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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 JAMES FLOYD, Individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 FIRST AMERICAN FINANCIAL
16 CORP., DENNIS J. GILMORE, AND
17 MARK E. SEATON,

18 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

19 Plaintiff James Floyd (“Plaintiff”), individually and on behalf of all other
20 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
21 complaint against Defendants (defined below), alleges the following based upon
22 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and
23 belief as to all other matters, based upon, *inter alia*, the investigation conducted by
24 and through Plaintiff’s attorneys, which included, among other things, a review of
25 the Defendants’ public documents, conference calls and announcements made by
26 Defendants, United States Securities and Exchange Commission (“SEC”) filings,
27

1 wire and press releases published by and regarding First American Financial Corp.
2 (“First American” or the “Company”), analysts’ reports and advisories about the
3 Company, and information readily obtainable on the Internet. Plaintiff believes that
4 substantial evidentiary support will exist for the allegations set forth herein after a
5 reasonable opportunity for discovery.

6 **NATURE OF THE ACTION**

7 1. This is a federal securities class action on behalf of a class consisting
8 of all persons and entities other than Defendants who purchased or otherwise
9 acquired the publicly traded securities of First American from February 17, 2017
10 through October 22, 2020, both dates inclusive (the “Class Period”). Plaintiff seeks
11 to recover compensable damages caused by Defendants’ violations of the federal
12 securities laws and to pursue remedies under Sections 10(b) and 20(a) of the
13 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated
14 thereunder.
15

16 **JURISDICTION AND VENUE**

17 2. The claims asserted herein arise under and pursuant to §§10(b) and
18 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5
19 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

20 3. This Court has jurisdiction over the subject matter of this action under
21 28 U.S.C. §1331 and §27 of the Exchange Act.

22 4. Venue is proper in this judicial district pursuant to §27 of the Exchange
23 Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the Company conducts business
24 and is headquartered within this judicial district.

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

4 **PARTIES**

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

8 7. Defendant First American is a Fortune 500 company with over 18,000
9 employees and over \$5 billion in revenue. Through its subsidiaries, First American
10 provides financial services through its title insurance and services segment and its
11 specialty insurance segment. The Company is incorporated in Delaware and its
12 principal executive offices are located at 1 First American Way, Santa Ana, CA
13 92707. First American securities are traded on the New York Stock Exchange
14 ("NYSE") under the ticker symbol "FAF."

15 8. Defendant Dennis J. Gilmore ("Gilmore") has been the Chief Executive
16 Officer ("CEO") and a Director of First American during the Class Period.

17 9. Defendant Mark E. Seaton ("Seaton") has been the Chief Financial
18 Officer ("CFO") and Executive Vice President of First American during the Class
19 Period.

20 10. Defendants Gilmore and Seaton are sometimes referred to herein as
21 the "Individual Defendants."

22 11. Each of the Individual Defendants:

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

24 (b) was directly involved in the day-to-day operations of the Company at
25 the highest levels;
26

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

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

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

21 14. The Company and the Individual Defendants are referred to herein,
22 collectively, as the "Defendants."

23 **SUBSTANTIVE ALLEGATIONS**

24 **Materially False and Misleading Statements**

25 15. On February 17, 2017, when First American filed an annual report on
26 Form 10-K with the SEC, announcing the Company's financial and operating results
27

1 for the fiscal year ended December 31, 2016 (the “2016 10-K”). The 2016 10-K was
2 signed by Defendants Gilmore and Seaton. Attached to the 2016 10-K were
3 certification pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by
4 Defendants Gilmore and Seaton attesting to the accuracy of financial reporting, the
5 disclosure of any material changes to the Company’s internal control over financial
6 reporting and the disclosure of all fraud.

7 16. The 2016 10-K made clear to investors that First American understood
8 its information and data services were a key component of the Company’s success,
9 stating in relevant part: “In the current market environment, we are focused on
10 growing our core title insurance and settlement services business, *strengthening our*
11 *enterprise through data and process advantages. . .*” (Emphasis added.)

12 17. On March 31, 2017, Defendant Gilmore released a letter to First
13 American’s stockholders (the “March 2017 Letter”). In the March 2017 Letter,
14 Defendant Gilmore repeatedly touted First American’s “ongoing focus on operating
15 efficiency” and “increasing efficiency.” The March 2017 Letter, stated under
16 “Capital Management” in relevant part: “Much of this investment was directed to
17 technology, including the continued enhancement of our title production platform
18 and our customer-facing technologies and enterprise systems, all of which will
19 improve our customers’ experience and our internal process efficiency.”

20 18. In the March 2017 Letter, Gilmore also highlighted First American’s
21 acquisitions of two companies, RedVision and TD Service Financial, for their
22 technology and document management capabilities.

23 19. The March 2017 Letter continues, attempting to reassure stockholders
24 and the public in his “**VISION AND STRATEGY**” section that: “Our continued
25 focus on operating efficiency coupled with favorable market conditions helped us
26
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1 achieve the highest pretax margin in our title segment’s history. . . As we continue
2 to pursue market share, we remain committed to ensuring that growth never comes
3 at the expense of returns.”

4 20. Continuing under “**VISION AND STRATEGY**,” the March 2017
5 Letter states: “*Strengthen the enterprise through data and process advantage . . .*
6 *These efforts strengthen our control over the key data assets that underlie our*
7 *products and services and facilitate our efforts to manage risk and drive efficiencies*
8 *throughout the title and settlement process.*”

9 21. To finish the “**VISION AND STRATEGY**” section of the March 2017
10 Letter, we find that Gilmore, once again, touts First American’s acquisitions
11 “allowing us to streamline the title process and continue to improve the solutions we
12 offer our customers.”

13 22. In Gilmore’s March 30, 2018 letter to First American’s stockholders
14 (“March 2018 Letter”), investors were repeatedly assured that First American was
15 investing and improving its information and technology footing. Examples include:
16

17 **CAPITAL MANAGEMENT ACTIVITIES**

18 . . .
19 *Invest in our core business—Much of First American’s \$137 million in*
20 *capital expenditures in 2017 was directed to the development and*
improvement of our technology.

21 * * *

22 **OUR VISION AND STRATEGY**

23 . . .
24 *Manage and actively invest in complementary businesses that support*
25 *or expand the core—. . .we enhanced the customer experience for our*
26 *home warranty customers by upgrading the digital interface to*
streamline the claims, payment and contract renewal processes.

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LOOKING AHEAD

...
Importantly, I am excited about the innovation underway within the company that will enable us to meet the dynamic needs and expectations of our customers. *Many of these initiatives leverage our unique data, technology and banking assets, giving us a distinct competitive advantage.*

(Emphasis added.)

23. First American’s website stated in 2017 under “Privacy Information”:
We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

* * *

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1)

1 as necessary for us to provide the product or service you have requested
2 of us; or (2) as permitted by law. We may, however, store such
3 information indefinitely, including the period after which any customer
4 relationship has ceased. Such information may be used for any internal
5 purpose, such as quality control efforts or customer analysis. We may
6 also provide all of the types of nonpublic personal information listed
7 above to one or more of our affiliated companies. Such affiliated
8 companies include financial service providers, such as title insurers,
9 property and casualty insurers, and trust and investment advisory
10 companies, or companies involved in real estate services, such as
11 appraisal companies, home warranty companies and escrow companies

12 * * *

13 **Former Customers**

14 Even if you are no longer our customer, our Privacy Policy will
15 continue to apply to you.

16 **Confidentiality and Security**

17 *We will use our best efforts to ensure that no unauthorized parties*
18 *have access to any of your information. We restrict access to*
19 *nonpublic personal information about you to those individuals and*
20 *entities who need to know that information to provide products or*
21 *services to you. We will use our best efforts to train and oversee our*
22 *employees and agents to ensure that your information will be handled*
23 *responsibly and in accordance with this Privacy Policy and First*
24 *American's Fair Information Values. We currently maintain*
25 *physical, electronic, and procedural safeguards that comply with*
26 *federal regulations to guard your nonpublic personal information.*

27 **Information Obtained Through Our Web Site**

28 First American Financial Corporation is sensitive to privacy issues on
the Internet . . .

Fair Information Values

Fairness We consider consumer expectations about their privacy in all
our businesses. *We only offer products and services that assure a*
favorable balance between consumer benefits and consumer privacy.

1
2 **Public Record** We believe that an open public record creates
3 significant value for society, enhances consumer choice and creates
4 consumer opportunity. We actively support an open public record and
emphasize its importance and contribution to our economy.

5 **Use** *We believe we should behave responsibly when we use*
6 *information about a consumer in our business.* We will obey the laws
7 governing the collection, use and dissemination of data.

8 **Accuracy** We will take reasonable steps to help assure the accuracy of
9 the data we collect, use and disseminate. Where possible, we will take
10 reasonable steps to correct inaccurate information. When, as with the
11 public record, we cannot correct inaccurate information, we will take
12 all reasonable steps to assist consumers in identifying the source of the
erroneous data so that the consumer can secure the required corrections.

13 **Education** *We endeavor to educate the users of our products and*
14 *services, our employees and others in our industry about the*
15 *importance of consumer privacy.* We will instruct our employees on
16 our fair information values and on the responsible collection and use of
17 information in a responsible manner.

18 **Security** *We will maintain appropriate facilities and systems to*
19 *protect against unauthorized access to and corruption of the data we*
20 *maintain.*

21 (Emphasis added.)

22 24. First American's website stated in 2018:

23 *Post-Closing Document Management*

24 . . . Let us store your records in our secure facility that is monitored 24-
25 hours a day. And, of course, you always have online access to your and
26 your customers' documents, any time, day or night.

27 * * *

1 *Secure Document Storage*

2 ***We offer secure, reliable, and affordable records storage solutions for***
3 ***your needs of any size to help you manage active mortgage collateral***
4 ***files.***

5 Imaged Documents Reviewed for Deficiencies (capture critical data
6 elements, report missing documents & interfile trailing documents)

7 State-of-the-art Document Tracking System

8 Online Access for Document Viewing, Shipping Request Fulfillment
9 & Client-specific Inventory Reports

10 ***Secure Facility Monitored 24-hours a day***

11 * * *

12 ***Secure access to files which provides our clients with detailed***
13 ***information concerning their REO property closing status***

14 (Emphasis added.)

15 25. In Gilmore’s March 29, 2019 letter to First Financial’s stockholders
16 (“March 2019 Letter”), investors were repeatedly assured that First American was
17 investing and improving its information and technology systems with “examples of
18 some of the industry-leading moves we’re making to meet those customer
19 expectations”:

20 *eClosing*—In 2018, we rolled out electronic “*eClosing*” solutions that
21 lets consumers sign many documents online in advance of the final
22 closing, and we are actively developing other innovative methods for
23 creating a more complete digital closing experience.

24 * * *

25 *Automated Data Extraction*—Through the use of optical character
26 recognition and artificial intelligence, we’re significantly reducing
27 manual data entry, which increases our efficiency and enables us to
28 more rapidly expand our content.

1 *Blockchain*—In November, we announced the launch of a First
2 American-developed system using blockchain technology. Designed to
3 increase efficiency and reduce risk, we’re pleased that Old Republic
4 Title Insurance Group was the first to join us in utilizing the system.

5 **LOOKING AHEAD**

6 . . .
7 We’ll continue streamlining and automating our processes, while
8 enhancing the customer experience. And while our data leadership,
9 technology and industry expertise will propel our efforts, it is ultimately
10 our dedicated employees who drive these efforts to differentiate us in
11 the marketplace and provide a competitive advantage.

12 26. The statements referenced in ¶¶15-25 above were materially false
13 and/or misleading because they misrepresented and failed to disclose the following
14 adverse facts pertaining to the Company’s business, operational and financial results,
15 which were known to Defendants or recklessly disregarded by them. Specifically,
16 Defendants made false and/or misleading statements and/or failed to disclose that:
17 (1) the Company failed to implement basic security standards to protect its
18 customers’ sensitive personal information and data; (2) the Company faced a
19 heightened risk of cybersecurity failure due to its automation and efficiency
20 initiatives; and (3) as a result, Defendants’ public statements were materially false
21 and misleading at all relevant times.

22 **The Truth Emerges**

23 27. On May 24, 2019, KrebsOnSecurity.com (“KrebsOnSecurity”), a noted
24 cybersecurity blog, reported a massive data exposure by First American in which
25 Approximately 885 million customer files were exposed by First American. In its
26 post entitled, “First American Financial Corp. Leaked Hundreds of Millions of Title
27 Insurance Records” KrebsOnSecurity disclosed in relevant part:
28

1 “The Web site for Fortune 500 real estate *title insurance giant First*
2 *American Financial Corp.* [NYSE:FAF] *leaked hundreds of millions*
3 *of documents related to mortgage deals going back to 2003*, until
4 notified this week by KrebsOnSecurity. *The digitized records —*
5 *including bank account numbers and statements, mortgage and tax*
6 *records, Social Security numbers, wire transaction receipts, and*
7 *drivers license images — were available without authentication to*
8 *anyone with a Web browser.*

9 * * *

10 Earlier this week, KrebsOnSecurity was contacted by a real estate
11 developer in Washington state who said he’d had little luck getting a
12 response from the company about what he found, which was that a
13 portion of its Web site (firstam.com) was leaking tens if not hundreds
14 of millions of records. He said anyone who knew the URL for a valid
15 document at the Web site could view other documents just by
16 modifying a single digit in the link.

17 And this would potentially include anyone who’s ever been sent a
18 document link via email by First American.

19 ***KrebsOnSecurity confirmed the real estate developer’s findings,***
20 ***which indicate that First American’s Web site exposed approximately***
21 ***885 million files, the earliest dating back more than 16 years. No***
22 ***authentication was required to read the documents.***

23 Many of the exposed files are records of wire transactions with bank
24 account numbers and other information from home or property buyers
25 and sellers. Ben Shoval, the developer who notified KrebsOnSecurity
26 about the data exposure, said that’s because First American is one of
27 the most widely-used companies for real estate title insurance and for
28 closing real estate deals — where both parties to the sale meet in a room
and sign stacks of legal documents.

* * *

1 Shoval shared a document link he'd been given by First American from
2 a recent transaction, which referenced a record number that was nine
3 digits long and dated April 2019. *Modifying the document number in*
4 *his link by numbers in either direction yielded other peoples' records*
5 *before or after the same date and time, indicating the document*
6 *numbers may have been issued sequentially.*

7 * * *

8 I should emphasize that these documents were merely available from
9 First American's Web site; I do not have any information on whether
10 this fact was known to fraudsters previously, nor do I have any
11 information to suggest the documents were somehow mass-harvested
12 *(although a low-and-slow or distributed indexing of this data would*
13 *not have been difficult for even a novice attacker).*

14 Nevertheless, the information exposed by First American would be a
15 virtual gold mine for phishers and scammers involved in so-called
16 Business Email Compromise (BEC) scams, which often impersonate
17 real estate agents, closing agencies, title and escrow firms in a bid
18 to trick property buyers into wiring funds to fraudsters. According to
19 the FBI, BEC scams are the most costly form of cybercrime today.

20 Armed with a single link to a First American document, BEC scammers
21 would have an endless supply of very convincing phishing templates to
22 use. A database like this also would give fraudsters a constant feed of
23 new information about upcoming real estate financial transactions
24 — *including the email addresses, names and phone numbers of the*
25 *closing agents and buyers.*

26 (Emphasis added.)

27 28. On this news, shares of First American fell \$3.46, or over 6%, to close
28 at \$51.80 on May 25, 2019.

1 29. On October 22, 2020, First American filed a quarterly report on Form
2 10-Q with the SEC, announcing that the Company had received a Wells Notice
3 regarding its massive security breach, stating, in pertinent part:

4 Currently, governmental agencies are examining or investigating
5 certain of the Company's operations. *These exams and investigations*
6 *include two investigations initiated in connection with the*
7 *information security incident that occurred during the second quarter*
8 *of 2019, one being conducted by the Securities and Exchange*
9 *Commission ("SEC") enforcement staff and the other by the New*
10 *York Department of Financial Services. The SEC enforcement staff is*
11 *questioning the adequacy of disclosures the Company made at the time*
12 *of the incident and the adequacy of its disclosure controls. In*
13 *September 2020, the Company received a Wells Notice informing the*
14 *Company that the enforcement staff has made a preliminary*
15 *determination to recommend a filing of an enforcement action by the*
16 *SEC against the Company.*

17 (Emphasis added.)

18 30. On this news the price of First American shares fell approximately
19 \$4.83 per share, or 9%, to close at \$46.75 per share on October 22, 2020.

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

23 PLAINTIFF'S CLASS ACTION ALLEGATIONS

24 32. Plaintiff brings this action as a class action pursuant to Federal Rule of
25 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
26 purchased or otherwise acquired the publicly traded securities of First American
27 during the Class Period (the "Class") and were damaged upon the revelation of the
28 alleged corrective disclosure. Excluded from the Class are Defendants herein, the
officers and directors of the Company, at all relevant times, members of their

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

3 33. The members of the Class are so numerous that joinder of all members
4 is impracticable. Throughout the Class Period, the Company's securities were
5 actively traded on the NYSE. While the exact number of Class members is unknown
6 to Plaintiff at this time and can be ascertained only through appropriate discovery,
7 Plaintiff believes that there are hundreds or thousands of members in the proposed
8 Class. Record owners and other members of the Class may be identified from
9 records maintained by the Company or its transfer agent and may be notified of the
10 pendency of this action by mail, using the form of notice similar to that customarily
11 used in securities class actions.

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

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

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

- 22
23 (a) whether Defendants' acts as alleged violated the federal securities
24 laws;

- 1 (b) whether Defendants' statements to the investing public during the
2 Class Period misrepresented material facts about the financial
3 condition, business, operations, and management of the Company;
- 4 (c) whether Defendants' statements to the investing public during the
5 Class Period omitted material facts necessary to make the statements
6 made, in light of the circumstances under which they were made, not
7 misleading;
- 8 (d) whether the Individual Defendants caused the Company to issue false
9 and misleading SEC filings and public statements during the Class
10 Period;
- 11 (e) whether Defendants acted knowingly or recklessly in issuing false and
12 misleading SEC filings and public statements during the Class Period;
- 13 (f) whether the prices of the Company's securities during the Class Period
14 were artificially inflated because of the Defendants' conduct
15 complained of herein; and
- 16 (g) whether the members of the Class have sustained damages and, if so,
17 what is the proper measure of damages.

18
19 37. A class action is superior to all other available methods for the fair and
20 efficient adjudication of this controversy since joinder of all members is
21 impracticable. Furthermore, as the damages suffered by individual Class members
22 may be relatively small, the expense and burden of individual litigation make it
23 impossible for members of the Class to individually redress the wrongs done to
24 them. There will be no difficulty in the management of this action as a class action.

25 38. Plaintiff will rely, in part, upon the presumption of reliance established
26 by the fraud-on-the-market doctrine in that:
27

- 1 (a) Defendants made public misrepresentations or failed to disclose
2 material facts during the Class Period;
- 3 (b) the omissions and misrepresentations were material;
- 4 (c) the Company's securities are traded in efficient markets;
- 5 (d) the Company's securities were liquid and traded with moderate to
6 heavy volume during the Class Period;
- 7 (e) the Company traded on the NYSE, and was covered by multiple
8 analysts;
- 9 (f) the misrepresentations and omissions alleged would tend to induce a
10 reasonable investor to misjudge the value of the Company's securities;
11 Plaintiff and members of the Class purchased and/or sold the
12 Company's securities between the time the Defendants failed to
13 disclose or misrepresented material facts and the time the true facts
14 were disclosed, without knowledge of the omitted or misrepresented
15 facts; and
- 16 (g) Unexpected material news about the Company was rapidly reflected
17 in and incorporated into the Company's stock price during the Class
18 Period.
19

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

22 40. Alternatively, Plaintiff and the members of the Class are entitled to the
23 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens*
24 *of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as
25 Defendants omitted material information in their Class Period statements in
26 violation of a duty to disclose such information, as detailed above.
27

COUNT I

Violation of Section 10(b) of The Exchange Act and Rule 10b-5

Against All Defendants

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

42. 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.

43. 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.

44. 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; and/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.

45. 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

1 statements or documents would be issued or disseminated to the investing public;
2 and knowingly and substantially participated, or acquiesced in the issuance or
3 dissemination of such statements or documents as primary violations of the
4 securities laws. These defendants by virtue of their receipt of information reflecting
5 the true facts of the Company, their control over, and/or receipt and/or modification
6 of the Company's allegedly materially misleading statements, and/or their
7 associations with the Company which made them privy to confidential proprietary
8 information concerning the Company, participated in the fraudulent scheme alleged
9 herein.

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

17 47. As a result of the foregoing, the market price of the Company's
18 securities was artificially inflated during the Class Period. In ignorance of the falsity
19 of the Company's and the Individual Defendants' statements, Plaintiff and the other
20 members of the Class relied on the statements described above and/or the integrity
21 of the market price of the Company's securities during the Class Period in
22 purchasing the Company's securities at prices that were artificially inflated as a
23 result of the Company's and the Individual Defendants' false and misleading
24 statements.
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1 48. Had Plaintiff and the other members of the Class been aware that the
2 market price of the Company's securities had been artificially and falsely inflated
3 by the Company's and the Individual Defendants' misleading statements and by the
4 material adverse information which the Company's and the Individual Defendants
5 did not disclose, they would not have purchased the Company's securities at the
6 artificially inflated prices that they did, or at all.

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

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

15 **COUNT II**

16 **Violation of Section 20(a) of The Exchange Act**

17 **Against The Individual Defendants**

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

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

25 53. As officers and/or directors of a publicly owned company, the
26 Individual Defendants had a duty to disseminate accurate and truthful information
27

1 with respect to the Company's financial condition and results of operations, and to
2 correct promptly any public statements issued by the Company which had become
3 materially false or misleading.

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

13 55. Each of the Individual Defendants, therefore, acted as a controlling
14 person of the Company. By reason of their senior management positions and/or
15 being directors of the Company, each of the Individual Defendants had the power
16 to direct the actions of, and exercised the same to cause, the Company to engage in
17 the unlawful acts and conduct complained of herein. Each of the Individual
18 Defendants exercised control over the general operations of the Company and
19 possessed the power to control the specific activities which comprise the primary
20 violations about which Plaintiff and the other members of the Class complain.

21 56. 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

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff demands judgment against Defendants as follows:
27

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

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

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

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

11 **DEMAND FOR TRIAL BY JURY**

12 Plaintiff hereby demands a trial by jury.

13
14
15 Dated: October 25, 2020

Respectfully submitted,

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

17 */s/Laurence M. Rosen*

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