

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

\_\_\_\_\_, Individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

CANCER GENETICS, INC., PANNA L.  
SHARMA, JOHN A. ROBERTS, AND IGOR  
GITELMAN,

Defendants.

Case No.

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

**JURY TRIAL DEMANDED**

Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the defendants’ public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Cancer Genetics, Inc. (“Cancer Genetics” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary

support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of a class consisting of all persons and entities, other than Defendants, who purchased or otherwise acquired the publicly traded securities of Cancer Genetics from March 23, 2017 through April 2, 2018, inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

### **JURISDICTION AND VENUE**

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

3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and §27 of the Exchange Act.

4. Venue is proper in this District pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the Company conducts business and its headquarters are located in this District.

5. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

## PARTIES

6. Plaintiff, as set forth in the accompanying Certification, purchased Cancer Genetics securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosure.

7. Defendant Cancer Genetics is a Delaware corporation with its principal executive offices located at 201 Route 17 North 2nd Floor, Rutherford, NJ 07070. Cancer Genetics is an emerging leader in the field of personalized medicine, offering diagnostic products and services that enable precision medicine in the field of oncology. The Company trades on NASDAQ under the ticker symbol “CGIX.”

8. Defendant Panna L. Sharma (“Sharma”) was the Chief Executive Officer (“CEO”) of Cancer Genetics from the beginning of the Class Period until February 2, 2018.

9. Defendant John A. Roberts (“Roberts”) has been the Chief Operating Officer (“COO”) of Cancer Genetics since the beginning of the Class Period. Roberts has served as Interim-CEO since February 5, 2018.

10. Defendant Igor Gitelman (“Gitelman”) has been the Chief Accounting Officer (“CAO”) of Cancer Genetics since February 2017.

11. Defendants Sharma, Roberts, and Gitelman are sometimes referred to herein as the “Individual Defendants.”

12. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;

- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or
- (g) approved or ratified these statements in violation of the federal securities laws.

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

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

15. The Company and the Individual Defendants are referred to herein, collectively, as the "Defendants."

### **Background**

16. On October 12, 2015, Cancer Genetics issued a press release entitled, "Cancer Genetics, Inc. Finalizes Purchase of Los Angeles-based Molecular Profiling Laboratory, Response Genetics, Inc., Adding \$10-\$12M in Annual Revenue and Establishing a National Clinical Sales Footprint" which announced that Cancer Genetics closed its acquisition of Response Genetics, Inc., a molecular profiling laboratory on October 9, 2012.

## SUBSTANTIVE ALLEGATIONS

17. On March 23, 2017, the Company filed a Form 10-K for the fiscal year ended December 31, 2016 (the “2016 10-K”) with the SEC, which provided the Company’s year-end financial results and position as of December 31, 2016. The 2016 10-K was signed by Defendants Sharma, Roberts, and Gitelman. The 2016 10-K also contained signed certifications pursuant to Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants Sharma and Roberts attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal controls over financial reporting, and the disclosure of all fraud.

18. The 2016 10-K discussed internal and disclosure controls, stating in relevant part:

**Item 9A. Controls and Procedures.**

*Evaluation of Disclosure Controls and Procedures.*

We evaluated, under the supervision and with the participation of our principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934 (“Exchange Act”), as amended) as of December 31, 2016, the end of the period covered by this report on Form 10-K. ***Based on this evaluation, the principal executive officer and the principal financial officer have concluded that our disclosure controls and procedures were effective at December 31, 2016.*** Disclosure controls and procedures are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and were operating in an effective manner for the period covered by this report, and (ii) is accumulated and communicated to management, including, the principal executive officer and principal financial officer, or the person performing similar functions as appropriate, to allow timely decisions regarding required disclosures.

*Management’s Report on Internal Control Over Financial Reporting.*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934.

The Company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with

generally accepted accounting principles and includes those policies and procedures that:

- Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of our management and directors; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to risk that controls may become inadequate because of changes in conditions or because of declines in the degree of compliance with policies or procedures.

Our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2016. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in *Internal Control-Integrated Framework (2013)*.

***Based on management's assessment, as of December 31, 2016, the Company's internal control over financial reporting was effective.***

*Changes in Internal Control over Financial Reporting.*

There were no changes in our internal control over financial reporting during the three months ended December 31, 2016 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

(Emphasis added).

19. On May 12, 2017, the Company filed its Form 10-Q with the SEC which provided the Company's financial results for the first quarter of 2017 ended March 31, 2017 (the "1Q17 10-Q"). The 1Q17 10-Q was signed by Defendants Sharma, Roberts, and Gitelman. The 1Q17

10-Q contained signed SOX certifications by Defendants Sharma and Roberts attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal controls over financial reporting, and the disclosure of all fraud. The 1Q17 10-Q discussed its controls and procedures, stating in relevant part:

**Item 4. Controls and Procedures**

*Evaluation of Disclosure Controls and Procedures*

We evaluated, under the supervision and with the participation of the principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934 ("Exchange Act"), as amended, as of March 31, 2017, the end of the period covered by this report on Form 10-Q. ***Based on this evaluation, our President and Chief Executive Officer (principal executive officer) and our Chief Operating Officer (principal financial officer) have concluded that our disclosure controls and procedures were effective at the reasonable assurance level at March 31, 2017.***

\* \* \*

*Changes in Internal Control over Financial Reporting*

***There were no changes in our internal control over financial reporting during the three months ended March 31, 2017 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.***

(Emphasis added).

20. On August 14, 2017, the Company filed its Form 10-Q with the SEC which provided the Company's financial results for the second quarter of 2017 ended June 30, 2017 (the "2Q17 10-Q"). The 2Q17 10-Q was signed by Defendants Sharma, Roberts, and Gitelman. The 2Q17 10-Q contained signed SOX certifications by Defendants Sharma and Roberts attesting to the accuracy of financial reporting, the disclosure of any material changes to the

Company's internal controls over financial reporting, and the disclosure of all fraud. The 2Q17 10-Q discussed its controls and procedures, stating in relevant part:

**Item 4. Controls and Procedures**

*Evaluation of Disclosure Controls and Procedures*

We evaluated, under the supervision and with the participation of the principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934 ("Exchange Act"), as amended, as of June 30, 2017, the end of the period covered by this report on Form 10-Q. ***Based on this evaluation, our President and Chief Executive Officer (principal executive officer) and our Chief Operating Officer (principal financial officer) have concluded that our disclosure controls and procedures were effective at the reasonable assurance level at June 30, 2017.***

\* \* \*

*Changes in Internal Control over Financial Reporting*

***There were no changes in our internal control over financial reporting during the three months ended June 30, 2017 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.***

(Emphasis added).

21. On November 13, 2017, the Company filed its Form 10-Q with the SEC which provided the Company's financial results for the second quarter of 2017 ended September 30, 2017 (the "3Q17 10-Q"). The 3Q17 10-Q was signed by Defendants Sharma, Roberts, and Gitelman. The 3Q17 10-Q contained signed SOX certifications by Defendants Sharma and Roberts attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal controls over financial reporting, and the disclosure of all fraud. The 3Q17 10-Q discussed its controls and procedures, stating in relevant part:

**Item 4. Controls and Procedures**

*Evaluation of Disclosure Controls and Procedures*



We evaluated, under the supervision and with the participation of the principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934 (“Exchange Act”), as amended, as of September 30, 2017, the end of the period covered by this report on Form 10-Q. ***Based on this evaluation, our President and Chief Executive Officer (principal executive officer) and our Chief Operating Officer (principal financial officer) have concluded that our disclosure controls and procedures were effective at the reasonable assurance level at September 30, 2017.***

\* \* \*

*Changes in Internal Control over Financial Reporting*

***There were no changes in our internal control over financial reporting during the three months ended September 30, 2017 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.***

(Emphasis added).

22. The statements referenced in ¶¶17-21 above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operational and financial results, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) Cancer Genetics had ineffective disclosure controls and internal controls over financial reporting; and (2) as a result, Defendants’ statements about the Company’s business, operations and prospects were materially false and misleading and/or lacked a reasonable bases at all relevant times.

**The Truth Emerges**

23. On April 2, 2018, after the market closed, Cancer Genetics issued a press release entitled, “Cancer Genetics Reports Fourth Quarter and Full Year 2017, Financial Results and

Provides Strategic Business Updates.” The press release discussed the fourth quarter and full year 2017 financial results, stating in relevant part:

A major area of concentrated focus during the first quarter of 2018 was the careful evaluation of the Company’s accounts receivables, which had increased to approximately \$16 million on the balance sheet prior to any adjustments. A significant reason for the increase was disruptions in collections in its Clinical Services business. While the Company continues with its collections efforts on all claims, in the fourth quarter it recorded a bad debt expense of \$4.4 million and wrote off \$1.8 million of its accounts receivable, with a significant portion of the bad debt expense and write off related to collection issues with respect to the accounts receivable recorded subsequent to the 2015 acquisition of Response Genetics Inc. Payors have declined to reimburse the Company on certain performed Clinical services due to delays in filing its claims, the demands by payors for copies of patient medical records or diagnosis codes which have been difficult to obtain, and reimbursement challenges for certain of our next generation sequencing tests by Medicare and third-party managed care plans, among other reasons. As such, the Company has made a prudent decision to write these off in the fourth quarter. Management believes that its current outstanding accounts receivables are collectible, net of the allowance for doubtful accounts.

24. Further, on April 2, 2018, Cancer Genetics filed its Form 10-K for the fiscal year ended December 31, 2017 (the “2017 10-K”) with the SEC. The 2017 10-K discussed controls over financial reporting, stating in relevant part:

Item 9A. Controls and Procedures.

*Evaluation of Disclosure Controls and Procedures.*

We evaluated, under the supervision and with the participation of our principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934 (“Exchange Act”), as amended) as of December 31, 2017, the end of the period covered by this report on Form 10-K. ***Based on this evaluation, the principal executive officer and the principal financial officer have concluded that our disclosure controls and procedures were not effective at December 31, 2017 as a result of the material weakness in internal controls described below.*** Disclosure controls and procedures are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and were operating in an effective manner for the period covered by this report, and (ii) is accumulated and communicated to management,

including, the principal executive officer and principal financial officer, or the person performing similar functions as appropriate, to allow timely decisions regarding required disclosures.

\* \* \*

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to risk that controls may become inadequate because of changes in conditions or because of declines in the degree of compliance with policies or procedures. Our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2017. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in *Internal Control-Integrated Framework (2013)*.

***In connection with this assessment, we identified a material weakness, as described below, in our internal control over financial reporting as of December 31, 2017.*** A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement for the annual or interim financial statements will not be prevented or detected on a timely basis. Because of the material weakness identified below, and based on management's assessment, as of December 31, 2017, the Company's internal control over financial reporting was not effective:

Accounting for uncollectible clinical services revenue: The Company's quarterly and year- end review procedures includes management's assessment of collectability and adjustment of its allowance for doubtful accounts. ***During the fourth quarter management revised its estimation process and as a result of the low collection patterns during the fourth quarter principally related to clinical service revenues from claims generated by the Los Angeles location, a determination was made to significantly increase the allowance for doubtful accounts to reflect this change in estimate, and our management has determined that this control deficiency constitutes a material weakness at December 31, 2017. However, the Company failed to identify that adjustments which pertained to contractual allowances and reduced expected collections of current quarter revenues should have been recorded as reductions in net revenue rather than bad debt expense.*** Accordingly, management needed to record audit adjustments to properly account for these items. Although management does perform overall review of revenue and related reserves at each reporting date, the controls designed to identify material misstatements did not operate at a sufficient level of precision to prevent or detect such errors in its determination of this significant accounting estimate.

(Emphasis added).

25. On this news, shares of Cancer Genetics fell \$0.55 per share or over 33% from its previous closing price to close at \$1.10 per share on April 3, 2018, damaging investors.

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

### **ADDITIONAL SCIENTER ALLEGATIONS**

27. On December 8, 2017, Cancer Genetics announced the pricing of a registered direct offering scheduled to close on December 12, 2017 (the "December Offering"), stating in relevant part:

#### **Cancer Genetics Prices \$7 Million Registered Direct Offering**

RUTHERFORD, N.J., Dec. 08, 2017 (GLOBE NEWSWIRE) -- Cancer Genetics, Inc. (Nasdaq:CGIX), a leader in enabling precision medicine for oncology through molecular markers and diagnostics, today announced the pricing of a registered direct offering of 3,500,000 units at a purchase price of \$2.00 per unit. The gross proceeds are expected to be \$7.0 million, prior to deducting any placement agent fees or other offering-related expenses.

H.C. Wainwright & Co. is acting as the exclusive placement agent for the offering.

Each unit consists of one share of Cancer Genetics common stock and one warrant to purchase a share of common stock at an exercise price of \$2.35 per share. Each warrant will be exercisable 6 months following the date of issuance and will expire 18 months from the date of issuance.

The closing of the offering is expected to take place on or about December 12, 2017, subject to the satisfaction of customary closing conditions.

The securities are being offered by Cancer Genetics pursuant to a "shelf" registration statement on Form S-3 that was filed and declared effective by the Securities and Exchange Commission ("SEC") and the base prospectus contained therein (File No. 333-218229). The offering of the securities will be made only by means of a prospectus. A prospectus supplement and accompanying base prospectus relating to the securities being offered will be filed with the SEC. Copies of the final prospectus supplement and accompanying base prospectus may be obtained, when available, on the SEC's website at <http://www.sec.gov> or

by contacting H.C. Wainwright & Co., LLC at 430 Park Avenue, 4th Floor, New York, NY 10022, by phone at 646-975-6996 or e-mail at placements@hcwco.com.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or other jurisdiction.

28. The Company decided to reveal the \$4.4 million bad debt and write off \$1.8 million in accounts receivables after the December Offering so that it could raise \$7 million.

29. On February 1, 2018, Defendant Sharma resigned as CEO effective February 2, 2018.

### **CLASS ACTION ALLEGATIONS**

30. 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 those who purchased or otherwise acquired the publicly traded securities of Cancer Genetics during the Class Period (the “Class”); and were damaged upon the revelation of the alleged corrective disclosure. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

31. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the Company’s securities were actively traded on NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by the Company or its transfer agent and may be

notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

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

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

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

- a. whether Defendants' acts as alleged violated the federal securities laws;
- b. whether Defendants' statements to the investing public during the Class Period misrepresented material facts about the financial condition, business, operations, and management of the Company;
- c. whether Defendants' statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- d. whether the Individual Defendants caused the Company to issue false and misleading SEC filings and public statements during the Class Period;
- e. whether Defendants acted knowingly or recklessly in issuing false and misleading SEC filings and public statements during the Class Period;

- f. whether the prices of the Company's securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- g. whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

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

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

- a. Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- b. the omissions and misrepresentations were material;
- c. the Company's securities are traded in efficient markets;
- d. the Company's securities were liquid and traded with moderate to heavy volume during the Class Period;
- e. the Company traded on NASDAQ, and was covered by multiple analysts;
- f. the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities;
- g. Plaintiff and members of the Class purchased and/or sold the Company's securities between the time the Defendants failed to disclose or misrepresented

material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts; and

- h. Unexpected material news about the Company was rapidly reflected in and incorporated into the Company's stock price during the Class Period.

37. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

38. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

## **COUNT I**

### **Violation of Section 10(b) of The Exchange Act and Rule 10b-5 Against All Defendants**

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

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

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



42. The Company and the Individual Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they: employed devices, schemes and artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of the Company's securities during the Class Period.

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

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

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

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

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

48. By reason of the foregoing, the Company and the Individual Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the Plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchases of the Company's securities during the Class Period.

## **COUNT II**

### **Violation of Section 20(a) of The Exchange Act Against The Individual Defendants**

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

50. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions, they knew the adverse non-public information regarding the Company's business practices.

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

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

53. Each of the Individual Defendants, therefore, acted as a controlling person of the Company. By reason of their senior management positions and/or being directors of the Company, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, the Company to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of the Company and possessed the power to control the specific activities which

comprise the primary violations about which Plaintiff and the other members of the Class complaint.

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

Dated:

Respectfully submitted,

**THE ROSEN LAW FIRM, P.A.**