

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Counsel for Plaintiff*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

\_\_\_\_\_, Individually and on  
behalf of all others similarly situated,  
  
Plaintiff,  
  
v.  
  
TATTOOED CHEF, INC.,  
SALVATORE GALLETTI, and  
STEPHANIE DIECKMANN,  
  
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  
2 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 Tattooed Chef, Inc. (“Tattooed Chef” 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 1. This is a class action on behalf of persons or entities who purchased  
14 or otherwise acquired publicly traded Tattooed Chef securities between March 20,  
15 2021 and October 12, 2022, inclusive (the “Class Period”). Plaintiff seeks to  
16 recover compensable damages caused by Defendants’ violations of the federal  
17 securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

18 **JURISDICTION AND VENUE**

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

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

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

1 district. Further, the Company’s head office is located at 6305 Alondra Boulevard,  
2 Paramount, California 90723.

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 Tattooed Chef securities during the Class Period  
11 and was economically damaged thereby.

12 7. Defendant Tattooed Chef, Inc. is a plant-based food company that  
13 offers sourced plant-based food. Its plant-based products are available in the frozen  
14 food sections of national retail food stores across the United States as well as on  
15 its e-commerce site. The Company also provides chef-created products to the  
16 group of plant-based consumers as well as the mainstream marketplace. Tattooed  
17 Chef was founded by Salvatore Galletti and Sarah Galletti in 2017 and is  
18 headquartered in Paramount, California.

19 8. Defendant Tattooed Chef is incorporated in Delaware and its head  
20 office is located at 6305 Alondra Boulevard, Paramount, California 90723.  
21 Tattooed Chef, Inc. securities trade on NASDAQ under the ticker symbol “TTCF.”

22 9. Defendant Salvatore Galletti (“Galletti”) has served as the Company’s  
23 Chief Executive Officer (“CEO”) and President since 2017.

24 10. Defendant Stephanie Dieckmann (“Dieckmann”) has served as the  
25 Company’s Chief Financial Officer since April 2021.

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

28

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

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

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

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

19          carried out within the scope of their employment.

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

21          agents of the Company is similarly imputed to Tattooed Chef under *respondeat*

22          *superior* and agency principles.

23          15. Defendant Tattooed Chef and the Individual Defendants are

24          collectively referred to herein as “Defendants.”

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SUBSTANTIVE ALLEGATIONS**

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

16. On March 19, 2021, after market hours, Tattooed Chef filed with the SEC its 2021 Annual report on Form 10K for the year ended December 31, 2020 (the “2020 Annual Report”). Attached to the Annual Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Galletti and Dieckmann attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

17. The 2020 Annual Report downplayed the serious issues with the Company’s internal controls by stating the following, in pertinent part, regarding its internal controls and its remediation efforts:

***Controls and Procedures***

We have begun the process of, and we are focused on, designing and implementing effective internal controls measures to improve our internal control over financial reporting and remediate the material weaknesses. Our efforts include a number of actions:

- We hired qualified staff and outside resources to segregate key functions within our financial and information technology processes supporting our internal controls over financial reporting;
- We developed internal controls documentation, including comprehensive accounting policies and procedures and designed, implemented, and tested new controls over key financial processes.

***While these actions and plans are subject to ongoing management evaluation and will require validation and testing of the design and operating effectiveness of internal controls over a sustained period of financial reporting cycles, we are committed to the continuous improvement of our internal control over financial reporting and will continue to diligently review our internal control over financial reporting.***

1 (Emphasis added.)  
2

3 18. On May 18, 2021, the Company filed with the SEC its 2021 First  
4 Quarter report on Form 10-Q for the year ended March 31, 2021 (the “1Q21  
5 Report”). Attached to the 1Q21 Report were certifications pursuant to SOX signed  
6 by Defendants Galletti and Dieckmann attesting to the accuracy of financial  
7 reporting, the disclosure of any material changes to the Company’s internal control  
8 over financial reporting and the disclosure of all fraud.

9 19. The 1Q21 revealed the Company reported a net revenue of  
10 \$52,682,000 and net loss of \$8,152,000.

11 20. The 1Q21 Report downplayed the serious issues with the Company’s  
12 internal controls by stating the following, in pertinent part, regarding its internal  
13 controls and remediation efforts:

14 ***Controls and Procedures***

15 We have begun the process of, and we are focused on, designing and  
16 implementing effective internal controls measures to improve our  
17 internal control over financial reporting and remediate the material  
18 weaknesses. Our efforts include a number of actions:

- 19 • We hired qualified staff and outside resources to segregate key  
20 functions within our financial and information technology processes  
21 supporting our internal controls over financial reporting; and  
22 • We developed internal controls documentation, including  
23 comprehensive accounting policies and procedures and designed,  
24 implemented, and tested new controls over key financial processes

25 While these actions and planned actions are subject to ongoing  
26 management evaluation and will require validation and testing of the  
27 design and operating effectiveness of internal controls over a sustained  
28 period of financial reporting cycles, ***we are committed to the  
continuous improvement of our internal control over financial  
reporting and will continue to diligently review our internal control  
over financial reporting.***

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our chief executive officer and chief financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report. Based on this evaluation, our chief executive officer and chief financial officer concluded that, as of March 31, 2021, our disclosure controls and procedures were not effective due to the material weaknesses in our internal control over financial reporting described above.

***However, after giving full consideration to these material weaknesses, and the additional analyses and other procedures that we performed to ensure that our consolidated financial statements included in this Quarterly Report were prepared in accordance with U.S. GAAP, our management has concluded that our consolidated financial statements present fairly, in all material respects, our financial position, results of operations and cash flows for the periods disclosed in conformity with U.S. GAAP.***

***Changes in Internal Control Over Financial Reporting***

Other than described above in this Item 4, ***there has been no change in our internal control over financial reporting during the fiscal quarter ended March 31, 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.***

(Emphasis added.)

21. On August 16, 2021, the Company filed with the SEC its second quarter report on Form 10-Q for the period ended June 30, 2021 (the “2Q21 Report”). Attached to the 2Q21 Report were certifications pursuant to SOX signed by Defendants Galletti and Dieckmann attesting to the accuracy of financial

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

3 22. The 2Q21 Report revealed the Company reported a net revenue of  
4 \$50,716,000 three months ended June 30, 2021 and \$103,398,000 six months  
5 ended June 30, 2021, and a net loss of \$53,196,000 three months ended June 30,  
6 2021 and \$61,348,000 six months ended June 30, 2021.

7 23. The 2Q21 Report downplayed the serious issues with the Company’s  
8 internal controls by stating the following, in pertinent part, regarding its internal  
9 controls and remediation efforts:

10 However, after giving full consideration to these material weaknesses,  
11 and the additional analyses and other procedures that we performed to  
12 ensure that our consolidated financial statements included in this  
13 Quarterly Report were prepared in accordance with U.S. GAAP, *our*  
14 *management has concluded that our consolidated financial*  
15 *statements present fairly, in all material respects, our financial*  
16 *position, results of operations and cash flows for the periods*  
17 *disclosed in conformity with U.S. GAAP.*

18 ...

#### 19 **Changes in Internal Control Over Financial Reporting**

20 Other than described above in this Item 4, *there has been no change*  
21 *in our internal control over financial reporting during the fiscal*  
22 *quarter ended June 30, 2021 that has materially affected, or is*  
23 *reasonably likely to materially affect, our internal control over*  
24 *financial reporting.*

25 (Emphasis added.)

26 24. On November 22, 2021, the Company filed with the SEC its quarterly  
27 report on Form 10-Q for the period ended September 30, 2021 (the “3Q21  
28 Report”). Attached to the 3Q21 Report were certifications pursuant to SOX signed  
by Defendants Galletti and Dieckmann attesting to the accuracy of financial



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

3 25. The 3Q21 Report revealed the Company reported a net revenue of  
4 \$58,780,000 three months ended September 30, 2021 and \$161,972,000 nine  
5 months ended September 30, 2021, and a net loss of \$8,174,000 three months  
6 ended September 30, 2021 and \$70,095,000 nine months ended September 30,  
7 2021.

8 26. The 3Q21 Report downplayed the serious issues with the Company’s  
9 internal controls by stating the following, in pertinent part, regarding its internal  
10 controls and remediation efforts:

11 However, after giving full consideration to these material weaknesses,  
12 and the additional analyses and other procedures that we performed to  
13 ensure that our consolidated financial statements included in this  
14 Quarterly Report were prepared in accordance with U.S. GAAP, *our*  
15 *management has concluded that our consolidated financial*  
16 *statements present fairly, in all material respects, our financial*  
17 *position, results of operations and cash flows for the periods*  
18 *disclosed in conformity with U.S. GAAP.*

19 ...

#### 20 **Changes in Internal Control Over Financial Reporting**

21 Other than described above in this Item 4, *there has been no change*  
22 *in our internal control over financial reporting during the fiscal*  
23 *quarter ended September 30, 2021 that has materially affected, or is*  
24 *reasonably likely to materially affect, our internal control over*  
25 *financial reporting.*

26 (Emphasis added.)

27 27. On March 16, 2022, the Company filed with the SEC its annual report  
28 and fourth quarter and annual results on Form 10-K for the period ended December  
31, 2021 (the “Annual Report”). Attached to the Annual Report were certifications  
pursuant to SOX signed by Defendants Galletti and Dieckmann attesting to the

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

3 28. The Annual Report revealed the Company reported a net revenue of  
4 \$213,430,000 and a net loss of \$87,404,000.

5 29. The Annual Report downplayed the serious issues with the  
6 Company's internal controls by stating the following, in pertinent part, regarding  
7 its internal controls and remediation efforts:

8 *However, after giving full consideration to these material*  
9 *weaknesses, and the additional analyses and other procedures that*  
10 *we performed to ensure that our consolidated financial statements*  
11 *included in this Annual Report on Form 10-K were prepared in*  
12 *accordance with U.S. GAAP, our management has concluded that*  
13 *our consolidated financial statements present fairly, in all material*  
14 *respects, our financial position, results of operations and cash flows*  
15 *for the periods disclosed in conformity with U.S. GAAP.*

#### 16 **Remediation of Material Weaknesses**

17 We have begun the process of, and *we are focused on, designing and*  
18 *implementing effective measures to improve our internal controls*  
19 *over financial reporting and remediate the material weaknesses.* Our  
20 efforts include a number of actions:

- 21 • Hired qualified staff and outside resources to segregate  
22 key functions within our financial and information  
23 technology processes supporting our internal controls  
24 over financial reporting;
- 25 • Hired several qualified accounting professionals with  
26 appropriate level of expense and training to design,  
27 maintain and improve our accounting policies,  
28 procedures and controls to prevent and detect material  
misstatements related to the presentation and disclosures  
of the consolidated financial statements;
- Developed internal controls documentation, including  
comprehensive accounting policies and procedures over

1 certain key financial processes and related disclosures;  
2 and

- 3 • Drafted position papers for all complex, non-recurring  
4 transactions.

5 While these actions and planned actions are subject to ongoing management  
6 evaluation and will require validation and testing of the design and  
7 operating effectiveness of internal controls over a sustained period of  
8 financial reporting cycles, ***we are committed to the continuous  
9 improvement of our internal control over financial reporting and will  
10 continue to diligently review our internal control over financial reporting.***

### 11 **Changes in Internal Control Over Financial Reporting**

12 Other than described above in this Item 9A, ***there has been no change  
13 in our internal control over financial reporting during the fiscal year  
14 ended December 31, 2021 that has materially affected, or is  
15 reasonably likely to materially affect, our internal control over  
16 financial reporting.***

17 (Emphasis added.)

18 30. The statements contained in ¶¶ 16-29 were materially false and/or  
19 misleading because they misrepresented and failed to disclose the following  
20 adverse facts pertaining to the Company’s business, operations and prospects,  
21 which were known to Defendants or recklessly disregarded by them. Specifically,  
22 Defendants made false and/or misleading statements and/or failed to disclose that:  
23 (1) Tattooed Chef continuously downplayed its serious issues with internal  
24 controls; (2) Tattooed Chef’s financial statements from March 31, 2021 to the  
25 present included “certain errors” such as overstating revenue and understating  
26 losses; (3) as a result, Tattooed Chef would need to restate its previously filed  
27 financial statements for certain periods; and (4) as a result, Defendants’ statements  
28 about its business, operations, and prospects, were materially false and misleading  
and/or lacked a reasonable basis at all relevant times.

**THE TRUTH EMERGES**

1  
2           31. Then on October 12, 2022, after market hours, the Company  
3 announced that it would restate its financial statements from March 31, 2021 to the  
4 present and revealed for the first time the revenue was overstated by \$213,000 and  
5 the net loss was understated by \$90,000 on the 1Q21 Report. On the 2Q21 Report,  
6 the revenue was overstated by \$446,000 three months ended June 30, 2021 and  
7 \$659,000 six months ended June 30, 2021 and the net loss was understated by  
8 \$4,276,000 three months ended June 30, 2021 and \$4,366,000 six months ended  
9 June 30, 2021. On the 3Q21 Report, the revenue was overstated by \$425,000 three  
10 months ended September 30, 2021 and \$878,000 nine months ended September  
11 30, 2021 and the net loss was understated by \$372,000 three months ended  
12 September 30, 2021 and \$4,165,000 nine months ended September 30, 2021. On  
13 the Annual Report, the revenue was overstated by \$5,436,000 ended December 31,  
14 2021.

15           32. The Company also made numerous other changes in financial  
16 statements that revealed the extent of internal control weaknesses, stating the  
17 following, in pertinent part, in its current report filed with the SEC on Form 8-K:

18           **Item 4.02. Non-Reliance on Previously Issued Financial**  
19           **Statements or a Related Audit Report or Completed Interim**  
20           **Review.**

21           On October 6, 2022, Tattooed Chef, Inc. (the “Company”) received a  
22 written notice pursuant to Item 4.02(b) from the Company’s former  
23 independent registered public accounting firm, BDO USA, LLP, that  
24 the Company’s unaudited interim condensed consolidated financial  
25 statements for the quarters ended March 31, 2021, June 30, 2021 and  
26 September 30, 2021, and its audited annual consolidated financial  
27 statements for the year ended December 31, 2021, and accompanying  
28 audit report, each as previously filed with the Securities and Exchange  
Commission (“SEC”), *were materially misstated and should no  
longer be relied upon and should be restated, because the Company  
(a) incorrectly recorded expenses related to a multi-vendor mailer*

1 *program with a large customer as operating expenses rather than as*  
2 *a reduction of revenue; and (b) incorrectly recorded expenses for*  
3 *advertising placement by a marketing services firm on a straight-line*  
4 *basis over the life of the contract rather than when the services were*  
5 *actually rendered.* For these reasons, pursuant to Item 4.02(a) the  
6 Board, after consultation with the Audit Committee, has also  
7 determined that the Company's unaudited interim condensed  
8 consolidated financial statements for the quarters ended March 31,  
9 2022 and June 30, 2022 should no longer be relied upon.

(Emphasis added.)

10 33. On this news, Tattooed Chefs' share price fell \$0.44 per share, or  
11 9.8%, from its close on October 12, 2022 to open on October 13, 2022 at \$4.05 per  
12 share, damaging investors.

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

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

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

24 36. The members of the Class are so numerous that joinder of all members  
25 is impracticable. Throughout the Class Period, the Company's securities were  
26 actively traded on NASDAQ. While the exact number of Class members is  
27 unknown to Plaintiff at this time and can be ascertained only through appropriate  
28

1 discovery, Plaintiff believes that there are hundreds, if not thousands of members  
2 in the proposed Class.

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

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

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

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

- 1           • whether the prices of the Company securities during the Class Period  
2 were artificially inflated because of the Defendants' conduct complained of  
3 herein; and  
4           • whether the members of the Class have sustained damages and, if so,  
5 what is the proper measure of damages.

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

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

- 14           • the Company's shares met the requirements for listing, and were listed  
15 and actively traded on NASDAQ, an efficient market;  
16           • as a public issuer, the Company filed periodic public reports;  
17           • the Company regularly communicated with public investors via  
18 established market communication mechanisms, including through the  
19 regular dissemination of press releases via major newswire services and  
20 through other wide-ranging public disclosures, such as communications with  
21 the financial press and other similar reporting services;  
22           • the Company's securities were liquid and traded with moderate to  
23 heavy volume during the Class Period; and  
24           • the Company was followed by a number of securities analysts  
25 employed by major brokerage firms who wrote reports that were widely  
26 distributed and publicly available.

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

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

11 **COUNT I**

12 **For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**  
13 **Against All Defendants**

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

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

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

25 47. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that  
26 they:

- 27 • employed devices, schemes and artifices to defraud;



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

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

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

25 50. As a result of the foregoing, the market price of the Company's  
26 securities was artificially inflated during the Class Period. In ignorance of the  
27 falsity of Defendants' statements, Plaintiff and the other members of the Class  
28

1 relied on the statements described above and/or the integrity of the market price of  
2 the Company's securities during the Class Period in purchasing the Company's  
3 securities at prices that were artificially inflated as a result of Defendants' false and  
4 misleading statements.

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

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

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

## 17 **COUNT II**

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

#### 19 **Against the Individual Defendants**

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

22 55. During the Class Period, the Individual Defendants participated in the  
23 operation and management of the Company, and conducted and participated,  
24 directly and indirectly, in the conduct of the Company's business affairs. Because  
25 of their senior positions, they knew the adverse non-public information about the  
26 Company's false financial statements.



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

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

5 **JURY TRIAL DEMANDED**

6 Plaintiff hereby demands a trial by jury.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28