CLERK'S OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED
JAN 10 2000
MORGAN E. SCOTT, JR., CLERK
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

MARVIN E. SIKES Plaintiff, v. VALUE AMERICA, INC., CRAIG A. WINN, THOMAS MORGAN, REX SCATENA and DEAN M. JOHNSON, Defendants.	)	CIVIL ACTION NO. 3:00CV00004 CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff, by his attorneys, as and for his Class Action Complaint, alleges the following upon personal knowledge as to himself and his acts and as to all other matters upon, inter alia, the investigation made by and through his attorneys, including a review of the public filings of Value America, Inc. ("Value America" or the "Company") with the United States Securities and Exchange Commission ("SEC"), as well as published reports and news articles.

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §78aa], Section 22 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §77v] and supplemental jurisdiction [28 U.S.C. §1367]. The claims asserted herein arise under Section 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], and Sections 11, 12(a)(2) and 15 of the Securities Act [15 U.S.C. §§77k, 77l(2) and 77o].

2. Venue in this case is proper in this Judicial District pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa], and 28 U.S.C. §1391(b) and Section 22 of the Securities Act [15 U.S.C. §77v]. Many of the acts and transactions giving rise to the violations of law complained of herein, including the preparation and dissemination to the investing public of materially false and misleading information, occurred within this Judicial District. In addition, Value America maintains its principal executive offices within this Judicial District.

3. In connection with the acts, conduct and other wrongs alleged in this complaint, the defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the mails, telephone communications and the facilities of a national securities exchange.

NATURE OF THE ACTION

4. This is a securities class action brought by plaintiff on behalf of himself and all persons as described below (the "Class"), other than the defendants and related parties, who purchased or otherwise acquired Value America securities between April 7, 1999 through December 28, 1999, inclusive, (the "Class Period").

5. Defendants' public misrepresentations and omissions of material adverse information regarding, inter alia, Value America's financial condition were known to them, or were recklessly disregarded by them and caused the market price of Value America securities to be artificially inflated during the Class Period.

6. Each of the defendants either knew or recklessly disregarded the facts that the statements and omissions described below were false and misleading; that such statements

would adversely affect the integrity of the market for Value America securities; and that such statements would deceive investors into purchasing those securities at artificially inflated prices.

7. During the Class Period, plaintiff and each member of the Class purchased Value America securities in the IPO and/or open market without knowledge of the false and misleading statements and omissions of the defendants and without knowledge that the price of those securities was artificially inflated during the Class Period, and have suffered damages as a result. During the Class Period, plaintiff and each member of the Class directly or indirectly relied upon the defendants' public reports, press releases, filings with the SEC and other public statements, as more fully described below, and the fact that these securities were fairly priced and/or upon the integrity of the market for Value America securities. As a result, plaintiff and each member of the Class have been damaged by the defendants' wrongful conduct.

THE PARTIES

8. Plaintiff Marvin E. Sikes, purchased 50 shares of Value America common stock in the April 7, 1999 initial public offering ("IPO") at $23 per share, as set forth in his accompanying certification and was damaged thereby as set forth herein.

9. Defendant Value America, incorporated in March 1996 in Nevada and reincorporated in 1997 in Virginia, maintains its principal executive offices at 1560 Insurance Lane, Charlottesville, VA 22911. Value America is an online service that purports to sell a wide variety of products including apparel, footwear, computers, electronics, home furnishings, jewelry, major appliances, software and toys.

10. Defendant Craig A. Winn ("Winn"), the principal founder of Value America in March 1996, was chairman of the board from March 1996 until November 24, 1999.

Defendant Winn was a member of Value America's board of directors throughout the Class Period, and served as Value America's chief executive officer ("CEO") from March 1996 through March 1999. During the Class Period, while in possession of material adverse inside information, defendant Winn sold 72,500 shares of Value America common stock, reaping proceeds of more than $1.07 million at prices as high as $14.86 per share.

11. Defendant Thomas Morgan ("Morgan") was CEO of Value America from prior to the start of the Class Period until November 24, 1999.

12. Defendant Rex Scatena ("Scatena"), co-founder of Value America in March 1996, was vice chairman of the board and general counsel throughout the Class Period, and director since March 1996. Defendant Scatena resigned on December 29, 1999. From August 1998 through March 1999, defendant Scatena served as Value America's executive vice president -- Business Development. During the Class Period, while in possession of material adverse inside information, defendant Scatena sold 195,500 shares of Value America common stock, reaping proceeds of more than $2.195 million at prices as high as $11.86 per share.

13. Defendant Dean M. Johnson ("Johnson"), was executive vice president, chief financial officer ("CFO") and director of Value America from November 1997 through the end of the Class Period. In December 1997, defendant Johnson became Value America's secretary. During the Class Period, while in possession of material adverse inside information, defendant Johnson sold 93,310 shares of Value America common stock, reaping proceeds of more than $1.028 million at prices as high as $11.86 per share.

14. Defendants Winn, Morgan, Scatena and Johnson are collectively referred to herein as the "Individual Defendants." The Individual Defendants, because of their positions

of control and authority as officers and/or directors of Value America, were able to and did control the contents of the various quarterly reports, SEC filings, press releases and presentations to securities analysts pertaining to those entities, including, without limitation, the registration statements and prospectuses filed with the SEC, including the final registration statement (the "Registration Statement") containing the final prospectus (the "Prospectus") declared effective by the SEC on or about April 7, 1999. Each of the Insider Defendants was provided with copies of management reports, press releases and SEC filings alleged herein to be misleading prior to, or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. As a result, each of the defendants is responsible for the accuracy of the public reports and releases detailed herein as "group published" information, and is therefore responsible and liable for the representations contained therein.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the "Class") of all individuals and entities who purchased or otherwise acquired Value America securities during the Class Period. Excluded from the Class are the defendants herein, members of the immediate family of each of the defendants, any person, firm, trust, corporation, officer, director or other individual of any entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

16. This action is properly maintainable as a class action because:

a. During the Class Period, in excess of 44 million shares of Value America common stock were outstanding;

b. The common stock was actively traded on an impersonal and efficient trading market during the Class Period. The members of the Class for whose benefit this action is brought are dispersed throughout the United States, and are so numerous that joinder of all Class members is impracticable. Thousands of Value America shares were publicly traded during the Class Period and, upon information and belief, there are hundreds of members of the Class;

c. Plaintiff's claims are typical of the claims of the other members of the Class, and plaintiff and all members of the Class sustained damages as a result of the defendants' wrongful conduct complained of herein;

d. Plaintiff is a representative party who will fairly and adequately protect the interests of the other members of the Class, and has retained counsel competent and experienced in class action securities litigation. Plaintiff has no interests antagonistic to, or in conflict with, the Class it seeks to represent;

e. A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein, because joinder of all members is impracticable. Furthermore, because the damages suffered by the individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to separately redress the wrongs done to them. The likelihood of individual Class members prosecuting separate claims is remote;

f. Plaintiff anticipates no unusual difficulties in the management of this action as a class action; and

g. The questions of law and fact common to the members of the Class predominate over any questions affecting any individual members of the Class.

17. The questions of law and fact which are common to the Class include, among others:

a. Whether the federal securities laws were violated by the defendants' acts as alleged herein;

b. Whether the documents, releases, reports and/or statements disseminated to the investing public and to Value America shareholders during the Class Period omitted or misrepresented material facts about the financial condition, business and income of Value America;

c. Whether the defendants acted with knowledge or with reckless disregard for the truth in omitting to state and/or misrepresenting material facts;

d. Whether, during the Class Period, the market price of Value America common stock was artificially inflated due to the non-disclosures and/or material misrepresentations complained of herein;

e. Whether the defendants participated in and pursued the common course of conduct complained of herein; and

f. Whether the members of the Class have sustained damages and, if so, what is the proper measure thereof.

18. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-market doctrine. The market for Value America common stock was at all times an efficient market for the following reasons, among others:

a. Value America met the requirements for listing, and was listed on the NASDAQ National Market System, a highly efficient securities market, under the symbol "VUSA;"

b. As a regulated issuer, Value America filed periodic public reports with the SEC;

c. Value America's securities volume was substantial during the Class Period;

d. Value America was followed by various securities analysts who wrote reports which were available through various automated data retrieval services;

e. Value America disseminated information on a market-wide basis through various electronic media services; and

f. The market price of Value America securities reacted efficiently to new information entering the market.

19. The foregoing facts clearly indicate the existence of an efficient market for trading of Value America securities and make applicable the fraud-on-the-market doctrine. Similarly, plaintiff and the other members of the Class are entitled to a presumption of reliance with respect to the misstatements and omissions alleged herein.

8

PRE-CLASS PERIOD STATEMENTS

20. On January 19, 1999, William L. Hunt III ("Hunt"), Value America's divisional vice president for Housewares Merchandise made several statements relating to the Company's purported growth and upcoming IPO. The statements were reported by Dow Jones Online News later that day. The statements included assertions that Value America's growth in sales was double that of other electronic commerce retailers. The Company did not even attempt to retract this statement prior to the IPO.

SUBSTANTIVE ALLEGATIONS

21. On April 7, 1999, the start of the Class Period, Bloomberg News reported that Value America IPO comprised 5.5 million shares of common stock priced at $23 per share, raising $117.6 million. On this first day of trading, Value America's common stock traded as high as $74.25 per share, closing at $55, a gain of 139% for the day, giving the Company a market value of $2.4 billion and defendant Winn a stake in the Company worth $348.4 million.

22. Bloomberg News also reported on April 7, 1999, that Value America's offering of 5.5 million shares was "500,000 more than originally expected, and $1 [per share] above the top of the $20-$22 range set by [the underwriters]."

23. Under the heading "STRATEGY," the Registration Statement stated, "Value America intends to offer consumers a wide selection of products from a variety of categories." This statement was materially misleading when made because defendants knew that more than 95% of Value America's customers bought products nearly exclusively from a few related categories, namely, (1) the consumer and business PC's and peripherals, (2) computer software, (3) consumer electronics and (4) office supplies. Additionally, the Registration

Statement failed to warn investors that the Company was experiencing considerable difficulty expanding its business model to other product areas because, inter alia:

a. the Company's marketing efforts were focused upon low to sub-zero margin PC and consumer electronics offerings;

b. the Company was unable to timely supply ordered goods in areas beyond its core PC and consumer electronics business; and

c. unfilled orders outside the Company's core PC and consumer electronics business were creating an undisclosed backlog with ever increasing delay in shipment and/or failed shipment, thereby losing the customers attracted to the Company's website by its massive and costly advertising campaign.

Value America investors were therefore unaware that the Company was forced to compete nearly exclusively in the low to sub-zero margin business of PC and consumer electronics sales.

24. Regarding Hunt's pre-IPO statement regarding the Company's purported growth, under the heading "YOU MAY MAKE AN INAPPROPRIATE INVESTMENT DECISION IF YOU RELY ON STATEMENTS MADE IN THE PRESS," the Registration Statement merely states, "We cannot validate the statements relating to [Value America's growth in sales]." This statement was materially misleading when made because defendants were in the best position to know, and did know, or were reckless in not knowing, that Value America's growth was not "double that of other electronic commerce retailers."

25. At the direction of defendants, the Company filed its report on SEC Form 10-Q for the quarter ended March 31, 1999 on or about May 10, 1999 (the "First Quarter 1999 10-Q"). Under the heading, "ADDITIONAL FACTORS THAT MAY AFFECT FUTURE

RESULTS," the First Quarter 1999 10-Q states, "If the Company does not improve its operational systems and customer service capabilities, it could lose customers and damage its reputation." This statement was materially misleading when made because the Company was already experiencing loss of customers and damage to its reputation as a result of its proprietary and wholly inadequate "operational systems and customer service capabilities." Additionally, the two subsequently filed quarterly reports on SEC Form 10-Q, for the quarters ended June 30, 1999 (filed on or about August 9, 1999) and September 30, 1999 (filed on or about November 8, 1999) conspicuously omitted this purported "risk" disclosure, thereby further misleading investors to believe that even the "risk" had been eliminated.

26. On August 2, 1999, Business Wire carried a Value America press release reporting $35.8 million in revenue for its second quarter ended June 30, 1999, a 600% increase over the comparable quarter a year earlier. The Company's press release added, "During the quarter, 95% of Value America's brand partners were able to ship [to] its customers within one business day." The Company also reported:

> The Company continued to make significant investments in technology in order to maintain a state-of-the-art infrastructure that is capable of scaling with increased growth. While the Company is pleased with and has continued to apply its NT and Intel-based services in Web applications, it has enhanced its core data base infrastructure and transactional engine to a Unix and RISC Enterprise alternative that also features EMC storage arrays, Oracle data bases and a Cisco-based ATM network.
>
> Craig A. Winn, Chairman and Founder of Value America, said: "The explosive growth in Value America during the quarter and our increasingly strong and broad relationships with the leading brand name manufacturers clearly demonstrates that Value America's business model is succeeding faster than we expected. Value America is building the leading Internet superstore, and is striving to sell more brand name products to consumers and

businesses than any other e-commerce company. Our results this quarter demonstrate that we are well on our way to achieving this goal."

Mr. Winn added: "We continue to add new brands and market categories, diversifying our product offerings and making Value America the Internet's most convenient one-stop-shopping location. At the same time, we are dramatically increasing the number of specialized storefronts that we offer communities of buyers, including associations, charities, schools, unions, faith groups, and local governments. We are providing the retail solution that benefits everyone."

Tom Morgan, Chief Executive Officer of Value America, said: "To guarantee that we will be able to manage our growth over the long term, we increased investments in technology, people and brand-building this quarter. Our investments in technology will provide us with the infrastructure we need to handle our growth, while our investments in brand-building will help establish Value America as the superior e-commerce destination. We have assembled a winning management team and resources to provide an outstanding customer experience."

Value America currently sells products in more than 40 industries from more than 2,000 brand manufacturers, an increase of more than 500 relationships since last quarter. The company continued to expand its range of products this quarter and its non-technology consumer sales were up more than 400% from the previous quarter. [Emphasis added.]

27. The Company's August 2, 1999 press release, disseminated at the direction of defendants, failed to disclose that the Company was actually experiencing considerable difficulty expanding its business model to other product areas because, *inter alia*:

a. the Company's marketing efforts were focused upon the low to sub-zero margin PC and consumer electronics offerings; and

b. the Company was unable to timely supply ordered goods in areas beyond its core PC and consumer electronics business. Value America investors were therefore unaware that the Company was forced to compete nearly exclusively in the low to sub-zero margin business of PC and consumer electronics sales.

28. Additionally, the Company's August 2, 1999 press release was false and misleading because the Company's huge investment in "upgraded" technology was not effective and the Value America customers were experiencing huge order processing delays and missed shipments. Further, customers were being billed for shipments that were never sent, particularly in the Company's "expanded" product offerings.

29. On September 13, 1999, Bloomberg News reported that defendant Winn stated in an interview that Value America could become profitable in 2001, a full year ahead of analysts' expectations. Defendant Winn specifically stated, "The possibility exists that within two to three years we could be annualizing at a billion dollars in sales. Otherwise we'd be fools to have invested that heavily in technology. My personal goal is to be profitable two years ahead of schedule, but I'm highly confident we'll be profitable a year ahead of schedule."

30. Defendant Winn's September 13, 1999 statements were false and misleading when made because, inter alia, the Company was actually experiencing considerable difficulty expanding its business model to the numerous other product areas necessary to achieve such revenue growth because, inter alia:

a. the Company's marketing efforts were focused upon low to sub-zero margin PC and consumer electronics offerings; and

b. the Company was unable to timely supply ordered goods in areas beyond its core PC and consumer electronics business, resulting in an undisclosed backlog of unfilled orders.

Value America investors were therefore unaware that the Company was forced to compete nearly exclusively in the low to sub-zero margin business of PC and consumer electronics sales.

31. Additionally, defendant Winn's comments in the Company's August 2, 1999 press release was false and misleading because the Company's huge investment in "upgraded" technology was not effective and the Value America customers were experiencing huge order processing delays and missed shipments, negatively impacting the Company's ability to achieve profitability. Further, customers were being billed for shipments that were never sent, particularly in the Company's "expanded" product offerings.

32. On November 4, 1999, Business Wire carried a Value America press release regarding the Company's results for its third quarter ended September 30, 1999. Value America reported that its revenue for the quarter ended September 30, 1999, surged to $ 57.6 million, a 269% increase over revenue of $15.6 million in the comparable period a year prior. The Company added that third quarter revenue represented a 61% increase over the second quarter ended June 30, 1999. The Company press release continued:

> "Our financial results prove that Value America's promising business model is becoming a viable and exciting business," said Tom Morgan, CEO of Value America. "Our bottom-line, no-nonsense focus on building a profitable business is paying off. Our inventory-less solution is a winner for brands that want e-commerce access, and for consumers who want the best brands at the best prices on the best products. We are constantly improving how and what we deliver to our customers, and we are pleased to be seeing such progress in the efficiency and productivity of our business model."
>
> "Because Value America is a pure e-commerce, inventory-less model, we can grow our business rapidly and efficiently. As we add more customers and more brands, our state-of- the-art, scalable technology enables us to achieve the benefits of scale and the stronger margins that come with it," added Morgan. "We are

extremely encouraged that all our trends are moving in the right direction, and we are determined to exceed our goals for growth and efficiency going forward."

In addition, Value America experienced a significant increase in its customer base, which grew nearly 50% during the quarter. These results were in addition to significant Company growth in the following areas:

Technology Infrastructure

Value America continued its substantial investment in technology infrastructure, building an e-commerce engine designed to support escalating membership and revenue growth. Major upgrades were made to systems infrastructure to enhance stability, scalability and efficiency. This included upgrading to the Oracle database platform, upgrading to a Unix infrastructure running on HP N-Class servers, and upgrading our EDI systems. The Value America web site continues to run on custom-developed software, but with extensive improvements in management and financial systems and call center tools. Customer relationship management software from Siebel systems was implemented to provide top-quality call center and operations tools. Transition to SAP systems for the financial and transaction management backbone of its systems is nearing completion, with full conversion to SAP scheduled for November 8.

Brand Expansion

Value America continued to build direct relationships with leading brands, enabling the company to sell products that ship directly from the manufacturers. In the third quarter alone, Value America added 366 brands to the store, bringing the total to 3,000 brands in 30 product categories. Significant partnerships were forged or deepened with market leaders such as IBM, Compaq, Fisher Price, 3Com, Nikon, Braun, and Mattel. The company also established business-to-business relationships with 15 Fortune 500 companies, including McGraw Hill, Time Warner, Ziff Davis, Blue Cross Blue Shield and Motorola.

Product Categories

During the third quarter, Value America continued its focus on expanding the number of product categories available to consumers, but also increasing depth and selection within each product category. The office products division, which offers products from industry leaders like 3M, Esselte, Acco and Fellowes, presents one of the most extensive arrays of office products on the Internet. Consumer products such as Consumer Electronics, Cameras, Housewares, Toys and Major Appliances were the fastest-growing segments of Value America's sales. Overall, sales of consumer products grew 53% over last quarter. This trend of rapid product addition will continue in coming months as Value America focuses on introducing new product and service areas, as well as expanding existing categories. [Emphasis added.]

33. The Company's November 4, 1999 press release, disseminated at the direction of defendants, failed to disclose that the Company was experiencing considerable difficulty expanding its business model to other product areas because, inter alia:

a. the Company's marketing efforts were focused upon low to sub-zero margin PC and consumer electronics offerings; and

b. the Company was unable to timely supply ordered goods in areas beyond its core PC and consumer electronics business. Value America investors were therefore unaware that the Company was forced to compete nearly exclusively in the low to sub-zero margin business of PC and consumer electronics sales. Additionally, the Company's November 4, 1999 press release was false and misleading because the Company's huge investment in "upgraded" technology was not effective and the Value America customers were experiencing huge order processing delays and missed shipments. Further, customers were being billed for shipments that were never sent, particularly in the Company's "expanded" product offerings

34. On or about November 8, 1999, the Company filed its SEC report on Form 10-Q for the quarterly period ended September 30, 1999 (the "Third Quarter 1999 10-Q"). In the "RESULTS OF OPERATIONS," under the subheading "Revenues," the Third Quarter 1999 10-Q, signed by defendant Johnson, states, "The growth in product sales reflects the growth of Value America's customer based, repeat purchases from existing customers, increases in the volume of merchandise sold and an overall increase in demand for Value America's expanding array of merchandise." In keeping with Value America's purported robust growth, under the heading "LIQUIDITY AND CAPITAL RESOURCES," the Third Quarter 1999 10-Q states, "Value America plans to increase its operating expenses significantly in order to ... increase the size of its staff."

35. The Third Quarter 1999 10-Q, filed at the direction of defendants, and signed by defendant Johnson, failed to disclose that the Company was experiencing considerable difficulty expanding its business model to other product areas because, inter alia:

a. the Company's marketing efforts were focused upon low to sub-zero margin PC and consumer electronics offerings; and

b. the Company was unable to timely supply ordered goods in areas beyond its core PC and consumer electronics business. Value America investors were therefore unaware that the Company was forced to compete nearly exclusively in the low to sub-zero margin business of PC and consumer electronics sales. Additionally, the Company's November 4, 1999 press release was false and misleading because the Company's huge investment in "upgraded" technology was not effective and the Value America customers were experiencing huge order processing delays and missed shipments. Further, customers were being billed for shipments that were never sent, particularly in the Company's "expanded" product offerings.

36. On November 24, 1999, *Business Wire* carried a Value America press release that announced that defendant Morgan was "leaving the company for personal reasons, returning to be with his family in Northern Virginia." Dorchak replaced Morgan as CEO, stating, "Value America's innovative business model is becoming a viable and exciting business. As we advance toward profitability, we are determined to focus on providing the highest-quality customer experience, increasing the depth of products in our store and solidifying our standing as e-commerce's inventory-less pioneer." The Company press release added that defendant Winn had been replaced as chairman of the board of directors by Wolf Schmitt, retired Chairman and CEO of Rubbermaid, Inc., and that defendant Winn would remain on the board to serve as chairman of the board's Executive Committee and consult with Schmitt on strategic direction and brand relationships.

37. On November 30, 1999, the *Richmond Times Dispatch* quoted Value America spokesperson David Kuo, "Value America believes it has the potential to become profitable by 2001 if not sooner."

38. Spokesperson David Kuo's November 30, 1999 statement, disseminated at the direction of, or with the consent of, defendants, failed to disclose that the Company was experiencing considerable difficulty expanding its business model to other product areas because, *inter alia*:

a. the Company's marketing efforts were focused upon low to sub-zero margin PC and consumer electronics offerings; and

h. the Company was unable to timely supply ordered goods in areas beyond its core PC and consumer electronics business. Value America investors were therefore unaware that the Company was forced to compete nearly exclusively in the low to sub-zero margin business of PC and consumer electronics sales. Additionally, David Kuo's November 30, 1999 press release was false and misleading because the Company's huge investment in "upgraded" technology was not effective and the Value America customers were experiencing huge order processing delays and missed shipments. Further, customers were being billed for shipments that were never sent, particularly in the Company's "expanded" product offerings.

39. Prior to the start of trading on December 29, 1999, the day after the end of the Class Period, Bloomberg News reported the Company's shocking news that Value America would fire half its staff, sales missed Wall Street forecasts (formed in part by guidance by the Company) and that the Company was forced to explore all options, including a sale of the Company. Specifically, the Bloomberg report stated:

> The retailer will fire 47 percent of its more than 600 workers, resulting in a fourth- quarter charge of $5.6 million. Value America's stock fell 27/32 to 6 1/32, a 92 percent decline from its high in April [1999].
>
> Value America said it gave three or four analysts details of its plan last night, with the agreement they couldn't tell traders or disseminate reports until the company made it public. A report by one of those analysts, Lauren Cooks Levitan of BancBoston Robertson Stephens, went out before the company's release. She declined to comment.
>
> * * *
>
> Securities and Exchange Commission Chairman Arthur Levitt has criticized companies that reveal market-moving information to analysts before it's released to the public. Companies shouldn't use embargoes with analysts because all investors may not get the news at the same time, said Alan Bromberg, a securities fraud specialist at Southern Methodist Law School.

"Clearly the proper way to put information out is to put it where the public can reach it by press release or SEC filing or on the Web," he said. "I'd consider (how the news was handled) at best highly dubious and quite possibly illegal."

The fourth-quarter sales shortfall is the latest disappointment for Value America, whose investors include billionaire Paul Allen and FDX Corp. Chairman Frederick Smith.

Its shares surged on the first day of trading in April from an initial price of 23 to a high of 74 1/4 before finally closing at about 55....

The retailer also said founders Craig Winn and Rex Scatena resigned. Winn, who controls about a third of the company's stock, had been chairman and chief executive until November. He was replaced then as chairman by former Rubbermaid executive Wolf Schmitt and as CEO by President Glenda Dorchak.

Sales Shortfall

* * *

Fourth-quarter sales will be 6 percent to 9 percent less than forecasts. Analyst Neal Johnson of Robinson-Humphrey Co. said he's lowering his sales forecast to $68 million to $70 million, from his earlier estimate of about $80 million.

Value America blamed the shortfall on the conversion to a new computer system, which slowed orders and hurt service.

Value America now features 25 different product categories on its Web site, including toiletries and clothing. It plans to pare that down to focus on personal computers and related equipment, software, office supplies, and consumer electronics -- categories that make up about 95 percent of sales.

"This was an extremely entrepreneurial and highly experimental company," said Schmitt. "We've learned many lessons. We'll become more focused, disciplined and results-oriented."

The company expects to reduce its vendors and distributors to 25 from more than 450. Value America said it will unveil a redesigned Web site in January [2000] that will be easier to use.

Marketing

The company also plans to spread more of its advertising over the Internet, rather than its previous focus on newspapers and other traditional media to promote its products. A number of Internet retailers spent millions this holiday season to advertise on television, radio and other media. Many didn't generate the sales needed to make up that investment and will have to pare back their marketing spending, analysts said.

"All this money being spent off line to create these instant brands isn't working," Levitan said.

Before today, Value America was expected to have a loss of $1.03 a share, the average estimate of five analysts surveyed by IBES International. It hasn't made money as a public company.

* * *

Options

Value America's board said its committee to evaluate the company's options will be headed by FDX's Smith, who holds about 3 percent of the company's shares.

The directors' group will include William Savoy of Vulcan Ventures, the investment arm of investor Allen and owner of about 19 percent of the company. Others include Thomas Casey of Global Crossing Ltd. and Michael Steed at Pacific Capital Group.

The company may need to find a source of capital as it uses up about $25 million or $30 million in cash a quarter, said analyst David Trossman at First Union Securities, who rates the stock "neutral."

"They may need a strategic partner to inject some cash eventually," he said.

The retailer had $86 million in cash as of Sept. 30, [1999], according to SEC filings. It lost $53.4 million on sales of $41.5 million last year.

Win in September [1999] said the company, which began in March 1996, could reach $1 billion in sales by 2001. [Emphasis added.]

40. Thus, on December 29, 1999, investors learned for the first time the truth regarding the troubles at Value America, including that:

a. 95% of the Company's revenue came from only five product categories, with most revenue restricted to super-low margin sales of computer-related goods, electronics and office supplies;

b. Value America's business was not growing rapidly and, as a result, 47% of the Company's workforce would be terminated;

c. Value America's Fourth Quarter 1999 revenue would be as much as 9% below the Company's prior guidance to Wall Street analysts; and

d. the Company's offline marketing and advertising strategy was a complete failure, causing the Company to shift to online marketing in desperation; and

e. the Company's founders, defendants Winn and Scatena, after selling millions of dollars of Value America common stock during the Class Period at artificially inflated prices, had resigned as executives.

41. As one would expect, these revelations had an immediate and profound effect on Value America's share price, dropping it as low as $5 3/4 per share, and closing at $6 1/16 per share, down more than 12% for the day.

42. On December 30, 1999, The Wall Street Journal reported that as a result of the December 29, 1999 revelations:

> Value America's market value has plunged to about $262 million from a peak of $3.2 billion...
>
> Revenue for the quarter will be 6% to 9% below the [Wall Street] consensus estimate of about $76 million, Value America said. It

blamed an upgrade of its computer system, which temporarily disrupted order processing....

The company is abandoning its failed department-store approach....

Value America has spent about $60 million on advertising this year, largely in newspapers, a spokesman said. But the ads failed to make Value America a powerful brand like Amazon.com or eToys...

[Value America's new CEO] Dorchak said Value America will cut ad spending "dramatically," relying on e-mail messages to its customers.

[T]he company was dealing with about 450 suppliers -- a number that will drop to 25 under the new plan.

A failure to fill some orders promptly also compounded Value America's problems. "If you fall down there, the customer will not forgive you, and all the money you spent to get that customer is down the tubes," said Michele Pellino, a senior analyst with Yankee Group, a Boston-based consulting firm.

From now on, Ms. Dorchak said, Value America will sell only products that can be delivered quickly....

But analysts were skeptical that Value America's new strategy will turn the company around. In focusing on computers and consumer electronics, they said, it is picking some of the most competitive categories. "There are a lot of established companies in the same niche with better brand equity that Value America," said Melissa Shore, and analyst with Jupiter Communications in New York. She added, "My question is whether they have the money to change their site and their marketing. This is a company in trouble."

43. On December 30, 1999, The Washington Post reported Value America's admission that it was "[h]obbled by technical problems and a backlog of orders." The Washington Post also reported that David Kuo, spokesperson for Value America, admitted:

> The resignation of the founders was 's decision reached by the board of directors for the strategic direction of the company '...

Value America will consolidate its 13 office facilities in Charlottesville into eight offices there. The company ... will focus on selling computers and other office equipment and supplies, primarily to business and government customers.

Spokesman Kuo said the company will focus on five categories of goods that together have accounted for 95 percent of the company's revenue. He declined to discuss the company's specific comeback strategy for "competitive reasons."

44. On December 30, 1999, The Atlanta Constitution reported:

The company gave some analysts an early peek at its earnings warning and restructuring plans before making the news public.

Robertson Stephens apparently had the news early enough for analyst Lauren Cooks Levitan to put a research note detailing Value America's plans on the firm's Internet site early Monday morning, before Value America issued a release at 8 a.m.

Robertson Stephens was lead underwriter on Value America's initial public offering in April.

Levitan couldn't be reached immediately for comment.

The Securities and Exchange Commission has expressed concern about companies issuing news to select audiences, such as an influential analyst, before releasing the news to the public.

An SEC spokesman said Wednesday the commission does not comment on the legality of individual announcements.

Kimberly Kuo, Value America's vice president of investor relations, said the company gave the announcement Tuesday to "four or five" analysts, along with a legal statement barring the information's release before 8 a.m. Wednesday.

Kuo declined to name the other analysts but said five who regularly cover the company received the announcement early.

45. On January 2, 2000, The New York Times reported that Value America ended the week down 34.68%. The Company's shares have fallen 93% from the $75.25 per share price reached on Value America's first day of trading, April 7, 1999.

INAPPLICABILITY OF STATUTORY SAFE HARBOR

46. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as "forward-looking statements" when made.

COUNT I

Against All Defendants For Violations Of Section 11 Of The Securities Act

47. Plaintiff repeats and realleges each and every allegation contained above, except allegations of defendants' intentional or reckless misconduct.

48. This Count is brought by plaintiff pursuant to Section 11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all defendants and does not sound in fraud.

49. The Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed adequately to disclose material facts as described above.

50. The Company is the registrant for the Initial Public Offering. The defendants named herein were responsible for the contents and dissemination of the Registration Statement and Prospectus.

51. As issuer of the shares, Value America is strictly liable to plaintiff and the Class for the misstatements and omissions.

52. None of the defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and Prospectus were true and without omissions of any material facts and were not misleading.

53. Defendants issued, caused to be issued and participated in the issuance of materially false and misleading written statements to the investing public which were contained in the Prospectus, which misrepresented or failed to disclose, inter alia, the facts set forth above. By reasons of the conduct herein alleged, each defendant violated, and/or controlled a person who violated, Section 11 of the Securities Act.

54. Plaintiff acquired Value America common stock issued pursuant to, or traceable to, and in reliance on, the Registration Statement and Prospectus.

55. Plaintiff and the Class have sustained damages. The value of Value America common stock has declined substantially subsequent to and due to defendants' violations.

56. At the times they purchased Value America common stock, plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to December

29, 1999. Less than one year elapsed from the time that plaintiff discovered or reasonably could have discovered the facts upon which this complaint is based to the time that plaintiff filed his Complaint. Less than three years elapsed from the time that the securities upon which this Count is brought were bona fide offered to the public to the time plaintiff filed his Complaint.

COUNT II

Against All Defendants For Violations Of Section 12(a)(2) Of The Securities Act

57. Plaintiff repeats and realleges each and every allegation contained above, except allegations of defendants' intentional or reckless misconduct.

58. This Count is brought by plaintiff pursuant to Section 12(a)(2) of the Securities Act on behalf of all purchasers of Value America common stock in connection with, and traceable to, the Initial Public Offering and does not sound in fraud.

59. The defendants were sellers, offerors, and/or solicitors of sales of the shares offered pursuant to the Prospectus.

60. The Prospectus contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. Defendants' actions of solicitation included participating in the preparation of the false and misleading Prospectus.

61. The defendants owed to the purchasers of Value America common stock, including plaintiff and the other members of the Class, the duty to make a reasonable and diligent investigation of the statements contained in the Prospectus to insure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. These defendants knew of, or in the

exercise of reasonable care should have known of, the misstatements and omissions contained in the Prospectus as set forth above.

62. Plaintiff and other members of the Class purchased or otherwise acquired Value America common stock pursuant to and traceable to the defective Prospectus. Plaintiff did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Prospectus.

63. Plaintiff, individually and representatively, hereby offers to tender to defendants those securities which plaintiff and other Class members continue to own, on behalf of all members of the Class who continue to own such securities, in return for the consideration paid for those securities together with interest thereon.

64. By reason of the conduct alleged herein, these defendants violated, and/or controlled a person who violated, Section 12(a)(2) of the Securities Act. Accordingly, plaintiff and members of the Class who purchased Value America common stock in the Initial Public Offering have the right to rescind and recover the consideration paid for their Value America common stock and, hereby elect to rescind and tender their shares to the defendants sued herein. Plaintiff and Class members who have sold their shares of Value America common stock are entitled to rescissory damages.

65. Less than three years elapsed from the time that the securities upon which this Count is brought were sold to the public to the time of the filing of this action. Less than one year elapsed from the time when plaintiff discovered or reasonably could have discovered the facts upon which this Count is based to the time of the filing of this action.

COUNT III

Against The Individual Defendants For
Violations of Section 15 of the Securities Act

66. Plaintiff repeats and realleges each and every allegation contained above.

67. This Count is brought by plaintiff pursuant to Section 15 of the Securities Act against the Individual Defendants and does not sound in fraud.

68. Each of the Individual Defendants was a control person of Value America by virtue of his positions as a directors and/or senior offices of the Company.

69. Each of the Individual Defendants was a culpable participant in the violations of Sections 11 and 12(a)(2) of the Securities Act alleged in Counts I and II above, based on their having signed the Registration Statement and having otherwise participated in the process which allowed the Initial Public Offering to be successfully completed.

COUNT IV

VIOLATION OF SECTION 10(b) OF THE
EXCHANGE ACT AND RULE 10b-5 THEREUNDER

70. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

71. This count is brought pursuant to Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. §240.10b-5].

72. The defendants knowingly or recklessly violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that they themselves, or a person whom they controlled: (i) employed devices, schemes and artifices to defraud; (ii) 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; (iii) engaged in acts, practices and a course of conduct that operated as a fraud or deceit upon plaintiff and the other members of the class in connection with their purchases of Value America securities.

73. Each of the defendants named herein participated in and joined the alleged scheme and course of conduct specified above, and each is liable primarily for the aforesaid wrongful acts and statements specified above.

74. As a result of the foregoing, the market prices of Value America securities were artificially inflated. In ignorance of the false and misleading nature of the representations described above, plaintiff and the other members of the Class relied, to their damage, directly on the misrepresentations or on the integrity of the market both as to price and as to whether to purchase the securities. Plaintiff and the other members of the Class would not have purchased Value America securities at the market prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by these defendants' false and misleading statements and concealments. At the time of the purchase of those securities by plaintiff and the other members of the Class, the fair market value of Value America securities was substantially less than the prices paid.

75. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

COUNT V

VIOLATION OF SECTION 20(a) OF THE SECURITIES EXCHANGE ACT

76. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

77. This Count is brought pursuant to Section 20(a) of the Exchange Act [15 U.S.C. §78t(a)] against the Individual Defendants.

78. Each of the Individual Defendants was a control person of Value America by virtue of his positions as a director and/or senior executive officers of the Company.

79. Each of the Individual Defendants was a culpable participant in the violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, alleged in Count I, above, based on their having participated wrongful conduct alleged herein.

WHEREFORE, plaintiff, on behalf of himself and the other members of the Class, demands judgment against the defendants as follows:

A. Determining that this action is properly maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Certifying plaintiff as the Class Representative and his counsel as Class Counsel;

C. Declaring and determining that the defendants violated the federal securities laws by reason of their conduct as alleged herein;

D. Awarding monetary damages against all of the defendants, jointly and severally, in favor of plaintiff and the other members of the Class for all losses and damages suffered as a result of the acts and transactions complained of herein, together with prejudgment interest from the date of the wrongs to the date of the judgment herein;

E. Awarding plaintiff the costs, expenses, and disbursements incurred in this action, including reasonable attorneys' and experts' fees; and

F. Awarding plaintiff and the other members of the Class such other and further relief as the Court may deem just and proper in light of all the circumstances of this case.

JURY DEMAND

80. Plaintiff demands a trial by jury.

Dated: January 10, 2000

By:
Kryala Carmel Nelson VSB# 38778
CARMEL NELSON & DUGGER, PLC
408 Park Street
Charlottesville, VA 22902
(804) 979-0053
facsimile (804) 979-0237

Local Counsel for Plaintiff

ABBEY, GARDY & SQUITIERI, LLP
Lee Squitieri
James S. Notis
212 East 39th Street
New York, NY 10016
Telephone: 212/889-3700

-and-

ABBEY, GARDY & SQUITIERI, LLP
James Jay Seirmarco
595 Market Street, Suite 2500
San Francisco, CA 94105
Telephone: 415/538-3725

LAW OFFICES OF ALFRED G. YATES, Jr.
Alfred G. Yates, Jr.
519 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219
Telephone: 412/391-5164

Attorneys for Plaintiff