

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

NOV 29 1999 EC

W. N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

PASQUALE DI GIACOMO, on  
Behalf of Himself and All  
Others Similarly Situated,

Plaintiff,

v.

PLAINS ALL AMERICAN  
PIPELINE, LP; GREG L.  
ARMSTRONG; and PHILLIP D.  
KRAMER,

Defendants,

CASE NO. **H-99-4137**

JURY TRIAL  
DEMANDED

ORIGINAL COMPLAINT - CLASS ACTION

Plaintiff, by and through his undersigned counsel, and for his Complaint against Defendants, makes the following allegations upon information and belief (except as to the allegations specifically pertaining to the named plaintiff and his counsel), based upon the facts alleged below, which are predicated upon, inter alia, a review of relevant filings made with the Securities and Exchange Commission ("SEC"), press releases, news and analyst reports, and an investigation undertaken by plaintiff's counsel.

NATURE OF THE ACTION

I. This is a class action on behalf of a class (the "Class") consisting of all persons other than defendants who purchased the common limited partnership units ("common units") of Plains All American Pipeline, LP ("PAAP" or the "Company") from November 17, 1998, through November 29, 1999, inclusive (the "Class Period"),

including all persons who purchased PAAP common units in or traceable to the Company's initial offering ("Initial Offering") on or about November 17, 1998 (the "Offering Subclass"). PAAP common units trade on the New York Stock Exchange under the symbol "PAA."

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b) and 78t(a)], Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. § 240.10b-5] and Sections 11 and 15 of the Securities Act of 1933, as amended (the "Securities Act") [15 U.S.C. §§ 77k and 77c].

3. This Court has jurisdiction over the claims asserted in this Complaint pursuant to § 27 of the Exchange Act as amended [15 U.S.C. § 78aa], 28 U.S.C. §§ 1331 and 1337, the doctrine of supplemental jurisdiction, codified at 28 U.S.C. § 1367 and Section 22 of the Securities Act [15 U.S.C. § 77v].

4. Venue is properly laid in this judicial district pursuant to § 27 of the Exchange Act and 28 U.S.C. §§ 1391(b) and (c) and Section 22 of the Securities Act. Certain acts and conduct complained of herein, including the dissemination of materially false and misleading information to the investing public, occurred in this District. PAAP maintains its headquarters and principal place of business in this District and did so at all relevant times.

5. In connection with the acts and conduct alleged in this Complaint, defendants, directly or indirectly, used the means and

instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the New York Stock Exchange, a national securities exchange.

#### PARTIES

6. Plaintiff Pasquale Di Giacomo ("plaintiff") purchased PAAP common units in the Offering, as described in the certification attached hereto, and has suffered damages as a result of the wrongful acts of defendants as alleged herein.

7. Defendant PAAP is a limited partnership involved in interstate and intrastate crude oil pipeline transportation and crude oil terminalling storage activities. PAAP is also involved in gathering and marketing activities. PAAP was formed on November 23, 1998 to acquire and operate the midstream crude oil business and assets of Plains Resources, Inc. ("Plains Resources"). Plains Resources holds an effective 57% interest in PAAP and serves as its General Partner. PAAP maintains its principal executive offices at 500 Dallas Street, Suite 700, Houston, Texas.

8. Defendant Greg L. Armstrong ("Armstrong") was Chairman of the Board and Chief Executive Officer of PAAP at all relevant times during the Class Period. Armstrong was a signatory to PAAP's Registration Statement/Prospectus filed on September 23, 1998 and all amendments thereto.

9. Defendant Phillip D. Kramer ("Kramer") was Chief Financial Officer and Executive Vice President of PAAP at all relevant times during the Class Period. Kramer was a signatory to

PAAP's Registration Statement/Prospectus filed on September 23, 1998 and all amendments thereto.

10. Together, defendants Armstrong and Kramer will be referred to herein as the "Individual Defendants." The Individual Defendants participated in, conspired to effect, and/or consciously or recklessly pursued the wrongdoing complained of herein so that they could artificially inflate and maintain the market price of PAAP common units during the Class Period. Plaintiff and other members of the Class purchased such common units at artificially inflated prices and have suffered damages.

11. During the Class Period, the Individual Defendants each occupied positions in the Company that made them privy to material, adverse non-public information. Because of their senior-level positions with PAAP and/or positions on the board of directors of the Company, they both had access to such internal information. The Individual Defendants knew or recklessly disregarded that the adverse facts specified herein were being concealed from the public.

12. Both of the Individual Defendants were control persons of PAAP within the meaning of Section 20(a) of the Exchange Act by reason of their own involvement in the daily business of the Company and/or their positions on PAAP's Board of Directors, and/or as senior executives of PAAP. The Individual Defendants, at the time they held positions with the Company, were able to, and did, exercise substantial control over the operations of PAAP, including control of the materially false and misleading statements,

omissions and course of conduct complained of herein.

13. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false and misleading information conveyed in PAAP's public filings, press releases, interviews and other publications as alleged herein are the collective actions of the narrowly defined group of Individual Defendants identified above.

14. As officers, directors and/or controlling persons of a publicly held company and under the federal securities laws, the Individual Defendants had a duty (a) to disseminate promptly complete, accurate and truthful information with respect to PAAP; (b) to correct any previously issued statements from any source that had become materially misleading or untrue; and (c) to disclose any trends that would materially affect earnings and the present and future operating results of PAAP, so that the market price of the Company's publicly traded common units would be based upon truthful and accurate information. The Individual Defendants failed to adequately discharge these duties.

#### PLAINTIFF'S CLASS ACTION ALLEGATIONS

15. Plaintiff brings this lawsuit pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and on behalf of a class of persons who purchased common units of PAAP from November 17, 1998 through November 29, 1999, inclusive, including those persons that purchased in the Initial Offering (the "Offering Subclass"). Excluded from the Class are defendants herein, members of the immediate family of each of the

defendants, any person, firm, trust, corporation, officer, director or other individual or 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, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

16. This action is properly maintainable as a class action for the following reasons:

a. The Class of investors for whose benefit this action is brought is so numerous that joinder of all Class members is impracticable. As of August 11, 1999, PAAP had approximately 31 million common units outstanding. Members of the Class are scattered throughout the United States.

b. There are questions of law and fact which are common to members of the Class and which predominate over any questions affecting only individual members. The common questions include, inter alia, the following:

(1) Whether defendants' acts as alleged herein violated the federal securities laws;

(2) Whether defendants participated in and pursued the common course of conduct complained of herein;

(3) Whether documents, press releases and other statements disseminated to the investing public and PAAP's unitholders during the Class Period misrepresented material facts about the business, management, revenues, earnings, transactions, markets, financial condition, risk and business prospects of PAAP;

(4) Whether the market price of PAAP common units during the Class Period was artificially inflated due to the material misrepresentations and failure to correct the material misrepresentations complained of herein; and

(5) To what extent the members of the Class have sustained damages and the proper measure of damages.

c. The claims of plaintiff are typical of the claims of other members of the Class and plaintiff has no interests that are adverse or antagonistic to the interests of the Class.

d. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in litigation of this nature. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

e. Plaintiff anticipates that there will not be any difficulty in the management of this litigation as a class action.

17. For the reasons stated herein, a class action is superior to other available methods for the fair and efficient adjudication of this action and the claims asserted herein. Because of the size of the individual class members' claims, few, if any, class members could afford to seek legal redress individually for the wrongs complained of herein.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:  
FRAUD-ON-THE-MARKET DOCTRINE**

18. At all relevant times, the market for PAAP common units was an efficient market for the following reasons, among others:

a. PAAP common units met the requirements for listing

and were listed and actively traded on the New York Stock Exchange;

b. As a regulated issuer, PAAP filed periodic public reports with the SEC; and

c. PAAP regularly communicated with the investing public through the dissemination of various reports, participated in meetings and conferences with investors and securities analysts and through other customary means of communicating such as use of major newswire services for the dissemination of press releases and providing information and interviews about the Company to the business media.

19. As a result, the market for PAAP securities promptly digested current information regarding PAAP from all publicly available sources and reflected such information in PAAP's unit price. Under these circumstances, all purchasers of PAAP units during the Class Period suffered similar injury through their purchase of units at artificially inflated prices and a presumption of reliance applies.

#### SUBSTANTIVE ALLEGATIONS

20. On or about September 23, 1998, PAAP filed a Registration Statement/Prospectus on Form S-1 (the "Prospectus") with the SEC for the sale of approximately 13 million common units. The Prospectus stated:

Generally, as the Partnership purchases crude oil, it establishes a margin by selling crude oil for physical delivery to third parties, or by entering into a future delivery obligation with respect to futures contracts on the NYMEX. Through these transactions, the Partnership seeks to maintain a position that is substantially balanced between crude oil purchases, on the one hand, and sales or future delivery obligations, on the other

hand and not to speculate on price changes.

21. PAAP's Prospectus was materially false or misleading as PAAP lacked sufficient internal management controls to adequately monitor crude oil purchases, sales, and future delivery obligations to maintain PAAP's desired "balance."

22. On or about November 17, 1999, PAAP completed its Initial Offering of approximately 13 million common units at a price of \$20.00 per unit. Selling these shares at such an artificially inflated price was partial motivation for defendants' misrepresentations.

23. On or about March 3, 1999, PAAP issued a press release announcing the Company's financial results for the partial period of operations from its formation in November 1998 through December 31, 1998. The Company reported net income of \$4.2 million, or \$0.14 per common unit.

24. PAAP's March 3, 1999 press release was materially false or misleading as defendants knew or recklessly disregarded the following undisclosed information:

a. that, in violation of the Company's own stated policies, PAAP was recklessly trading crude-oil as it was not maintaining a balance between oil purchases and sales or delivery obligations for futures contracts bought on the New York Mercantile Exchange; and

b. that, as a result of PAAP's undisclosed reckless trading, the Company's net income and earnings per unit were materially overstated.

25. On or about May 12, 1999, PAAP issued a press release announcing the Company's financial results for the first quarter of 1999. Earnings before interest, taxes, depreciation, and amortization ("EBITDA") totaled \$17.3 million, compared with only \$14.3 million from the comparable period in 1998. PAAP reported net income of \$11.23 million, or \$0.37 per unit. Net income for the comparable period in 1998 was only \$1.2 million.

26. PAAP's May 12, 1999 press release was materially false or misleading as defendants knew or recklessly disregarded the following undisclosed information:

a. that, in violation of the Company's own stated policies, PAAP was recklessly trading crude-oil as it was not maintaining a balance between oil purchases and sales or delivery obligations for futures contracts bought on the New York Mercantile Exchange; and

b. that, as a result of PAAP's undisclosed reckless trading, the Company's net income and earnings per unit were materially overstated.

27. On or about August 2, 1999, PAAP issued a press release announcing the Company's financial results for the second quarter of 1999. EBITDA totaled \$20.6 million, compared with only \$4.5 million from the comparable period in 1998. PAAP reported net income of \$12.1 million, or \$0.38 per unit. Net income for the comparable period in 1998 was only \$2 million.

28. PAAP's August 2, 1999 press release was materially false or misleading as defendants knew or recklessly disregarded the

following undisclosed information:

a. that, in violation of the Company's own stated policies, PAAP was recklessly trading crude-oil as it was not maintaining a balance between oil purchases and sales or delivery obligations for futures contracts bought on the New York Mercantile Exchange; and

b. that, as a result of PAAP's undisclosed reckless trading, the Company's net income and earnings per unit were materially overstated.

29. On or about November 3, 1999, PAAP issued a press release announcing the Company's financial results for the third quarter of 1999. EBITDA totaled \$25.4 million, compared with only \$12.5 million from the comparable period in 1998. PAAP reported net income of \$12.1 million, or \$0.38 per unit. Net income for the comparable period in 1998 was only \$3.3 million. PAAP also announced that it was trying to get its banks to increase its credit line so that it would have a chance for further expansion through acquisitions.

30. PAAP's November 3, 1999 press release was materially false or misleading as defendants knew or recklessly disregarded the following undisclosed information:

a. that, in violation of the Company's own stated policies, PAAP was recklessly trading crude-oil as it was not maintaining a balance between oil purchases and sales or delivery obligations for futures contracts bought on the New York Mercantile Exchange;

b. that, as a result of PAAP's undisclosed reckless trading, the Company's net income and earnings per unit were materially overstated; and

c. that PAAP's reckless trading rendered it in default of the terms of several credit agreements.

31. Only several weeks after reporting its third quarter results, PAAP stunned the market with its announcement on November 29, 1999 that "unauthorized" trading by one of its employees would result in the Company experiencing approximately \$160 million in losses. The Company admitted that past profits were expected to be restated and that PAAP was now in default under some of its credit agreements as a result of the improper trading. PAAP also conceded that recognition of the \$160 million loss would substantially impede its ability to pay quarterly distributions.

32. In response to PAAP's shocking announcement, the price of the Company's common units fell approximately 50% from \$19.50 to \$9.75 per unit during trading on November 29, 1999. During the Class Period, as a result of defendants' numerous materially false or misleading statements and financial results, PAAP common stock traded as high as \$20.25 per share.

#### ADDITIONAL SCIENTER ALLEGATIONS

33. As alleged herein defendants acted with scienter in that the Individual Defendants knew or recklessly disregarded that the public documents and statements issued or disseminated in the name of PAAP were materially false and misleading; knew that such statements or documents would be issued or disseminated to the

investing public; and knowingly or recklessly substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding PAAP, their control over, and/or receipt and/or modification of PAAP's allegedly materially misleading misstatements and/or their associations with PAAP which made them privy to confidential proprietary information concerning PAAP, participated in the fraudulent scheme alleged herein. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public.

34. The undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, rules of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed to the investing public. This information is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed. For example:

a. Under Item 303 of Regulation S-K, promulgated by the SEC under the Exchange Act, there is a duty to disclose in periodic reports filed with the SEC "known trends or any known demands, commitments, events or uncertainties" that are reasonably likely to have a material impact on a company's sales revenues, income or

liquidity, or cause previously reported financial information not to be indicative of future operating results. 17 C.F.R. § 229.303(a)(1)-3(3) and Instruction 3. In addition to the periodic reports required under the Exchange Act, management of a public company has a duty promptly "to make full and prompt announcements of material facts regarding the company's financial condition." SEC Release No. 34-8995, 3 Fed. Sec. L. Rep. (CCH) ¶ 23,120A, at 17,095, 17 C.F.R. § 241.8995 (October 15, 1970). The SEC regulates companies "that can reasonably be expected to reach investors and the trading markets, whoever the intended primary audience." SEC Release No. 33-6504, 3 Fed. Sec. L. Rep. (CCH) ¶ 23,120, at 17,095-3, 17 C.F.R. § 241.20560 (January 13, 1984). The SEC has emphasized that "[i]nvestors have legitimate expectations that public companies are making, and will continue to make, prompt disclosure of significant corporate developments." SEC Release No. 18271, [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 83,049, at 84,618 (November 19, 1981).

35. The market for PAAP common units was open, well-developed and efficient at all relevant times. As a result of the materially false and misleading statements and failures to disclose the full truth about PAAP, its business and future prospects, PAAP common units traded at artificially inflated prices throughout the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired PAAP common units relying upon the integrity of the market price of PAAP common stock and market information relating to PAAP or, in the alternative, upon defendants'

materially false and misleading statements, and in ignorance of the adverse, material undisclosed information and false financial statements known to defendants and have been damaged thereby.

COUNT I

[Brought by the Offering Subclass Against All Defendants For Violations Of Section 11 Of The Securities Act]

36. Plaintiff repeats and realleges each and every allegation contained above in ¶¶ 1 through 32 as if set forth herein at length.

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

38. The Prospectus for the Secondary Offering 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.

39. The Individual Defendants were responsible for the contents and dissemination of the Prospectus as executives and officers of PAAP. Moreover, the Individual Defendants were signatories to the Prospectus and are therefore liable for its false or misleading statements.

40. As issuer of the units, PAAP is strictly liable to the Offering Subclass for the misstatements and omissions contained in the defective Prospectus.

41. Defendants issued, caused to be issued and participated

in the issuance of materially false or misleading written statements to the investing public which were contained in the Prospectus, which misrepresented or failed to disclose, 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.

42. Plaintiff acquired PAAP common units in the Initial Offering, which was effectuated by means of a Registration Statement and Prospectus issued by PAAP, which contained materially false or misleading statements.

43. Plaintiff and the other members of the Offering Subclass have sustained substantial damages as the value of their PAAP common units has declined due to defendants' violations of the federal securities laws.

44. At the time he acquired PAAP units in the Initial Offering, plaintiff and the other members of the Offering Subclass were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to PAAP's revelation of the truth on November 29, 1999. Less than one year elapsed from the time that the plaintiff discovered or reasonably could have discovered the facts upon which this complaint is based to the time that this complaint has been filed. 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 that plaintiff filed his complaint.

COUNT II

[Brought by the Offering Subclass Against  
the Individual Defendants For Violations of  
Section 15 of the Securities Act]

45. Plaintiff repeats and realleges each and every allegation contained above in ¶¶ 1 through 32 and 36 through 44 as if set forth herein at length.

46. This Count is brought by the plaintiff pursuant to Section 15 of the Securities Act on behalf of the Offering Subclass, against the Individual Defendants and does not sound in fraud.

47. Each of the Individual Defendants was a control person of PAAP by virtue of his position as a director and/or as a senior officer of PAAP. The Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors of PAAP.

48. Each of the Individual Defendants was a culpable participant in the violation of Sections 11 of the Securities Act alleged in Count I above, based upon their having signed the Prospectus and/or having otherwise participated in the process which allowed the Initial Offering to be successfully completed.

COUNT III

[Violations of Section 10(b) of the Exchange Act  
and Rule 10b-5 Promulgated Thereunder Against PAAP  
and the Individual Defendants]

49. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 35 above as though fully set forth herein.

50. This count is brought by plaintiff pursuant to Section

10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC against PAAP and the Individual Defendants.

51. The defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of PAAP's stock in an effort to maintain artificially high market prices for PAAP's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. PAAP and the Individual Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

52. In addition to the duties of full disclosure imposed on the Individual Defendants, by their status as controlling persons of PAAP, as a result of their affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. Sections 210.01 et seq.) and S-K (17 C.F.R. Sections 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to PAAP's operations, financial condition and earnings so that the market price of PAAP's common stock would be based on truthful, complete and accurate information.

53. PAAP and the Individual Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of PAAP as specified herein. The defendants employed devices, schemes and artifices to defraud, while in possession of material adverse nonpublic information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of PAAP's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about PAAP and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of PAAP common stock during the Class Period.

54. The primary liability, and controlling person liability of the defendants named in this count, arises from the following facts: (i) each of the Individual Defendants was a high-level executive and/or director at PAAP during the Class Period and was a member of PAAP's management team; (ii) each of the Individual Defendants, by virtue of his responsibilities and activities as a senior officer and/or director of PAAP, was aware of the true

financial condition of PAAP; (iii) each of the Individual Defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of PAAP's management team, internal reports and other data and information about PAAP's finances, operations, policies and practices at all relevant times; and (iv) each of the defendants was aware of PAAP's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

55. The Individual Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing PAAP's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its stock. As demonstrated by said defendants' overstatements and misstatements of PAAP's business, operations and future earnings prospects throughout the Class Period, said defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

56. As a result of the dissemination of the materially false

and misleading information and failure to disclose material facts by all defendants, as set forth above, the market price of PAAP common stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of PAAP's publicly-traded common stock was artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and the truth of any representations made to appropriate agencies as to the investing public, at the times at which any statements were made, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired PAAP's common stock during the Class Period at artificially high prices and were damaged thereby.

57. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known of the true financial condition and business prospects of PAAP, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their PAAP common stock during the Class Period, or, if they had acquired such common stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

58. By virtue of the foregoing, PAAP and the Individual

Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

59. As a direct and proximate result of the wrongful conduct of the defendants named in this count, plaintiff and the other members of the Class suffered damages in connection with their purchases of PAAP's common stock during the Class Period.

COUNT IV

[Violation of Section 20(a) of the Exchange Act Against the Individual Defendants]

60. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 35 and 49 through 59 as if set forth fully herein. This claim is asserted by plaintiff against the Individual Defendants.

61. The Individual Defendants acted as controlling persons of PAAP within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, substantial stock holdings, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's internal financial condition, business practices, products and the actual progress of its development and marketing efforts, these defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of PAAP, including the content and dissemination of the various statements which plaintiff contends are false and misleading. Each of the Individual Defendants was provided with or had unlimited access to copies of PAAP's internal reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to

and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

62. In particular, each of the Individual Defendants had direct involvement in or intimate knowledge of the day-to-day operations of PAAP and therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

63. As set forth above, the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act.

64. As a direct and proximate result of the wrongful conduct of these defendants, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment as follows:

A. declaring this action to be a plaintiff class action properly maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. awarding plaintiff and other members of the Class damages together with interest thereon;

C. awarding plaintiff and other members of the Class their costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements; and

D. awarding plaintiff and other members of the Class such other and further relief as may be just and proper under the circumstances.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: November 29, 1999.

Respectfully submitted,

By: 

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**CERTIFICATION OF NAMED PLAINTIFF  
PURSUANT TO FEDERAL SECURITIES LAWS**

PASQUALE Di GIACOMO ("Plaintiff") declares, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the Complaint.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff's counsel or in order to participate in any private action.
3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.
4. Plaintiff's transaction in the security that is the subject of this action during the Class Period is as follows:

<u>Security</u>	<u>Transaction</u>	<u>Date</u>	<u>Price Per Share</u>
Common Stock	Purchased 1,200 shares In the Offering	11/17/98	\$20.00

5. During the three years prior to the date of this Certification, Plaintiff has sought to serve or served as a representative party for a class in the following actions filed under the federal securities laws: N/A

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29 day of November, 1999.

*Patrick Di Giacomo*

PATRICK DI GIACOMO  
BASQUALE

FLAINSALLAMERICAN\DI GIACOMO.CRT