls over financial reporting, and the disclosure of all fraud.

23 24. In the 2022 Annual Report, the Company admitted that Defendant  
24 Huang had entered into undisclosed pre-paid forward sale contract transactions,  
25 which the Company had previously omitted from its filings, and which could spell  
26 disastrous consequences for the Company if Defendant Huang's share ownership  
27 went below 5%. The 2022 Annual Report stated, in pertinent part:

1  
2 ***If Mr. Huang's beneficial ownership in our company falls below***  
3 ***5%, our dual-class share structure will terminate and a change of***  
4 ***control would be triggered under certain of our material***  
5 ***commercial and loan agreements, and our business development,***  
6 ***financial condition and future prospects may be materially and***  
7 ***adversely affected.***

8 Subject to the provisions of our Articles of Association, our Class B  
9 ordinary shares will automatically convert into Class A ordinary  
10 shares upon the occurrence of an automatic conversion event, which  
11 events include, among others, Mr. Huang having beneficial ownership  
12 in less than 5% of our issued share capital on an as converted basis.  
13 As of March 15, 2023, Mr. Huang beneficially owned (whether in the  
14 form of ordinary shares or ADSs) 84,047,840 ordinary shares,  
15 representing 5.39% of our total issued share capital.

16 ***Mr. Huang has in the past entered into, and may in the future enter***  
17 ***into, certain transactions from time to time, including derivative***  
18 ***transactions, that have and could have the effect of reducing Mr.***  
19 ***Huang's beneficial ownership in our company. Mr. Huang***  
20 ***informed our company that certain variable pre-paid forward sale***  
21 ***contract transactions in respect of 42,457,504 ordinary shares***  
22 ***beneficially owned by him, which transactions he originally entered***  
23 ***into between May 2020 and June 2022, would expire between March***  
24 ***2023 and December 2023. If Mr. Huang chooses to settle these***  
25 ***transactions by transferring ownership of the 42,457,504 ordinary***  
26 ***shares to the counterparties, his beneficial ownership interest in our***  
27 ***total issued share capital may decrease to below 5%, which would***  
28 ***trigger an automatic conversion event, unless the 5% threshold***  
***contained in our Articles of Association is reduced or he otherwise***  
***acquires beneficial ownership of additional shares to keep his***  
***beneficial ownership at or above 5% or such other threshold if so***  
***reduced.***

Should this happen, all Class B ordinary shares would automatically  
convert into Class A ordinary shares, and the dual-class share  
structure would thereby be terminated. ***This would constitute a***  
***change of control for the purposes of certain of our, or our***

1 *subsidiaries’ and the consolidated entities’, sales agreements and*  
2 *domestic loan facility agreements, and if such provisions under the*  
3 *domestic loan agreements are triggered, which could give the*  
4 *lenders the right to demand early repayment under these domestic*  
5 *loan agreements. Such change of control may result in actual,*  
6 *potential or alleged breaches or early termination of other contracts*  
7 *or agreements. The change of control potentially may also have*  
8 *implications for the purposes of China’s national security review*  
9 *regime and anti-monopoly merger filing requirements, if*  
10 *applicable.* The occurrence of any of the foregoing may have a  
11 material and adverse effect on our business development, financial  
12 condition and future prospects.

13 \* \* \*

14 Our board of directors continues to explore additional possible  
15 measures to maintain the stability of its corporate governance  
16 structure and dual-class shareholding structure in the best interests of  
17 the Company, with due consideration given to the possible negative  
18 ramifications of a potential automatic conversion event on the  
19 operations and prospects of our group.

20 (Emphasis added).

21 25. On this news, the price of GDS ADSs declined by \$0.74 per ADS, or  
22 3.99%, to close at \$17.80 on April 4, 2023. The next day it declined a further \$0.56  
23 per ADS, or 3.14%, to close at \$17.24.

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

27 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

28 27. Plaintiff brings this action as a class action pursuant to Federal Rule  
of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons  
other than defendants who acquired the Company’s securities publicly traded on  
NASDAQ during the Class Period, and who were damaged thereby (the “Class”).

1 Excluded from the Class are Defendants, the officers and directors of the Company,  
2 members of the Individual Defendants' immediate families and their legal  
3 representatives, heirs, successors or assigns and any entity in which Defendants  
4 have or had a controlling interest.

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

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

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

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

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

3 • whether the Defendants caused the Company to issue false and  
4 misleading filings during the Class Period;

5 • whether Defendants acted knowingly or recklessly in issuing false  
6 filings;

7 • whether the prices of the Company securities during the Class Period  
8 were artificially inflated because of the Defendants' conduct complained of  
9 herein; and

10 • whether the members of the Class have sustained damages and, if so,  
11 what is the proper measure of damages.

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

18 33. Plaintiff will rely, in part, upon the presumption of reliance  
19 established by the fraud-on-the-market doctrine in that:

20 • the Company's shares met the requirements for listing, and were listed  
21 and actively traded on NASDAQ, an efficient market;

22 • as a public issuer, the Company filed periodic public reports;

23 • the Company regularly communicated with public investors via  
24 established market communication mechanisms, including through the  
25 regular dissemination of press releases via major newswire services and  
26 through other wide-ranging public disclosures, such as communications with  
27 the financial press and other similar reporting services;

28

- 1 • the Company's securities were liquid and traded with moderate to
- 2 heavy volume during the Class Period; and
- 3 • the Company was followed by a number of securities analysts
- 4 employed by major brokerage firms who wrote reports that were widely
- 5 distributed and publicly available.

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

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

### 16 **COUNT I**

#### 17 **For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder** 18 **Against All Defendants**

19 36. Plaintiff repeats and realleges each and every allegation contained  
20 above as if fully set forth herein.

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

24 38. During the Class Period, Defendants, individually and in concert,  
25 directly or indirectly, disseminated or approved the false statements specified  
26 above, which they knew or deliberately disregarded were misleading in that they  
27 contained misrepresentations and failed to disclose material facts necessary in  
28

1 order to make the statements made, in light of the circumstances under which they  
2 were made, not misleading.

3 39. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that  
4 they:

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

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

23 41. Individual Defendants, who are the senior officers of the Company,  
24 had actual knowledge of the material omissions and/or the falsity of the material  
25 statements set forth above, and intended to deceive Plaintiff and the other members  
26 of the Class, or, in the alternative, acted with reckless disregard for the truth when  
27 they failed to ascertain and disclose the true facts in the statements made by them  
28

1 or any other of the Company's personnel to members of the investing public,  
2 including Plaintiff and the Class.

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

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

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

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

## 22 **COUNT II**

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

#### 24 **Against the Individual Defendants**

25 46. Plaintiff repeats and realleges each and every allegation contained in  
26 the foregoing paragraphs as if fully set forth herein.

27  
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1 47. During the Class Period, the Individual Defendants participated in the  
2 operation and management of the Company, and conducted and participated,  
3 directly and indirectly, in the conduct of the Company's business affairs. Because  
4 of their senior positions, they knew the adverse non-public information about the  
5 Company's false financial statements.

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

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

21 50. By reason of the above conduct, the Individual Defendants are liable  
22 pursuant to Section 20(a) of the Exchange Act for the violations committed by the  
23 Company.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for  
26 judgment and relief as follows:  
27  
28

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

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

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

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

11 **JURY TRIAL DEMANDED**

12 Plaintiff hereby demands a trial by jury.

13  
14 Dated: June 21, 2023  
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