


ORIGINAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUL 26 2002
CLERK, U.S. DISTRICT COURT
By _____
Deputy

RICHARD BELL, ET AL., § CIVIL ACTION NO. 3:01-CV-166-P
§
Plaintiffs §
§
v. §
§
ASCENDANT SOLUTIONS, INC., §
NORMAN CHARNEY, PAUL JENNINGS, §
CCLP, LTD.; PAUL G. SHERER and §
ALAN E. SALZMAN, §
§
Defendants. §

**CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT**

SUMMARY AND OVERVIEW

1. This is a securities class action on behalf of all purchasers of Ascendant Solutions, Inc. (“ASD” or the “Company”) common stock between November 11, 1999 and January 24, 2000 (the “Class Period”), against ASD and its top executive officers for violations of Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a), and SEC Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5.

2. During the Class Period, ASD became a publicly traded company through an initial public offering (“IPO” or “Offering”) of its common stock on November 11, 1999. The IPO was accomplished through a prospectus (“Prospectus”) filed as part of The Registration Statement on Form S-1 (the “Registration Statement”) filed with the Securities and Exchange Commission (“SEC”) on August 26, 1999 and amendments thereto which described ASD as a rapidly growing company with a well-developed business model for Internet electronic commerce, providing high quality and comprehensive outsourcing services to companies selling their goods over the Internet. The Prospectus described ASD as a provider of proprietary software and

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comprehensive service solutions to Internet retailers and direct marketing companies that enables the outsourcing of their order management and fulfillment operations.

3. As explained in detail below, the representations made in the Prospectus were false or materially misleading. In truth and in fact, ASD was not a rapidly growing company, it did not have a well-developed business model, it was not maintaining high quality services, and it was experiencing extensive customer dissatisfaction. On January 24, 2000, just 8 weeks after the Company successfully completed the IPO, defendants announced that three out of its seven customers would not be renewing their contracts for services because the ASD's customer service levels were "not consistent with the standards of performance that are essential for ASD."

4. Investor reaction was swift as the price of the Company's stock declined by more than 30% in reaction to these disclosures, causing substantial damages to plaintiff and other similarly situated members of the investing public who had purchased ASD common stock. Plaintiff brings this action on behalf of himself and other similarly situated investors in order to recover those damages

5. The price of ASD's stock continued to deteriorate as the magnitude of its operational problems became better understood through, among other things, the filing of a lawsuit seeking millions of dollars in damages by one of ASD's largest customers, and ASD's eventual exit from the Internet support business, billed in the Prospectus as ASD's focus of operations.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa. 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 SEC Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5.

7. 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), (c) and (d). ADS maintains its principal executive offices within this District and acts giving rise to the violations complained of occurred or caused injury in this District, including the preparation of SEC filings and other public statements disseminated regarding ADS.

PARTIES

8. Lead Plaintiffs Plutarch, Ltd., Singlinde M. Jeffries and Mario Sonzone were appointed Lead Plaintiffs by the Court on April 17, 2002. Lead Plaintiffs purchased ASD common stock during the Class Period as set forth in their lead plaintiff certifications previously filed with the Court.

9. Defendant ASD is a corporation duly incorporated in the State of Delaware with principal executive offices located at 16250 Dallas Parkway, Suite 102, Dallas, Texas, 75248. During the Class Period, ASD's principal executive offices were located at 3737 Grader Street, Suite 110, Garland, Texas 75041.

10. Defendant Norman Charney ("Charney") was, at all relevant times, Chairman of the Board, President and Chief Executive Officer of the ASD. Charney beneficially owned 6,000,000 shares of ASD common stock, which amounted to 47.1% of the Company's outstanding common stock prior to the IPO and 33.8% after the completion of the IPO. Charney, either personally or through an attorney-in-fact, signed the Registration Statement. Charney is a co-founder of ASD Systems and has served as Chairman of the Board, Chief Executive Officer and President since inception and in similar capacities for ASD Partners, Ltd. (a predecessor of ASD

Systems) from October 1997 through December 1997. Mr. Charney was President and a director of Athletic Supply (a prior predecessor of ASD Systems) from 1981 through December 1996 when this entity was sold, in its entirety, to Genesis Direct, Inc. From December 1996 through October 1997, Mr. Charney was employed in various executive capacities by Athletic Supply.

11. Defendant Paul Jennings (“Jennings”), was at all relevant times, the Chief Operating Officer, Chief Information Officer and a Director of ASD. Defendant Jennings beneficially owned 957,000 shares of ASD common stock, which amounted to 7.0% of the Company’s outstanding common stock prior to the IPO and 5.1% after the completion of the Offering. Jennings, either personally or through an attorney-in-fact, signed the Registration Statement. Defendant Jennings is a co-founder of ASD Systems and served as Chief Information Officer, Chief Operating Officer and as a director since inception. Mr. Jennings served in similar capacities with ASD Partners, Ltd. from October 1997 through December 1997. For more than ten years prior to joining ASD Partners, Ltd., Jennings served as director of MIS for Athletic Supply of Dallas.

12. Defendant CCLP, Ltd. is a Texas limited partnership of which David Charney, the son of defendant Norman Charney, serves as the sole general partner and a limited partner. The business address of CCLP, Ltd. is P.O. Box 513, Addison, Texas 75001. CCLP, Ltd. was a limited partner of ASD Partners, Ltd., at the time of the IPO. On November 9, 2000, CCLP received 3,026,176 ASD shares as a liquidating distribution from ASD Partners.

13. Defendant Paul G. Sherer (“Sherer”) was at all relevant times, a director of ASD. Sherer is a partner of VantagePoint Venture Partners, a venture capital firm, which managed two funds, VantagePoint Venture Partners III(Q), L.P. and VantagePoint Communications Partners, L.P., which collectively beneficially own approximately 4,845,400 shares, or 22.9%, of ASD

common stock. Sheer, either personally or through an attorney-in-fact, signed the Registration Statement.

14. Defendant Alan E. Salzman (“Salzman”) was at all relevant times, a director of ASD. Salzman is a partner of VantagePoint Venture Partners, a venture capital firm, which managed two funds, VantagePoint Venture Partners III(Q), L.P. and VantagePoint Communications Partners, L.P., which collectively beneficially own approximately 4,845,400 shares, or 22.9%, of ASD common stock. Salzman, either personally or through an attorney-in-fact, signed the Registration Statement.

15. Defendants Charney, Jennings, CCLP, Sherer and Salzman are collectively referred to herein as the “Individual Defendants.”

SUBSTANTIVE ALLEGATIONS

16. ASD’s predecessor, ASD Systems, Inc. began as an order management and fulfillment business in January 1995 under its predecessor, Athletic Supply of Dallas, Inc. (“Athletic Supply”). Athletic Supply was a direct marketing cataloger for a variety of sports merchandise, including licensed sports products of the NFL, NHL, NBA and Major League Baseball and Sears’ “My Team” catalogs.

17. In January 1995, Athletic Supply began providing order management and fulfillment services for the Craftsman Power and Hand Tool and Home Healthcare catalogs using the proprietary software that had been developed for its own catalog operations.

18. On December 20, 1996, Athletic Supply was sold, in its entirety, to Genesis Direct, Inc.

19. On October 14, 1997, ASD Partners, Ltd., a limited partnership controlled by Defendant Norman Charney acquired all of the software, the call center and fulfillment center

assets and the Sears contracts previously owned by Athletic Supply from Genesis Direct, Inc. Effective January 1, 1998, ASD Partners, Ltd. transferred this business to ASD Systems, Inc. in connection with the conversion into a corporation.

Growth of the Outsourcing Industry

20. The trend toward outsourcing business processes grew during the Internet boom. According to a survey conducted by Forrester Research, companies were motivated to outsource one or more discrete business processes in order to gain better technical expertise, cut costs, focus on core competencies, and solve IT staffing problems.

21. As of June 30, 1999 the Company had a total of 453 employees. Of the total employees, 6 were in sales and marketing, 262 were in call center operations, 17 were in finance and administration, 81 were in software development and support and 87 were in fulfillment.

22. Often lost in the euphoria about electronic commerce during the Internet evolution, was that vast computer systems and specialty software were needed to execute orders. Large warehouses were often necessary for e-commerce companies to store inventory and prepare packages for shipping to customers. Staffed call centers were needed to handle questions from e-commerce customers.

23. Companies such as ASD entered the e-commerce scene to provide the types of services mentioned above for the e-commerce community. Press releases generated by ASD described the company's vision:

ASD Systems provides software and manages the infrastructure behind e-commerce. ASD's software and comprehensive service solutions enable Internet retailers and direct marketing businesses to outsource their complete commerce-related operations. ASD's software integrates clients' Web sites with multiple call centers, fulfillment centers and drop-ship vendors. ASD's clients can also outsource their operations to ASD's integrated network of call centers and strategically located fulfillment centers.

The ASD solution is priced on a per-transaction basis, reducing clients' initial costs and speeding their time to market.

24. Prior to entering the e-commerce universe, ASD handled order fulfillment in the brick-and-mortar world, taking care of the back end of the catalog business for Sears, Roebuck and Co. and The Honey Baked Ham Company of Georgia (“Honey Baked Ham”).

25. Following its transformation to handle e-commerce, ASD’s clients included Sears Roebuck, EDS for Sony's Metreon.com, Toys "R" Us, Honey Baked Ham and King World Direct.

26. On September 23, 1999, The Dallas Morning News reported ASD was planning a major push into the dot.com realm. Shortly, thereafter, the Company filed for its IPO with the SEC. Defendant Charney, President and Chief Executive of ASD Systems stated in the news article:

We purposely didn't call ourselves Fulfill.com... We're a real company. We can go to Internet retailers. We have the software and the infrastructure. (Emphasis added)

27. The Dallas Morning News article reported that certain officers of ASD Systems have stated:

One of the big advantages ASD Systems offers customers, is that it already has the infrastructure available to take on a client right away. (Emphasis added)

28. ASD’s hype of its developed infrastructure was significant to analysts and investors. For instance, David Shatsky, an analyst for Jupiter Communications and an expert on delivery infrastructure, highlighted ASD’s (false) capabilities on the October 6, 1999 edition of CNBC Business Center, emphasizing that “[t]he difference between fulfillment companies that will succeed and the ones that don’t is – it comes down to execution.”

False Representations in the Prospectus

29. ASD filed its Prospectus for the IPO as part of the Registration Statement on Form S-1 on August 26, 1999 and two amendments thereto on October 15, 1999 and November 8, 1999.

30. The explosive growth of Internet sales offered an opportunity for ASD to expand the scope of its operations, which it purportedly did by providing proprietary software and comprehensive service solutions to Internet retailers. The Prospectus described those services as follows:

Our proprietary software and comprehensive service solutions enable Internet retailers and direct marketing businesses to outsource their order management and fulfillment operations. Our systems automate and integrate in real-time Web sites, call centers, fulfillment centers and drop-ship vendors. We operate and manage a scalable network of company-owned and third-party call centers and fulfillment centers. Our systems and services offer our clients an alternative to the costs, complexity and risks associated with developing and maintaining these commerce-related operations in-house. Our systems and services are priced on a per-transaction basis, reducing our clients' initial infrastructure costs and speeding their time to market, while providing us with recurring revenue.

Our systems differentiate us by integrating multiple sales channels, including Web sites and call centers, thus giving our clients' customers greater control over their shopping experience. The customer can research products, access real-time item availability and pay for the order through either a Web site or by calling a customer service representative in any of our integrated call centers. The customer can then either visit the Web site or call an 800 number for customer service or real-time order status, regardless of how the order was originally entered. Once the order is placed, our systems instantly and automatically route the order to the fulfillment center closest to the customer or drop-ship vendor, reducing shipping costs and time-in-transit. For clients that have retail stores, we are expanding the functionality of our systems to further enhance the shopping experience by integrating the stores into our systems. We anticipate that this integration will give our clients' customers the added option of confirming availability and price at the closest retail store.

31. The Prospectus made several statements concerning the Company's operations and business prospects, including the statement made in the "PROSPECTUS SUMMARY" under a heading titled "Our Business" stating that:

We believe that we are well-positioned to meet the needs of the rapidly growing number of Internet retailers and direct marketing companies. Our founders have over 14 years of experience in systems development and operations in direct marketing companies. Our business was originally developed to manage the commerce-related operations of direct marketing companies. However, we have transitioned to meet the demands of electronic commerce businesses. Our clients currently include Sears Roebuck, EDS for Sony's Metreon.com, Toys "R" Us, Honey Baked Ham of Georgia and King World Direct. (Emphasis added).

32. Similarly, in the Prospectus under a heading "The ASD Systems Solution" the Company stated that:

We believe that our solutions offer the following benefits to Internet retailers and direct marketing companies for outsourcing their commerce-related operations:

- Cost savings and faster time to market

By outsourcing their commerce related operations to us, our clients avoid the significant initial and ongoing capital investments associated with acquiring and maintaining the necessary systems and facilities. Because our clients pay for our services, as they are needed, their operating costs are generally lower and more predictable. Furthermore, our network of strategically located fulfillment centers allows our clients to reduce shipping costs and decrease time in transit by shipping from multiple locations. Lastly, our systems and services permit businesses to expand their existing operations or enter into new markets on an accelerated time frame by eliminating the time they would require to develop their own commerce-related operations.

- Comprehensive and reliable outsourced operations

Using our proprietary systems, we actively manage and integrate in real-time Web sites, call centers, fulfillment centers and drop-ship vendors. We believe that a single source solution provides our clients with greater efficiency, higher customer service levels and

greater management control. We believe that the comprehensive nature of our solution allows our clients to remain focused on their core competencies.

- Capacity that can expand and contract with the clients' changing needs

Both our systems and network of call centers and fulfillment centers can be scaled to meet our clients' changing growth requirements. We currently maintain relationships with multiple third-party call centers and fulfillment centers that have been integrated with our systems to provide scalability. We expand this network of service providers as necessary to support the requirements of our clients. We also ship from additional warehouses that are owned by, or under contract with, our clients. Our systems can also be scaled to support our network as needed. We believe that our clients directly benefit from our scalable solution because they are ensured of the appropriate processing capacity at each stage of their business life cycle.

- Superior levels of customer service. (Emphasis added).

One of our service objectives is to differentiate our clients by enabling them to provide superior customer service. Our systems allow our clients' customers to instantly access inventory availability, order status details and delivery information through either a call center representative or the client's Web site. Similarly, our clients have the ability to monitor all aspects of their commerce-related operations online. At engagement, each client is assigned an account team consisting of technical, systems and customer support personnel. That account team actively works with the client to customize our services and systems in order to create a feature set that increases the client's ability to control inventory, service its customers and maintain the efficiency of their commerce-related operations.

33. In the Prospectus under a heading "Our Growth Strategy" the Company outlined its strategy for growth, which included: "Maintaining high levels of client satisfaction. We intend to continue providing high levels of service" Similarly, in the body of the Prospectus, defendants stated that one of the elements of their growth strategy was:

Maintaining high levels of customer service. We work closely with our clients to understand and address their technical requirements and business objectives. . . We continually monitor numerous metrics of operations including order abandonment rates,

customer satisfaction levels, on-time delivery performance, returns processing, inventory accuracy, credit card settlement and daily balancing.

34. The Prospectus extolled the success of its business operations under a heading titled "Select Client Case Studies." There, the Prospectus described its relationship with Honey Baked Ham as follows:

Our relationship with HoneyBaked Ham demonstrates our ability to integrate various sales channels and facilities, including a catalog, an electronic commerce Web site, over 100 company-owned retail stores, multiple warehouses, a customer support center and a substantial business-to-business operation. We are implementing our solution for HoneyBaked Ham in three phases.

The first phase, which has been completed, involved the integration of our order management systems with HoneyBaked Ham's existing customer service center and refrigerated fulfillment centers. Using our systems, we integrated the HoneyBaked Ham warehouse, three third-party fulfillment centers and our own call center, which is responsible for taking catalog orders. We are also providing HoneyBaked Ham with payment processing and customized activity reporting.

During the second phase, we intend to integrate HoneyBaked Ham's commerce-enabled Web site into the commerce-related operations established for it during the first phase. As with our other multi-channeled clients, we believe that this real-time integration will allow HoneyBaked Ham to realize greater efficiencies and control over its direct marketing operations. In addition, HoneyBaked Ham expects to improve customer service by enabling its customers to receive immediate and accurate inventory and order status through either the Web site or a call center representative. The systems are expected to support personalized cross sells and up sells through both the Web site and call center.

During the third and final phase, we anticipate integrating HoneyBaked Ham's direct marketing operation with its participating retail stores. This integration will give HoneyBaked Ham's customers the choice of either picking the product up from the closest store or having it shipped from the appropriate fulfillment center. Upon completion of the third phase, we expect that our systems will provide HoneyBaked Ham and its customers with real-time connectivity across all three sales channels (the catalog, the Web site and the retail stores) and the back-office services, such as customer support and fulfillment.

35. The Prospectus described the Company's relationship with EDS for Sony's Metreon.com in similarly glowing terms by stating that: "Our involvement in this project illustrates our ability to work with technology partners to deliver an electronic commerce solution to the client's entire commerce related operation."

36. The representations in the Prospectus enabled the Company to successfully complete the IPO with 5,000,000 shares being sold at \$8.00 per share on November 11, 1999, doubling on the first day to close at \$16.00 per share. The high trading price of ASD stock allowed the Company to sell an additional 750,000 shares to the underwriters in an over-allotment on November 17, 1999.

37. On November 11, 1999 ASD issued a press release to announce the successful completion of the IPO of 5,000,000 shares of common stock at \$8.00 per share.

The Company's common stock will begin trading publicly on the NASDAQ National Market under the symbol ASDS. ASD Systems provides software and manages the infrastructure behind e-commerce. ASD's software and comprehensive service solution enables Internet retailers and direct marketing businesses to outsource their order management and fulfillment operations. The ASD software integrates clients' Web sites with multiple call centers, fulfillment centers and drop-ship vendors. Clients can also outsource their operations to ASD's integrated network of call centers and strategically located fulfillment centers. The ASD solution is priced on a per-transaction basis, reducing clients' initial costs and speeding their time to market. Bear, Stearns & Co. Inc. is acting as managing underwriter for the offering, and Prudential Securities, Friedman Billings Ramsey and E*Offering are acting as co-managing underwriters. ASD Systems has granted the underwriters the option to purchase up to 750,000 additional shares to cover over-allotments, if any.

Reasons Why the Prospectus was False and Misleading

38. The statements made in the Prospectus concerning the level of client satisfaction with ASD and the Company's success in establishing successful systems for Honey

Baked Ham and EDS for Sony's Metreon.com were materially false or misleading because they failed to disclose that: (a) the Company was failing to meet the expectations of its customers, with customer service levels so low that it would be necessary for the Company to review and significantly improve its levels of customer service in order to retain its existing customers and successfully expand its operations; and (b) the Company lacked sufficient expertise and manpower to successfully service the large scale volume associated with holiday order and delivery demands.

39. Honey Baked Ham is a case in point. The Company had touted Honey Baked Hams as one of its longtime accounts, and yet undisclosed to the investing public, no successful integration of Honey Baked Ham's systems had ever taken place. By the time of the IPO, ASD had already missed an October 1999 Honey Baked Ham integration deadline.

40. A November 12, 1999, meeting between ASD and Honey Baked Ham revealed problems relating to, among other things, (1) label messages, (2) the accounts receivable program, (3) fax back software, (4) on-line authorizations, (5) shipping reports and (6) data integrity. In addition, ASD had already failed to load the winter shipping schedule on November 1, 1999, as required, causing thousands of customers to have their orders shipped by more expensive UPS shipping methods rather than less expensive ground transportation.

41. These failures to properly implement resulted in the ASD system failing to timely generate order and/or shipping information. For example, ASD delivered 200 shipping labels on November 24, 1999, for a shipping date of November 19, 1999 - - five days earlier. Similarly, during the Christmas 1999 holiday, ASD failed to deliver, and apparently lost, 3,000 shipping labels. Other major problems pervaded the ASD system. A failure to have the on-line authorization operational until December 17, 1999, caused credit card approval to be delayed for days in a "hold file." Finally, on December 20, 1999, just six weeks after ASD completed the

IPO with a prospectus touting the Company as a solution to the complexities and risks of developing and maintaining commerce-related operations in house, ASD's inventory system lost data integrity causing Honey Baked Ham to completely shut down its catalog operations.

42. On December 1, 1999 ASD issued a press release to announce that its Chief Operating Officer, James P. Cormier, has resigned to pursue other opportunities. Defendant Charney, ASD's President and Chief Executive Officer at the time assumed the responsibilities previously performed by Mr. Cormier. Cormier's departure was unplanned, and ASD provided no further details of the resignation or "other opportunities."

43. On December 8, 1999, ASD issued a press release to announce that VantagePoint Venture Partners III(Q), L.P. and VantagePoint Communications Partners, L.P. exercised all their common stock purchase warrants acquiring an additional 2,597,400 shares of ASD common stock. The warrants were exercised through a cashless exercise feature which involved the VantagePoint Funds simply canceling a portion of the warrants they owned and utilizing their value based upon the market price of the Company's common stock to pay for the exercise price of the remaining warrants.

44. After the close of trading, just 53 days after ASD's IPO, on January 24, 2000, ASD shocked investors by disclosing that it had been informed by three out of its seven customers that they were terminating their relationships with the Company. The Company issued a press release essentially admitting that customer service levels had been inadequate and quoted David Bowe, the Company's Chief Financial Officer stating:

We have recently experienced a loss of customers that is not consistent with the standards of performance that are essential for ASD. . . ASD Systems is committed to improving our overall customer service levels to ensure we meet or exceed the expectations of our existing and future customers.

45. ASD also announced that it was informed by Honey Baked Ham and two smaller clients, including EDS for Sony's Metreon.com, that they were terminating their relationship with the Company.

46. Investor reaction to this announcement was swift, as ASD's stock declined by \$4.5625 per share on January 25, 2000, or almost 30%, from its previous closing price of \$15.625, to close at \$11.0625 on volume of 2.34 million shares. By contrast, ASD's average daily volume during the class period was 1.25 million shares.

47. On January 25, 2000, Prudential Securities analyst John McPeake issued a report which, among other things, stated that:

ASD Systems Announced Significant Customer Losses - - This Could Negatively Impact 4Q EPS. Last Night after the close, ASD Systems issued a press release announcing that the company had lost the business of three of its customers. These customers, Honey Baked Ham, Music In Motion, and Sony's Metreon.com, had been billed for roughly \$1.7 million of services in 1999 (most of which occurred in the fourth quarter), or roughly 15% of our modeled \$11.6 million 1999 total revenues. While ASD's auditors are currently working on the collection of these billings, we believe that a possible failure to collect these payments presents the significant risk of a fourth quarter earnings miss.

* * * * *

We View These Customer Losses As A Significant Blow To ASD's Momentum. We view the loss of these three customers, which leaves ASD Systems with four remaining customers, as a significant blow to the company's momentum. While both Honey Baked Ham and Music In Motion were the largest of the three customers lost (in terms of revenue), we view the loss of Sony's Metreon.com as the most significant setback to ASD. Honey Baked Ham, clearly the largest of the three customers, and Music In Motion were both catalog-based or direct marketing customers. Sony's Metreon.com, which ASD signed as an e-commerce customer during the second quarter of 1999, was in our opinion, an important name in terms of credibility for ASD's e-commerce customer list. Management noted that each customer discontinued its relationship with ASD for company specific reasons, however, customer service issues were a concern for all three of the customers. As many e-tailers painfully learned during this past holiday season, quality

customer service is often the most important aspect of e-business and can often be the deciding factor between success and failure. As such, ASD Systems is instituting a "Best Practices Initiative" which will review and address customer service issues on a client-by client basis, in order to improve the quality of customer service offered. Although the issue is being addressed after the fact, we are optimistic that ASD's efforts to resolve this problem will prevent any further client departures.

* * * * *

. . . However These Client Departure Have Significantly Decreased Visibility Into 4Q and 2000-Lowering 2000 and 2001 Estimates. While we do believe that ASD's position has long term potential, the loss of these three customers has significantly deteriorated ASD's near-term visibility. We recognize that it is difficult for a young company with a limited client base to recover lost business. As well, we believe that a lack of recent new contract announcements adds an element of risk to this story. . . . (Bold in the original, underline emphasis added)

48. Similarly, Richard Leggett, an analyst at the Friedman Billing Ramsey firm, which served as one of the underwriters for the IPO, lowered his rating for ASD stock from "accumulate" to "underperform" noting his concern with the impact of the loss of clients would have on possible new customers and the fact that the Company had not announced the signing of any new clients since the time of the IPO.

49. Other brokerage firms followed suit in downgrading their investment opinions. On January 25, 2000, Richard Scocozza at Bear Stearns downgraded his rating for ASD stock to "neutral" from "buy".

50. On January 25, 2000, Timothy J. Quillin at Stephens, Inc. downgraded his rating for ASD stock to "neutral" from "buy".

51. As indicated in the Form 10-K filed with the SEC for fiscal year ended December 31, 2000, the Company announced:

For the fiscal years ended December 31, 2000 and December 31, 1999, Sears, our largest client, accounted for approximately 82%

and 54% of our gross revenues, respectively. A substantial portion of our Sears related revenue has been reduced by the sale of our call center and warehouse assets. The contracts for the remaining systems services we are performing for Sears will terminate on June 30, 2001. Sears has indicated that their contract with us will not be renewed. This will have a material adverse effect on our business, including our financial performance and revenue stream, and will result in the loss of an important client reference.

52. On May 12, 2000, the Company issued a press release to announce that ASD Systems would change its name to Ascendant Solutions, evidencing the need for the company to rid itself of its problems and to start afresh.

53. On June 9, 2000, the Company issued a press release essentially admitting that until that time, including at the time of the IPO, ASD lacked the tools necessary to implement its business strategy of providing back office Internet services. In it, the Company announced that David Bowe had been appointed Chief Executive Officer. The press release quoted Bowe as stating that:

Ascendant Solutions is taking the next steps toward having all the building blocks in place to take advantage of the many opportunities before us in the new economy. We have announced a new name, a new services platform and now, new company leaders. All of this puts Ascendant Solutions in the best possible position to provide its clients with the exceptional service and care that they expect and deserve.

54. The Associate Press reported on June 9, 2000 that defendant Jennings resigned from the Company.

55. On September 8, 2000, the Company announced that defendant Charney, ASD's co-founder, had resigned from the Company's board of directors.

56. On September 28, 2000, the Company issued a press released to announce that it would transition out of its fulfillment and call center operations and concentrate on providing systems solutions evidencing that it never had a well-developed business model. The Company also

announced that it would close its call-center and warehouse businesses, and would subsequently fire 170 employees if it could not find a buyer for those units.

57. On May 11, 2001, the Company's stock was delisted from the NASDAQ.

58. Hoovers Online website currently reports under the ASD company capsule that the Company has no revenue-producing operations or contracts and has laid off 98% of its workforce, leaving two employees. The Company doesn't have enough capital to continue operating alone and is seeking to acquire manufacturing, distribution or services companies.

CLASS ACTION ALLEGATIONS

59. Plaintiff brings this action as a class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the "Class") consisting of plaintiffs and all other persons or entities who purchased the common stock of ASD from November 11, 1999 through January 24, 2000, inclusive (the "Class Period") and were damaged thereby. Excluded from the Class are the defendants herein, members of the immediate families of the defendants, and any subsidiary, affiliate, director or controlled person of any such person or entity.

60. The Class is so numerous that joinder of all members is impracticable. There were approximately 5,750,000 shares of ASD common stock sold in the IPO which were freely tradeable and a substantial proportion of those shares changed hands during the Class Period. There are believed to be hundreds, if not thousands, of persons who purchased ASD common stock during the Class Period based upon the substantial volume of ASD common stock traded during the Class Period.

61. Plaintiff's claims are typical of the claims of the other members of the Class, since plaintiff and all members of the Class sustained damages arising out of defendants' conduct in violation of federal law as complained of herein.

62. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action and securities litigation.

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

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

(a) whether the federal securities law was violated by defendants' acts as alleged herein;

(b) whether statements disseminated by defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business and operations of the Company;

(c) whether defendants acted knowingly, or recklessly in omitting and/or misrepresenting material facts;

(d) whether defendants' non-disclosures and/or misrepresentations constituted a fraud on the market by artificially inflating the market prices of ASD securities during the Class Period; and

(e) whether the members of the Class have sustained damages and, if so, what is the proper measure of such damages.

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

(a) ASD common stock met the requirements for listing, and was listed and actively traded, on the NASDAQ National Market System, a highly efficient securities market;

(b) As a regulated issuer, ASD filed periodic public reports with the SEC and NASDAQ; and

(c) ASD's stock was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

66. As a result, the market for ASD's securities promptly digested current information with respect to ASD from all publicly-available sources and reflected such information in ASD's stock price. Under these circumstances, all purchasers of ASD's common stock during the Class period suffered similar injury through their purchase of stock at artificially inflated prices and a presumption of reliance applies.

COUNT I

Violations of Section 10(b) of the Exchange Act and Sec Rule 10b-5 Thereunder

67. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

68. This Count is asserted against all defendants, and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and SEC Rule 10b-5 thereunder, 17 C.F.R. §240-10b-5.

69. During the Class Period, defendants, singly and in concert, directly or indirectly engaged in a common plan, scheme, and unlawful course of conduct pursuant to which they knowingly or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud and deceit upon plaintiff and the other members of the Class. As set forth in detail above, the defendants made a deceptive and untrue statement of material fact and omitted to state material facts necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading to plaintiff and the other members of the Class.

70. Defendants possessed the requisite motive and opportunity to perpetrate the massive financial fraud detailed herein. A primary purpose and effect of defendants' scheme, plan, and unlawful course of conduct was to enable ASD to successfully complete the IPO including the exercise of the over-allotment of shares by the underwriters.

71. During the Class Period, defendants, pursuant to said scheme, plan, and unlawful course of conduct, knowingly or recklessly issued, caused to be issued, participated in the preparation and issuance of a deceptive and materially false and misleading statements to the investing public.

72. Defendants each knew and intended to deceive plaintiff and other members of the Class, or in the alternative, acted with reckless disregard for the truth when they failed to disclose or cause the disclosure of the true facts to plaintiffs and the other members of the Class.

73. Each defendant participated in and joined the alleged scheme and course of conduct detailed above and each is liable primarily for the wrongful acts and statements detailed herein.

74. As a result of the dissemination of the false and misleading statements and omissions set forth above, the market price of ASD's common stock was artificially inflated

throughout the Class Period. In ignorance of the false and misleading nature of the representations described above and the deceptive and manipulative devices and contrivances employed by said defendants, plaintiff and the other members of the Class relied to their detriment on the integrity of the market place of the stock in purchasing ASD common stock. Had plaintiff and other members of the Class known of the materially adverse information misrepresented or not disclosed by defendants, they would not have purchased ASD common stock at the artificially inflated prices that they did.

75. As a result of the inflation of the price of ASD common stock during the Class Period caused by defendants' material misrepresentations and omissions, plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs alleged.

76. By reason of the foregoing, defendants, directly or indirectly, violated Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder in that they;

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts and/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
- (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit and a scheme to defraud upon plaintiff and the other members of the Class in connection with their purchases of ASD's securities during the Class Period.

COUNT II

Violation of Section 20(a) of the Exchange Act

77. Plaintiffs repeat and reallege the foregoing allegations as if set forth in full herein.

78. This Count is asserted against the Individual Defendants, pursuant to Section 20(a) of the Exchange Act.

79. The Individual Defendants, by virtue of their offices, directorships, and/or stockholdings, and specific acts described above, were, at the time of the wrongs alleged herein, controlling persons of ASD within the meaning of Section 20(a) of the Exchange Act.

80. The Individual Defendants had the power and influence and exercised the same to cause ASD to engage in the illegal conduct and practices complained of herein.

81. By reason of the conduct alleged in Count I of the Complaint, the Individual Defendants are liable for the aforesaid wrongful conduct, and are liable to plaintiffs and to the other purchasers of ASD's common stock during the Class Period.

PRAYER FOR RELIEF

82. WHEREFORE, plaintiffs pray for judgment as follows:

A. Declaring this action to be a proper class action, appointing the Lead Plaintiffs as class representatives pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of plaintiffs and the Class against all defendants, jointly and severally, for the damages sustained as a result of the wrongdoing of defendants, together with interest thereon;

C. Awarding plaintiffs and the Class their costs and expenses incurred in this action, including reasonable allowance of fees for plaintiffs' attorneys, accountants, and experts, and reimbursement of plaintiffs' expenses; and

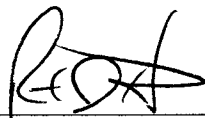
D. Granting such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: July 26, 2002

Respectfully submitted,

By:  _____

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Certificate of Service

I, the undersigned hereby certify that a true and correct copy of the foregoing document was served on the person listed below by fax and certified mail, return receipt requested on this 26th day of July, 2002.

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Robert J. Hill