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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

<p>JERRY SLOAN, on Behalf of Himself and All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>GUESS?, INC., MAURICE MARCIANO, ARMAND MARCIANO, PAUL MARCIANO and BRIAN FLEMING,</p> <p>Defendants.</p>	<p>CASE NO.</p> <p><u>CLASS ACTION</u></p> <p>COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS</p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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INTRODUCTION

1. This is a securities fraud class action on behalf of all purchasers of the common stock of Guess?, Inc. ("Guess" or the "Company") between February 14, 2000, and January 26, 2001, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").
2. This action involves defendants' dissemination of materially false and misleading statements concerning Guess' operations and financial performance and the effect the adverse undisclosed conditions were having and would continue to have on the Company. As Guess' inventory increased during the Class Period, the price of Guess shares fell from the \$28-\$33 range to the \$18-\$20 range, and it became obvious to defendants that they could not successfully complete the sale of 4.5 million shares in planned secondary

offering for expected returns of approximately \$120 million (or approximately \$27 per share). Therefore, defendants embarked on a campaign to conceal the adverse, financial condition of the Company and thereby avoid a complete collapse in the price of Guess shares.

3. On November 9, 2000, after defendants had sold over \$2.2 million of their own Guess shares, they revealed that in the 3rdQ fiscal 2000 ("F00") Guess would earn only \$0.13 per share compared to analysts' revised estimates of \$0.33 per share (\$0.45 unrevised), that in the 4thQ F00 the Company would earn only \$0.08 per share compared to an estimated of \$0.44 per share (unrevised), and for F01 \$0.95 per share compared to \$1.85 per share (unrevised). In addition, and for the first time, defendants also revealed that Guess would record a loss of over \$4.7 million their related to below cost sale of inventory, and an additional charge of \$5.4 million to increase reserves for impaired or worthless inventory. According to the Company at this time, earnings for the 3rdQ F00 had fallen to a mere \$5.6 million, compared to net earnings of \$14.2 million in the 3rdQ F99, and gross margins declined by almost 900 basis points, a seemingly impossible occurrence. Stunned analysts and investors were forced to watch as Guess shares declined to a low of \$4.25, a loss of more than 85% from the stock's Class Period high, and the Company's market capitalization was reduced more than \$1.2 billion.
4. The November 9, 2000 press release was defendants' attempt to effectuate a "soft landing" (i.e., avoid a complete collapse in Guess stock) and was a precursor of things to come. On January 26, 2001, the Company issued a press release in which it admitted that, throughout the Class Period, it had artificially and improperly inflated its earnings by failing to expense costs or record accruals relating to the value of its substantially impaired inventory. As a result of the Company's accounting improprieties and violations of Generally Accepted Accounting Principles ("GAAP"), Guess was forced to restate its financial results for the 1stQ, 2ndQ and 3rdQ of fiscal 2000.
5. By the time defendants' scheme had run its course, Guess shares had lost over 89% of their value, as shares traded to a Class Period low of \$3.50 after reaching a Class Period high of \$33. As a result of this catastrophic decline in the value of Guess shares, investors have lost, in the aggregate, hundreds of millions of dollars.

JURISDICTION AND VENUE

6. The claims asserted herein arise under and pursuant to §§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 Securities and Exchange Commission ("SEC") [17 C.F.R. §240.10b-5].
7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1337 and §27 of the Exchange Act [15 U.S.C. §78aa].
8. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b). Many of the acts alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District. Additionally, defendants maintain their chief executive offices and principal place of business within this District.
9. In connection with the acts 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 national securities markets.

PARTIES

10. Plaintiff Jerry Sloan purchased the common stock of Guess at artificially inflated prices during the Class Period, as detailed in the attached certification, and was damaged thereby.
11. Founded in 1981, Guess currently operates as a Delaware corporation, with its principal executive offices located in Los Angeles, California. According to statements made by the Company and filed with the SEC,

Guess purports to design, market, distribute and license one of the world's leading lifestyle collections of casual apparel and accessories for men, women and children. Guess apparel is marketed under numerous trademarks including Guess, Guess?, Guess U.S.A., Guess Jeans, Guess Kids and Guess Collection, among others.

12. The individual defendants identified below (the "Individual Defendants"), served at all times material to the claims herein, as senior officers and/or directors of Guess in the positions set forth below:
 - a. Defendant Maurice Marciano ("M. Marciano") is, and at all times relevant to the allegations raised herein was, Co-Chairman and Co-Chief Executive Officer of the Company. During the Class Period and as part of the fraudulent scheme, defendant M. Marciano sold 20,000 shares of his privately held Guess common stock for prices as high as \$22.75 per share for proceeds of at least \$455,000.
 - b. Defendant Armand Marciano ("A. Marciano") is, and at all times relevant to the allegations raised herein was, Executive Vice President of the Company. During the Class Period and as part of the fraudulent scheme, defendant A. Marciano sold 81,600 shares of his privately held Guess common stock for prices as high as \$22.00 per share for proceeds of at least \$1.75 million.
 - c. Defendant Paul Marciano ("P. Marciano") is, and at all times relevant to the allegations raised herein was, President, Co-Chairman and Co-Chief Executive Officer of the Company.
 - d. Defendant Brian Fleming ("Fleming") is, and at all times relevant to the allegations raised herein was, Chief Financial Officer of the Company. Immediately following the Company's November 16, 2000 earnings revision, defendant Fleming was unceremoniously removed from this position and left the Company.
13. Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about its business, operations, products, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and/or Board of Directors meetings and committees thereof and via reports and other information provided to them in, connection therewith.
14. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers and/or directors of Guess, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.
15. As officers and/or directors and controlling persons of a publicly held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, traded on the New York Stock Exchange (the "NYSE"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to promptly disseminate accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of the Company's common stock would be based upon truthful and accurate information. The Individual Defendants'

misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

16. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public, shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Guess, each of the Individual Defendants had access to the adverse undisclosed information about Guess' business prospects, financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Guess and its business issued or adopted by the Company materially false and misleading.
17. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.
18. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Guess common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Guess business, new product quality and capabilities, product demand, growth, operations and the intrinsic value of Guess common stock; and (ii) caused plaintiff and other members of the Class to purchase Guess common stock at artificially inflated prices.

INSIDER SELLING AND EVIDENCE OF DEFENDANTS' SCIENTER

19. With Guess shares trading above \$20 per share, during the two week period between August 30, 2000 and September 15, 2000, while in possession of the materially adverse, nonpublic information described herein, defendants sold over 101,000 shares of their own Guess stock. Having duped investors into purchasing shares of Guess, and having pushed the stock above \$20 per share, defendants A. Marciano and M. Marciano immediately went to the market to dump over \$2.2 million worth of Guess shares, beginning within two weeks after the Company filed its false and misleading 2ndQ Form 10-Q. The sales of Guess stock by defendants include:

<u>Name</u>	<u>Position</u>	<u>Dates</u>	<u>Shares</u>	<u>Proceeds</u>
M. Marciano	Co-Chairman/ Co-CEO	08/31/00	20,000	\$ 455,000
A. Marciano	Sr. Executive Officer	08/30/00	50,000	\$ 1,084,525
		09/15/00	31,600	\$ 666,896
		Totals:	101,600	\$ 2,206,421 (1)

20. The timing and amounts of these stock sales, which took place two weeks after the filing of Guess' 2ndQ F00 Form 10-Q and only days before the Company issued its first 3rdQ F00 earnings warning, is strong evidence that these insiders knew of the serious undisclosed adverse conditions inside Guess' operations which were adversely impacting the Company's business throughout the Class Period and that they took advantage of that insider information. These stock sales were also *per se* evidence of defendants' scienter because they all occurred during the time when, as defendants have now admitted, the Company had failed to properly account for impaired inventory and had artificially inflated Guess' earnings per share ("EPS") figures, and before the time when defendants issued the January 26, 2001 restatement which radically

revised, downward, results for the 1stQ and 2ndQ F00.

STATEMENTS MADE BY DEFENDANTS DURING THE CLASS PERIOD

21. On February 14, 2000, the first day of the Class Period, Guess issued a press release published on *Business Wire in* which it announced results for the 4thQ and year ended December 31, 1999. According to the press release, purported revenues for the 4thQ F99 increased 47% to \$195.5 million, compared with \$133.0 million for the 4thQ F98, and net earnings increased to \$19.2 million, or \$0.44 per share, compared with net earnings of \$4.1 million, or \$0.10 per share, for the 4thQ F98. For the full year 1999, the Company announced purported net earnings increased 107% to \$51.9 million, for \$1.20 per share, compared to \$25.1 million, or \$0.59 per share, reported in 1998. In addition to announcing this very "**strong revenue and earnings growth**," at this time the Company also announced the following:

We are very excited about our growth strategies for fiscal 2000. ***Our strong revenue and earnings growth in 1999 demonstrates the strength of our brand and product. Our business currently has great momentum and we are looking forward to a very successful year 2000.***

22. The statements made in the Company's February 14, 2000 press release were false and misleading. Defendants each knew or deliberately disregarded the true facts concerning Guess and its operations based upon internal Guess corporate data, including:
- That, as a result of a slow-down in demand, inventory was accelerating well above plan and, as a result, Guess was experiencing significant problems managing its inventory and controlling costs, and that these undisclosed problems had only been exacerbated by the relocation of warehousing and distribution functions in Kentucky - thousands of miles away from the Company's chief executive offices; and
 - That defendants had no reasonable basis to expect and did not expect a "very successful year 2000," as by the time defendants announced 4thQ F99 results, Guess was already well into the 1stQ F00 and defendants knew that inventory was building well above plan as demand for Guess products declined.
23. On March 30, 2000, Guess filed with the SEC, pursuant to Form 10-K, its financial results for F99, the period ended December 31, 1999, signed by defendants M. Marciano, P. Marciano, A. Marciano and Fleming, among others. The Company's F99 Form 10-K reiterated many of the same false and misleading statements previously disseminated on February 14, 2000 and was false and misleading for the reasons in ¶22, *supra*.
24. Despite the fact that Guess had failed to disclose the adverse conditions which were then affecting the Company, on April 27, 2000, Guess announced its intention to issue and sell approximately \$125 million of Guess stock to the public in connection with the Company's planned Secondary Offering. According to the Company, this sale would be preceded by the filing with the SEC of a Registration Statement.
25. Following the announcement of its planned Secondary Offering, on May 1, 2000, the Company published a release in which it announced results for 1stQ F00, the period ended April 1, 2000. According to the release, the company stated that net earnings for the 1stQ F00 increased 39.3-i to \$15.9 million compared to net earnings of \$11.5 million reported in the 1stQ F99. In addition to announcing these purportedly "strong" results, the press release stated the following:

[Defendant P. Marciano] commented, "We are extremely pleased to report our sixth consecutive quarter of ***strong revenue and earnings growth. We achieved growth in all areas of our business highlighted by very positive increases in both our retail and wholesale segments*** The success of our retail operations continues to be attributed to our fashion-focused product mix and merchandising, combined with a highly motivated sales staff. ***Our retail expansion program to open 60 new stores during 2000 is on track*** with the opening of eight new stores during the first quarter."

[Defendant M. Marciano stated], "***We continue to be very encouraged by retailers' strong***

product sell-throughs and response to our new product lines. Our wholesale backlog continues at high levels reflecting the popularity of our brand and product."

[Defendant M.] Marciano added, "**Results for the first quarter also reflected continued improvement in our gross profit rate** to 42.7% of net revenue compared to 41.9% a year ago. **This increase was entirely driven by higher margins on product sales**

[Defendant M.] Marciano continued, "At quarter end, inventories were \$135.5 million ... up 25.1% from year end and 71.7% from a year ago. **The majority of these higher inventory levels are the result of significantly increased product sales, substantially higher wholesale backlog and our retail expansion program We are very pleased with the strength of our business and the progress we have made on our growth initiatives. We remain confident about the outlook for the remainder of 2000.**"

26. The statements contained in the Company's May 1, 2000 press release announcing 1stQ F00 results were false and misleading for the reasons in ¶22, *supra*. In addition, these statements were also false and misleading for the following reasons:
- The Company's inventory levels were not increasing by design in order to increase product sales, higher wholesale backlog and expanding retail operations, but were, in fact, rising as a result of increased competition and slowing demand for Guess' products;
 - Defendants knew that demand for Guess products did not remain strong and Guess was not experiencing "great momentum";
 - Finished inventory in wholesale during the 1stQ F00 had nearly doubled compared to the same period the prior year, and thus defendants knew it was false and misleading to claim that wholesale backlog would remedy- this inventory issue;
 - Defendants did not "continue to be very encouraged by retailers' strong product sell-throughs," as product sell-through had already materially declined as inventories began to far exceed Company plan;
 - Defendants had no reasonable basis to believe in and did not remain "confident about the outlook for the remainder of [fiscal year] 2000"; and
 - As defendants later admitted on January 26, 2001 when restating financial results for the 1stQ F00, earnings were a full \$0.02 below reported 1stQ F00 figures, due almost entirely to a reduction in gross margins and an increase in inventory-related charge-offs. As defendants admitted at that time, the financial results for this period were false and materially misleading and did not conform to GAAP.
27. On May 16, 2000, the company filed with the SEC, pursuant to Form 10-Q, its financial results for the 1stQ F00, the period ended April 1, 2000, signed by defendants M. Marciano and Fleming. The statements contained in the Company's 1stQ F00 Form 10-Q were materially false and misleading for the reasons stated in ¶¶22 and 26, *supra*.
28. On May 24, 2000, in accordance with Guess' April 27, 2000 announcement, the Company filed with the SEC a Registration Statement in connection with the proposed Secondary Offering of \$125 million worth of Guess shares. The Registration Statement incorporated the false and misleading information previously announced and, therefore, the statements contained in the Company's Secondary Offering Registration Statement were false and misleading for the reasons in ¶¶22 and 26, *supra*.
29. Despite defendants' best efforts to mislead investors and artificially inflate the value of Guess shares prior to the Secondary Offering, following the announcement of 1stQ F00 results, shares of Guess traded below \$20 per share, well below the Class Period high of \$33, reached just before Guess announced its Secondary offering in late April 2000. Thus, by June 2000, the Company announced that it had decided to shelve its

secondary Offering, and that while it would not seek to sell shares at these prices, it would register \$200 million worth of shares which the Company could sell over the next two years. The Shelf Registration would allow Guess to sell stock as soon as its price recovered.

30. Realizing that they could not augment their wealth by adding over \$120 million in cash to a company which defendants substantially owned, nor could they add over a hundred million to Guess' market capitalization, nor create a much larger supply of publicly traded stock with greater liquidity (into which they could later sell their personal Guess shares), defendants were now motivated to inflate the price of Guess shares so they could sell their own Guess stock and, thereby, profit from the substantial artificial inflation which still existed in Guess shares as a direct result of their fraud.
31. On July 31, 2000, the Company issued a release announcing consensus-beating results for the 2ndQ F00, the period ended July 1, 2000. According to the release, net earnings for the 2ndQ F00 increased 72.3% to \$12.1 million compared to net earnings of \$7.0 million in the 2ndQ F99. In addition to announcing these results, the release stated the following:

[Defendant P. Marciano] commented, "We are very pleased with our seventh consecutive quarter of strong revenue and earnings growth. *We achieved very positive increases in both our retail and wholesale segments The continued success of our retail operations can be attributed to smart, fashion-focused product mix and brand awareness*"

[Defendant M. Marciano] stated, "...The continued strength of wholesale backlog, which, at \$162 million, was up 62% at the end of second quarter, signals *excellent demand for our product going forward.*"

[Defendant M.] Marciano continued, "*While we are still working through some excess inventory by primarily utilizing wholesale off-price and factory store channels, the amount of our inventory overage at the end of the second quarter is less than \$15 million.* The year-over-year comparison for inventory . . . at July 1, 2000 include *\$14.2 million of Guess Canada, the abnormally low inventory in the year-ago period, inventory necessary for new stores,* and inventory necessary to support our retail comparable sales gains. *The remaining increase in inventory is in line with sales trends and is necessary to support our substantially higher wholesale backlog. We expect to have the inventory overage substantially cleared by early in the fourth quarter.*"

32. The statements contained in the Company's July 31, 2000 press release, announcing 2ndQ F00 results, were false and misleading for the reasons stated in ¶¶22 and 26, *supra*. In addition, these statements were also false and misleading for the following reasons:
 - a. It was false and misleading to state that 2ndQ F00 "inventory [was] in line with sales trends," when, at this time, inventory had risen well above plan and was having a material adverse effect on earnings, gross margins and reserves;
 - b. It was completely false for defendants to claim that "excellent demand" existed for Guess products at wholesale during the 2ndQ F00, when, as defendants knew, demand had already declined as inventory built-up; and
 - c. As defendants later admitted on January 26, 2001, when restating financial results for the 2ndQ F00, the financial results for this period were false and materially misleading and did not conform to GAAP. In fact, earnings for the 2ndQ F00 did not exceed analysts' consensus estimates by \$0.02, as defendants claimed, but actually fell short of such estimates by \$0.11, or 42%.
33. On August 14, 2000, the Company filed with the SEC, pursuant to Form 10-Q, its financial results for the 2ndQ F00, the period ended July 1, 2000, signed by defendants M. Marciano and Fleming. The statements contained in the Company's 2ndQ F00 Form 10-Q were false and misleading for the reasons previously

stated herein in ¶¶22, 26 and 32, *supra*.

34. Having duped investors into purchasing shares of Guess and having pushed the stock above \$20 per share, several of the Company's officers and directors, including defendants A. Marciano and M. Marciano, immediately went to the market to dump over \$2.2 million worth of Guess shares beginning two weeks after the Company filed its 2ndQ Form 10-Q and concluding with only 2 weeks left in the 3rdQ F00, and only 10 days before the Company issued the first of two 3rdQ F00 earnings revisions. During the two week period from August 30, 2000 to September 15, 2000, while in possession of materially adverse, non-public information, defendants sold over 101,000 shares of their own Guess stock. The sales of Guess stock by defendants include:

<u>Name</u>	<u>Position</u>	<u>Dates</u>	<u>Shares</u>	<u>Proceeds</u>
M. Marciano	Co-Chairman/ Co-CEO	08/31/00	20,000	\$ 455,000
A. Marciano	Sr. Executive Officer	08/30/00	50,000	\$ 1,084,525
		09/15/00	31,600	\$ 666,896
		Totals:	101,600	\$ 2,206,421 (2)

35. The timing of these sales was highly suspicious given the proximity of these sales to the earnings revisions and given the impossibility that problems as pervasive and serious as those that destroyed Guess' 3rdQ F00 and 4thQ F00 results and F01 prospects could have suddenly developed in that short span of time. These sales were also highly suspicious because they occurred at the time, as defendants have now admitted, when the Company was improperly accounting for inventory and reporting false and artificially inflated earnings figures.

GUESS' IMPAIRED FINANCIAL CONDITION BEGINS TO BE DISCLOSED

36. On September 25, 2000, *with only one week left in the quarter and only 10 days after defendants sold significant quantities of their own Guess stock*, Guess issued a release in which it announced that results for the 3rdQ F00 would fall materially short of analysts' expectations. The release stated the following:

Guess today announced that, due to the generally difficult retail environment, *the Company expects to report earnings per share in the range of \$0.35 to \$0.38 for the third quarter ending September 31st, versus the consensus expectation of \$0.44* and the year-ago quarter's results of \$0.33.

[Defendant M. Marciano] said, "*Our ability to clear inventory into the off-price channel at cost or better was impacted by wide and, in my memory, unprecedented quantities of apparel from competing brands*. While we managed to improve our excess inventory position, we did so at lower than expected pricing, which impacted our gross profit dollars for the quarter. *We also saw a higher level of clearance activity in the retail stores*, which again impacted our gross margins as well as our comparable store sales." *GUESS?, Inc. expects inventories at the end of the third quarter to be improved as a result of both the off price sales and the retail clearance activities.*

37. The stock market's reaction to Guess' initial disclosure was punitive. On September 26, 2000, *Bloomberg* reported that *Guess shares fell as much as 51.4\$, or \$10.19 per share, to close at \$9.63 per share, a new 52-week low*, on volume of more than 2.7 million shares - more than 20 times the three-month average daily trading volume. Regardless of this sharp decline in the value of Guess shares, however, defendants had still not disclosed the truly impaired financial condition of the Company.
38. On November 9, 2000, the Company issued a release in which it announced that Guess was operating well below even revised performance levels, and that *earnings for the 3rdQ F00, the period ended September*

30, 2000, would be only \$0.13 per share - only a third of the \$0.35-\$0.38 revised 3rdQ earnings estimate the Company provided on September 25, 2000. According to this release, net earnings for the 3rdQ F00 were \$5.6 million compared to net earnings of \$14.2 million in the 3rdQ F99. Earnings per share were \$0.13 for the third quarter versus \$0.33 in the 3rdQ F99. In addition to disclosing the impact which the write-down of the Company's bloated inventory was causing, this release also stated:

[Defendant M. Marciano] commented, "Our earnings were clearly disappointing. Our third quarter was very challenging due to excess inventory and the generally difficult retail environment. ***The liquidation of past season inventory, increased inventory reserves, as well as aggressive markdowns at both the wholesale and retail level resulted in much lower gross profit margins than expected. This caused gross margin to decrease nearly nine percentage points.***"

* * *

Gross profit for the third quarter was \$71.8 million versus \$65.3 million a year ago. ***The Company experienced a decrease in gross profit margin to 33.2% from 42.0% in the year-ago quarter.***

Moreover, at this time defendants also first disclosed that the liquidation of huge quantities of significantly devalued inventory was going to have an even greater impact on 4thQ F00 results that it did on 3rdQ F00. According to the release:

As a result of further expected inventory clearance activity and lower than expected comparable store sales trends, at this time the company expects earnings for fourth quarter to fall in the range of \$0.08 to \$0.10 on an operating basis. The company does expect to take charges of up to \$10 million for closing several under-performing retail stores beginning in fourth quarter. With regard to next year, the company now believes that revenues are likely to grow at a rate between 8% and 12% and earnings are likely to be in the range of \$0.95 to \$1.05 again on an operating basis.

39. The stock market's reaction to Guess' second corrective disclosure was punitive and immediate. On November 10, 2000, *Bloomberg* reported that ***Guess shares fell an additional 31%, or \$2.25 per share, to close at \$5.00 per share - after touching \$4.25, another new 52-week low***, on volume of more than 2.16 million shares - more than 12 times the three-month average daily trading volume. By this time, ***Guess shares had lost over 85% of their value, or over \$1.2 billion in market capitalization, since reaching a Class Period high of \$33 on March 30, 2000.***⁽³⁾
40. The financial problems disclosed by the Company were so severe that to regain even a modicum of credibility with investors, Guess was now forced to replace its senior officers. On November 15, 2000, Guess announced that defendant P. Marciano had been replaced as President of the Company⁽⁴⁾ and, as the bloodletting continued, on November 16, 2000, the Company announced the resignation of defendant Fleming as the Company's Chief Financial Officer. Adding insult to injury, by November 16, 2000, as a result of the Company's weak operating performance, which now caused the Company's financial ratios to fall below key indicators covenanted in its loan agreement, the Company was forced to obtain a waiver to stop Chase Manhattan Bank from foreclosing a \$125 million credit facility.

GUESS' TRUE FINANCIAL CONDITION IS FINALLY DISCLOSED

41. On January 26, 2001, on Friday afternoon after the close of even extended-hours trading, the Company issued a release which served as an admission that, throughout the Class Period, defendants had defrauded investors by artificially inflating EPS, overstating gross margins, and understating reserves. The Company's January 26, 2001 release, which ***restated results for the first three quarters of F00 and offered substantial downward earnings revisions for F00 and F01***, stated the following:

Guess?, Inc. Revises Earnings Expectations for Fiscal Year 2000 and 2001

Plans to Restate Previously Reported Quarterly Results for Fiscal Year 2000

LOS ANGELES, Calif. - (BUSINESS WIRE) - Jan. 26, 2001 - Guess? Inc. today announced that it *expects to report diluted earnings per share for the fiscal year ended December 31, 2000 in the range of \$0.36 to \$0.40 and a diluted loss per share for the fourth quarter ended December 31, 2000 in the range of \$0.27 to \$0.31. These results will include the recording of non-recurring charges of approximately \$14 million, consisting of inventory write-down charges to address the valuation of aged or impaired inventory, asset impairment charges, store closing costs and other non-recurring expenses.* These charges are the result of an in-depth analysis of the Company's operations, its financial position and its assets and obligations at year-end.

As a result of this analysis, *the Company determined it is necessary to restate its previously reported financial statements for the first three quarters of fiscal year 2000, because of (a) certain costs that should have been expensed were capitalized and (b) certain unrecorded inventory accruals, which were triggered by the relocation of the Company's distribution facility from Los Angeles, California to Louisville, Kentucky. These issues resulted in the overstatement of certain assets and the understatement of vendor obligations for inventory purchases in the Company's previously reported quarters for fiscal year 2000.* The Company expects the impact of such restatements to be approximately the following:

Diluted Earnings Per Share	<u>First</u> <u>Quarter</u>	<u>Second</u> <u>Quarter</u>	<u>Third</u> <u>Quarter</u>
As reported	\$ 0.35	\$ 0.28	\$ 0.13
To be restated to	\$ 0.33	\$ 0.15	\$ 0.19
<i>Approximate restatement impact on diluted earnings per share</i>	(\$ 0.02)	(\$ 0.13)	(\$ 0.06)

* * *

The Company announced that at December 31, 2000 had an outstanding loan balance under its bank revolving credit facility ("Credit Agreement") of \$22.4 million compared to \$73.4 million at the end of the quarter. *As a result of the restatements, the Company was technically in violation of one of the financial covenants in the Credit Agreement at the end of the third quarter of 2000 and it anticipates it will be in violation of the same covenant at year-end 2000.* The Company has initiated discussions with its banks and it believes, although no assurances can be given, that it will obtain the necessary waivers or an amendment Credit Agreement to cure the violations.

* * *

Guess?, Inc. also announced today that based on current trends it expects diluted earnings per share for fiscal 2001 to be in the range of \$0.68 to \$0.72. The Company plans to reduce its current cost structure and expects to record pre-tax restructuring and non-recurring charges during the first quarter of 2001 of approximately \$3 million to implement this plan. Inclusive of this action, *the Company now expects its 2001 quarterly diluted earnings per share in the range of \$0.03 to \$0.04 in the first quarter, \$0.08 to \$0.09 in the second quarter, \$0.23 to \$0.24 in the third quarter, and \$0.34 to \$0.35 in the fourth quarter.*

This restatement served as an admission that *Guess' prior financial statements were not in conformity with GAAP*, as stated, and that throughout the Class Period defendants had illegally and improperly misled investors by consistently issuing false and materially

misleading statements.

UNDISCLOSED ADVERSE INFORMATION

42. The market for Guess' common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Guess' common stock traded at artificially inflated prices during the Class Period. The artificial inflation continued until the time Guess admitted that demand was substantially impaired by Guess' failure to update its products and that, as a result, inventory had exploded and would have to be liquidated at a huge cost to investors, and this admission was communicated to, and/or digested by, the securities markets. Plaintiff and other members of the Class purchased or otherwise acquired Guess common stock relying upon the integrity of the market price of Guess' common stock and market information relating to Guess, and have been damaged thereby.
43. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Guess' common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were false and materially misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations.
44. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of false or materially misleading statements about Guess' business, prospects, product demand, inventory, growth and growth prospects and the Company's operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Guess and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' false and materially misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

VIOLATIONS OF GAAP AND SEC REPORTING RULES

45. During the Class Period, defendants materially misled the investing public, thereby inflating the price of the Company's securities, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its financial performance, accounting, reporting, and financial condition in violation of the federal securities laws and GAAP.
46. GAAP consists of those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practice at the particular time. Regulation S-X, to which the Company is subject as a registrant under the Exchange Act, 17 C.F.R. §210.4-01(a)(1), provides that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. SEC Rule 13a-13 requires issuers to file quarterly reports.
47. SEC Rule 12b-20 requires that periodic reports contain such further information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.
48. The Company's financial statements contained in the F99 Form 10-K and quarterly reports filed with the SEC on Form 10-Q throughout the Class Period violated the principles of following GAAP, among others:
 - a. The principles provide information that is investors and creditors and were presented in a manner that fair financial reporting and that financial reporting should be useful to present and potential other users in making rational investment, credit and similar decisions (FASB Statement of Concepts No. 1).

- b. The principle that financial reporting should provide information about an enterprise's financial performance during a period (FASB Statement of Concepts No. 1).
 - c. The principle that financial reporting should be reliable in that it represents what it purports to represent (FASB Statement of Concepts No. 2).
 - d. The principle of completeness, which means that nothing material is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions (FASB Statement of Concepts No. 2).
 - e. The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered (FASB Statement of Concepts No. 2).
 - f. The principle that disclosure of accounting policies should identify and describe the accounting principles followed by the reporting entity and the methods of applying those principles that materially affect the financial statements (APB Opinion No. 22).
 - g. The principle that losses be accrued for when a loss contingency exists (Statement of Financial Accounting Standards No. 5).
 - h. The principle that if no accrual is made for a loss contingency, then disclosure of the contingency shall be made when there is at least a reasonable possibility that a loss or an additional loss may have been incurred (Statement of Financial Accounting Standards No. 5).
 - i. The principle that contingencies and other uncertainties that affect the fairness of presentation of financial data at an interim date shall be disclosed in interim reports in the same manner required for annual reports (APB Opinion No. 28).
 - j. The principle that disclosures of contingencies shall be repeated in interim and annual reports until the contingencies have been removed, resolved, or have become immaterial (APB Opinion No. 28).
 - k. The principle that management should provide commentary relating to the effects of significant events upon the interim financial results (APB Opinion No. 28).
49. Defendants were required to disclose in the Company's financial statements the existence of the material facts described herein and to appropriately recognize and report assets, revenues, and expenses in conformity with GAAP. The Company failed to make such disclosures and to account for and to report its financial statements in conformity with GAAP. Defendants knew, or were reckless in not knowing, the facts which indicated that the fiscal F99 Form 10-K and all of the Company's interim financial statements, press releases, public statements, and filings with the SEC, which were disseminated to the investing public during the Class Period, were materially false and misleading for the reasons set forth herein. Had the true financial position and results of operations of the Company been disclosed during the Class Period, the Company's common stock would have traded at prices well below those at which it did trade.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23 and (b)(3) on behalf of a Class consisting of all persons who purchased Guess common stock during the Class Period and who were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.
51. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Guess common shares were actively traded on the NYSE. As of November 6, 2000, there

were approximately 43.5 million shares of Guess common stock issued and outstanding. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Guess or its transfer agent and may be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in securities class actions.

55. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.
56. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.
57. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:
 - a. whether the federal securities laws were violated by defendants' acts as alleged herein;
 - b. whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and financial statements of Guess; and
 - c. to what extent the members of the Class have sustained damages and the proper measure of damages.
58. A class action is superior to all 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 Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

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

59. At all relevant times, the market for Guess' stock was an efficient market for the following reasons, among others:
 - a. Guess' stock met the requirements for listing and was listed and actively traded on the NYSE, a highly efficient and automated market;
 - b. As a regulated issuer, Guess filed periodic public reports with the SEC and the NYSE;
 - c. Guess regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
 - d. Guess was followed by several 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.
60. As a result of the foregoing, the market for Guess' stock promptly digested current information regarding Guess from all publicly available sources and reflected such information in Guess' stock price. Under these circumstances, all purchasers of Guess common stock during the Class Period suffered similar injury through their purchase of Guess common stock at artificially inflated prices and a presumption of reliance applies.

NO SAFE HARBOR

61. 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 statutory safe harbor does not apply to Guess' false financial statements. In addition, many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Guess who knew that those statements were false when made.

FIRST CLAIM FOR RELIEF

Violation of §10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants

62. Plaintiff repeats and realleges each and every paragraph contained above as if set forth herein. This Claim is asserted against all defendants.
63. The defendants named in this Claim knew, or were reckless in failing to know, of the material omissions from and misrepresentations contained in the statements as set forth above. Each of these defendants: (a) knew or had access to the material adverse non-public information about Guess' adverse financial outlook and then-existing business conditions, which was not disclosed; and (b) directly or indirectly participated in drafting, reviewing and/or approving the misleading statements, releases, analyst reports, SEC filings and other public representations of and about Guess.
64. Throughout the Class Period, defendants, with knowledge of or reckless disregard for the truth, disseminated or approved releases, statements and reports, referred to above, which were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
65. During the Class Period, defendants, individually and via a fraudulent scheme, directly and indirectly, participated in a course of business that operated as a fraud or deceit on purchasers of Guess stock and concealed material adverse information regarding the then-existing business conditions and financial outlook of the Company as specified herein. Defendants employed devices, schemes and artifices to defraud and engaged in acts, practices and a course of business as herein alleged to commit a fraud on the integrity of the market for the Company's stock and to maintain artificially high market prices for the common stock of Guess. This included the formulation, making of and/or participation in the making of, untrue statements of material facts and the omission '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 engaging in acts, practices and a course of business which operated as a fraud and deceit upon plaintiff and the Class, all in connection with the purchase of Guess common stock by plaintiff and members of the Class.
66. By reason of the conduct alleged herein, defendants, knowingly or recklessly, directly or indirectly, have violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Guess common stock.
67. Plaintiff and the Class have suffered substantial damages in that, in reliance on the integrity of the market,

they paid artificially inflated prices for Guess common stock as a result of defendants' violations of §10(b) of the Exchange Act and SEC Rule 10b-5. Plaintiff and the Class would not have purchased Guess common stock at the price they paid, or at all, if they had been aware that the market price had been artificially and falsely inflated by defendants' misleading statements and concealment. At the time of the purchases by plaintiff and the Class of Guess common stock the fair and true market value of said common stock was substantially less than the price paid by them.

SECOND CLAIM FOR RELIEF

For Violation of §20(a) of The Exchange Act Against All Defendants

65. Plaintiff repeats and realleges each and every paragraph contained above as if set forth herein. This Claim is asserted against all defendants.
66. Each of the Individual Defendants acted as a controlling person of the Company within the meaning of §20 of the Exchange Act. Guess controlled each of the Individual Defendants. Each controlling person had the power and authority to cause others to engage in the wrongful conduct complained of herein.
67. By reason of such wrongful conduct, defendants are liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of their wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of the Company's stock.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief and judgment, as follows:

1. Determining that this action is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
3. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder, pursuant to Rules 64, 65 and any other appropriate state law remedies;
4. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
5. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: February 6, 2001

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1. In addition, Alice Kane, a Guess director and member of the Audit Committee, sold 15,150 shares of her Guess stock on September 14, 2000 for proceeds of \$313,087.
2. In addition, Alice Kane, a Guess director and member of the Audit Committee, sold 15,150 shares of her Guess stock on September 14, 2000 for proceeds of \$313,087.
3. As this news was disseminated to the market, Guess shares fell to a new 52-week low of \$3.50 on December 6, 2000.
4. Due to the Marciano brothers' control over the majority of Guess stock, defendant P. Marciano retained his position as Co-Chairman of the Company.