

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

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GILBERT J. VECONI, JR., on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

NEW ERA OF NETWORKS, INC., GEORGE F. ADAM, JR.,  
PATRICK FORTUNE AND STEPHEN E. WEBB,

Defendants.

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**CLASS ACTION COMPLAINT  
JURY TRIAL DEMANDED**

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**INTRODUCTION**

Plaintiff Gilbert J. Veconi, Jr. (“Plaintiff”), individually and on behalf of all other persons similarly situated, by his undersigned attorneys, alleges upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the public documents and announcements made by defendants, and Securities and Exchange Commission (“SEC”) filings, and press releases regarding New Era of Networks, Inc. (“NEON” or the “Company”) as follows:

**NATURE OF THE ACTION**

1. This is a class action on behalf of all persons who purchased the securities of NEON during the period October 18, 2000, through and including November 21, 2000 (the “Class Period”), to recover damages caused by defendants’ violation of the federal securities laws. During the Class Period, defendants issued to the investing public financial statements and press releases concerning the Company’s publicly reported earnings and expenses that were false and misleading in that they failed to state material information necessary in order to make the statements not false and misleading.

2. On October 18, 2000, the Company announced record revenues and earnings for the third quarter 2000 ended September 30, 2000. Those purported record revenues, however, were a sham. On November 21, 2000, a week after NEON had issued its quarterly report on Form 10-Q, several analysts announced that after a painstaking review of NEON's Form 10-Q, they were downgrading NEON's stock. Those analysts revealed that the record revenues and earnings for NEON's third quarter 2000 were predominantly based upon the Company's practice of selling software to companies in exchange for equity and then booking the sales as non-cash revenue.

3. The disclosure that NEON's "record" revenues and earnings were largely comprised of speculative equities caused the Company's common stock to plummet over 50% on extremely heavy trading volume on November 21, 2000.

#### **JURISDICTION AND VENUE**

4. The claims alleged herein arise under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder.

5. The jurisdiction of this Court is based on Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1331.

6. Venue is proper in this District pursuant to Section 27 of the 1934 Act and 28 U.S.C. 1391(b). Many of the acts alleged herein, including the dissemination to the investing public of the misleading statements at issue, occurred in substantial part in this District. NEON maintains its principal place of business in this District.

7. In connection with the acts, conduct and other wrongs complained of herein, defendants used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and the facilities of national securities exchanges and markets.

#### **THE PARTIES**

8. Plaintiff purchased shares of NEON common stock during the Class Period as per the annexed certificate.

9. Defendant NEON is incorporated in the state of Delaware and maintains its principal place of business at One Greenwood Plaza, 6550 South Greenwood Plaza Blvd., Englewood, Colorado 80111. As of October 31, 2000, NEON had approximately 36 million shares of common stock outstanding. During the Class Period, NEON's common stock was actively traded on the NASDAQ.

10. According to its press releases, NEON is a leading provider of e-Business enabling software and services for the "New Economy."

11. Defendants had a duty to promptly disseminate truthful and accurate information with respect to NEON and to promptly correct any public statements issued by or on behalf of the Company which had become false or misleading.

12. Defendants knew or recklessly disregarded that the misleading statements and omissions complained of herein would adversely affect the integrity of the market for the Company's stock and would cause the price of the Company's common stock to become artificially inflated. Defendants acted knowingly or in such a reckless manner as to constitute a fraud and deceit upon Plaintiff and the other members of the Class.

13. Defendant George F. Adam, Jr., during the relevant time period, was the Chairman of the Board and Chief Executive Officer of the Company.

14. Defendant Patrick J. Fortune, during the relevant time period, was the President and Chief Operating Officer of the Company.

15. Defendant Stephen E. Webb, during the relevant time period, was the Senior Vice President and Chief Financial Officer of the Company.

16. Defendants Adam, Fortune and Webb are collectively referred to herein as the "Individual Defendants."

17. The Individual Defendants, by reason of their direct and substantial management positions and responsibilities during the time relevant to this Complaint, were "controlling persons" of NEON within the meaning of section 20 of the Exchange Act and had the power and influence to control NEON and exercised such control to cause the Company to engage in the violations and improper practices

complained of herein. The Individual Defendants, because of their positions as officers and directors of NEON had access to adverse non-public information about the Company's financial condition and future prospects.

18. The statements made by defendants as outlined below were materially false and misleading when made. Defendants knew that the October 18 announcement of third quarter revenues was false and misleading and omitted the material fact that approximately \$10 million in revenue reported was not based on the receipt of cash payment, but rather, receipt of speculative equity investments in the purchasing companies and/or in-kind professional services. In addition, Defendants had no reasonable or adequate basis to justify or support their earnings forecasts. The true financial and operating condition of the Company, which was known or recklessly disregarded by the defendants, remained concealed from the investing public. Defendants, who were under a duty to disclose those facts, instead misrepresented or concealed them during the relevant period herein.

#### **CLASS ACTION ALLEGATIONS**

19. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class (the "Class") consisting of all persons who purchased the common stock of NEON between October 18, 2000 and November 21, 2000, inclusive, and who suffered damages thereby. Excluded from the Class are the defendants, members of each Individual Defendant's immediate family, any entity in which any defendant has a controlling interest or is a parent or subsidiary of or is controlled by the Company, and the officers, directors, affiliates, legal representatives, heirs, predecessors, successors and assigns of the defendants.

20. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes there are, at a minimum, thousands of members of the Class who traded during the Class Period.

21. 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 laws were violated by defendants' acts as alleged herein;
- (b) whether NEON, Adam, Fortune and Webb issued false and misleading material statements and/or omissions during the Class Period;
- (c) whether the Individual Defendants caused NEON to issue false and misleading material statements and/or omissions during the Class Period;
- (d) whether defendants acted knowingly or recklessly in issuing false and misleading material statements and/or omissions;
- (e) whether the market price of NEON's common stock during the Class Period was artificially inflated because of the defendants' conduct complained of herein; and
- (f) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

22. Plaintiff's claims are typical of the claims of the members of the Class as Plaintiff and members of the Class sustained damages arising out of defendants' wrongful conduct in violation of federal law as complained herein.

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

24. 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 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.

**FRAUD ON THE MARKET PRESUMPTION**

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

- (a) defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- (b) the omissions and misrepresentations were material;
- (c) the securities of the Company traded in an efficient market ~~(d)~~ t h e misrepresentati  
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C o m p a n y ' s  
securities; and
- (e) Plaintiff and members of the Class purchased their NEON stock between the time the defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

26. Based upon the following, Plaintiff and members of the Class are entitled to the presumption of reliance upon the integrity of the market.

### **STATUTORY SAFE HARBOR**

27. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false forward-looking statements pleaded in this Complaint. The safe harbor does not apply to NEON's allegedly false financial statements. None of the written forward-looking statements made were identified as forward-looking statements, nor was it stated that actual results "could differ materially from those projected." Nor did meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statements accompany those forward-looking statements. Each of the forward-looking statements alleged herein to be false was authorized by an executive officer of NEON and was actually known by Adam, Fortune and Webb to be false when made.

### **SUBSTANTIVE ALLEGATIONS**

28. NEON is a supplier of Internet infrastructure software and services. Among other things, NEON assists in the automation of e-Business by providing products and services which integrate Internet-facing applications with core operational systems for goods and services providers, and which facilitate the creation of Net markets.

29. During 2000, the Company's stock was under tremendous pressure as the result of the Company's flagging earnings reports. Earlier in 2000, NEON had announced a net loss for calendar 1999 of \$46.3 million. That significant loss was followed by quarterly net losses of \$5.9 million and \$6.3 million for the quarters ended March 31 and June 30, 2000, respectively. As a result, by the start of the Class Period, NEON's stock was trading under \$20 per share, down from a 52-week high of \$96.25.

30. With the stock dramatically down and facing continued losses, defendants were under pressure from the market to reverse that trend by announcing positive results for the third quarter ended September 30, 2000. Thus, on October 18, 2000, the Company's press release trumpeted the following headlines:

NEON Reports Record Third Quarter 2000 Results:

Third Quarter revenues of \$55 Million and EPS of \$0.08

31. NEON's October 18, 2000 press release continued:

New Era Networks, (TM) Inc., a leading e-Business infrastructure provider, today announced revenues of \$55.2 million and earnings per share of \$0.08, before charges, for the quarter ended September 30, 2000. Reported revenues grew 73 percent compared to the quarter ended September 30, 1999.

Revenues (\$m)	1999 Q3	1999 Q4	2000 Q1	2000 Q2	2000 Q3
	\$31.9	\$38.6	\$42.1	\$50.9	\$55.2

“Our next-generation e-Business offerings help power the new economy,” said NEON Chief Executive Officer Rick Adam. “NEON helps our customers aggressively e-enable their business processes. We are continuing to enhance our products, NEON Portal Server, NEON Process Server, Open business Interchange(TM), GSTPA, and PaperFree.”

#### Operational Highlights

“We reported triple digit year-over-year growth in software license revenue, which grew 160%. We’ve now reported four consecutive profitable quarters, this quarter achieving six percent operating profit, excluding charges, and EBITDA of \$5.0 million for the quarter and \$14.7 million year-to-date,” said NEON Chief financial Officer Steve Webb. “We have met or exceeded our revenue and profit goals for five consecutive quarters. DSO increased sequentially due to seasonal factors, but are below year ago levels. Our goals is to bring DSO down in the fourth quarter.”

32. The October 18, 2000 press release bragged about the number of contracts closed by NEON in the quarter, which contributed to the record revenues and earnings:

During the quarter, NEON and IBM closed just over 200 contracts. Customers include: Aviall Inc., B2B-ERP.com, Inc., ClearNet, Deluxe Corporation, eCALYX, Inc., FatWire Corp., Guidant Corporation, INCUBED Ltd., Johnson & Johnson (DePuy), Nabisco,

Netfish Technologies, Inc., QST Industries Inc., SASOL, Shell, Singapore Stock Exchange, Think XML, and Thomas & Betts.

Below are several customers with a description of how they use NEON e-Business solutions:

- Centex Homes selected NEON for their e-Business initiative whereby NEON technology will provide real-time information for Centex Homes customers and suppliers, helping to maintain the company as one of the most sophisticated and Internet-savvy in the market.
- Mobilize, Inc., a leading provider of pre-packaged mobile application services, has licensed e-Biz Integrator(TM) and NEON Adapters, including adapters for Protocols, SAP R/3 and Siebel, to enable Mobilize enterprise clients to implement m-commerce services with existing corporate informationsystems in less than 60 days.
- VetCentric, the premier provider of e-Business infrastructure for the veterinary medical industry, implemented Internet-based order processing using NEON technology. The implementation of NEON e-Biz Integrator and NEON Adapter for R/3 helped VetCentric launch its e-Commerce service in less than seven weeks.
- Blue Cross and Blue Shield of Illinois and Blue Cross and Blue Shield of Texas chose NEON technology to assist in HIPAA compliance and e-commerce initiatives. As clearinghouses that receive and process electronic transactions for other major healthcare payers, they receive and process approximately 12 million data transactions per month. NEON technologies handles their high-volume, complex transactions as well as bringing them in compliance with HIPAA.

33. The October 18, 2000 press release also highlighted third quarter license revenue which was generated or influenced by partners:

- IBM and NEON continue to have success. NEON provides key components of IBM's MQSeries® Integrator business integration product, which is a key component of IBM's recently announced WebSphere® software platform for e-Business. Significant customers who have selected IBM and NEON technology for major integration projects include UPS, Shell, Freddie Mac, Vital Processing Services, Wachovia Bank, First Union Bank, New York Life Insurance Company, the

Australian Stock Exchange, Key Span Energy, Renault, and Zurich Insurance.

- BroadVision and NEON have signed up Japan Information Engineering Co., Ltd. (JIEC) as a reseller.
- B2B-ERP.com, Inc. delivers business-to-business eCommerce products for organizations currently using enterprise resource planning (ERP) applications such as SAP, Oracle, PeopleSoft, J.D. Edwards and BAAN. B2B-ERP adapters for delivering relevant ERP-based business processes for buy and sell side sales order management, inventory management, and auctions, all triggered from within an ERP system.

34. The October 18, 2000 press release also noted that NEON had engaged in private equity investments with several companies during the third quarter:

During the quarter NEON established new strategic relationships with several companies which included private equity investments including Mobilize; tapX, a UK company that automates financial and clearance transaction arising from B2B procurement processes; and MedWired Corporation, a Denver-based ASP focusing on an e-business portal for physicians.

35. The statements made in paragraphs 30 through 34 were materially false and misleading when made because the defendants failed to disclose or misrepresented material facts. While the October 18 press release gave a standard warning that its investments in companies with complimentary products or technologies could lose all or a significant part of their value, defendants never disclosed that certain of these investments during the third quarter were made in lieu of payment by those companies to which NEON provided products and/or services, or that a substantial portion of the revenues announced for NEON's third quarter was in fact recognized on the receipt of equity securities and/or services from customers in lieu of actual cash payment.

#### **THE TRUTH IS REVEALED**

36. On November 21, 2000, analyst Benjamin Sim of Wit SoundView cut his rating of NEON to "hold" from "strong buy" after analyzing NEON's Form 10-Q for the quarter ended September 30, 2000, which was filed with the SEC on or about November 14. In that Form 10-Q, NEON revealed for the first time:

During the third quarter of 2000, the Company established several strategic relationships through private equity investments and other transactions described below. As indicated in Note 3, concurrent with our commitments to invest in the private equity offerings of five early-stage e-Business companies, the investees purchased from us software, support and professional services. During the quarter, we also sold software and support services to three other software and service vendors and concurrently committed to acquire software and/or services from them.

**The above transactions effectively include nonmonetary sales of our software and services for equity securities of the investees and for software and services of other vendors. We believe that APB Opinion No. 29, "Accounting for Nonmonetary Transaction" ("APB 29"), as interpreted by EITF Issues 86-29 and 00-08, requires that we account for each of the transactions described above (and summarized below) at fair value. With respect to our license agreements, all other revenue recognition criteria were satisfied with respect to the amount of license revenue recognized during the quarter.**

The impact of these transactions on our consolidated financial statements as of and for the quarter ended September 30, 2000, is summarized in the following table:

	Software and Services for Equity	Other Nonmonetary Transactional
License revenues recognized	\$4,641	\$5,374
Deferred revenues	1,274	778
Account Receivable	2,883	5,652
Software for resale and Prepaid services	--	6,730
Nonmarketable securities	8,900	--
Accrued liabilities	3,900	5,130
Net cash used during quarter	1,968	1,100

The fair values of equity securities purchased by us were based on concurrent or recent purchases of substantially similar securities of the

investees by independent third parties. The values of our software license arrangements were based on similar monetary transactions with other customers. Prepaid professional services to be provided to us are valued at the same rates charged to us for prior engagements. For each of the other nonmonetary transactions reflected in the above table, monetary consideration was at least 25% of the total fair value of the transaction. (Emphasis added.)

37. Thus, through its 2000 third quarter 10-Q, NEON announced for the first time that a significant portion (nearly 20 percent) of its previously announced “record” revenues and earnings for third quarter 2000 were based upon non-monetary transactions. Once revealed, other analysts soon similarly reduced their ratings of NEON stock as they were concerned about the actual worth of those equity investments (because they were not from publicly traded companies) and were also concerned that the “payment” to NEON in equities reflected those companies’ concerns about NEON software.

38. As noted in the November 22, 2000 “ZDNet Interactive Investor” column:

Analysts have become concerned that third quarter revenues were boosted by up to \$10 million in non-cash revenues after the company took strategic stakes in companies that it sold software to. Without the deals, the company may have missed its revenues targets, they said.

39. The market’s response to this news was swift and punitive as the Company’s common stock fell over 50 percent on November 21, 2000 – from \$19.875 to \$9.375 on extraordinary volume of 19.33 million shares. The stock dropped another 30 percent on November 22, 2000, when it fell to \$6.5625 on volume of 13.68 million shares.

40. In response to these events, NEON issued a press release late on November 21, 2000 in which it announced a conference call “to respond to unusual trading activity.” In that press release, NEON claimed that in press releases on October 10, 18, 23 and November 2, 2000, it had announced “new strategic relationships, including equity investments” and had noted that it had or would “conduct commercial transactions with these companies.” This attempt to suggest that the material facts had been made available to the investing community was in itself false and misleading. In fact, none of the press releases cited stated, or informed the investing community, that the equity investments in question were made in lieu of payment for NEON products sold to the companies, or that NEON had treated those equity investments as revenues in its third quarter results.

**SCIENTER**

41 . As alleged herein, defendants acted with scienter in that defendants, by and through their employee(s), knew or recklessly disregarded the fact that a substantial portion of the revenues announced on October 18, 2000 were in the form of equity investments and/or bartered “professional services” from client companies in lieu of cash payment for NEON products, and knew or recklessly disregarded that the public documents and statements issued or disseminated in the name of NEON did not disclose the true state of affairs and thus were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws.

42. In addition, defendant George Adam, Jr., sold the following shares of NEON common stock at artificially inflated prices while in possession of material, non-public information:

<u>Date Sold</u>	<u>No. of Shares</u>	<u>Price Per Share</u>	<u>Net Proceeds</u>
10/31/00	2,000	\$14.25	\$ 28,500
11/01/00	2,000	\$15.67	\$ 31,340
11/08/00	5,000	\$19.85	\$ 99,250
11/13/00	2,000	\$17.00	\$ 34,000
11/14/00	3,000	\$18.69	\$ 56,070
11/16/00	10,000	\$21.50	\$215,000
11/17/00	7,600	\$21.18	\$160,968
<b>TOTAL</b>	<b>31,600</b>		<b>\$625,128</b>

43. Defendant Adam was under a duty to either make full disclosure of the material, non-public information or refrain from trading.

**COUNT I**

**VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND  
RULE 10b-5 OF THE SECURITIES AND EXCHANGE COMMISSION**

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

45. 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 Rule 10b-5 promulgated thereunder.

46. During the Class Period, defendants NEON and the Individual Defendants, separately and in concert, directly engaged in a common 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, and made various deceptive and untrue statements of material fact and omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiff and the other members of the Class. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Plaintiff and the other members of the Class to purchase NEON common stock during the Class Period at artificially inflated prices.

47. During the Class Period, defendants, pursuant to said scheme, plan, and unlawful course of conduct, knowingly and/or recklessly issued, caused to be issued, participated in the issuance of, the preparation and issuance of deceptive and materially false and misleading statements to the investing public identified in paragraphs 30 through 34 above.

48. Throughout the Class Period, NEON acted through Adam, Fortune and Webb whom the Company portrayed and represented to the financial press and public as its valid representatives. The motive, knowledge, and recklessness of Adam, Fortune and Webb is therefore imputed to NEON, which is primarily liable for the securities law violations of the defendants Adam, Fortune and Webb while acting in their official capacities as Company representatives, or, in the alternative, which is liable for the acts of Adam, Fortune and Webb under the doctrine of respondeat superior.

49. As a result of the dissemination of the false and misleading statements set forth above, the market price of NEON common stock was artificially inflated during the Class Period. In ignorance of the materially false and misleading statements identified in paragraphs 30 through 34, 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 price in purchasing NEON common stock.

Had Plaintiff and the other members of the Class known the truth, they would not have purchased said shares or would not have purchased them at the inflated prices that were paid.

50. Plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

51. By reason of the foregoing, defendants directly violated Section 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 in order to make the 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 which operated as a fraud and deceit upon Plaintiff and the other members of the Class in connection with their purchases of NEON common stock during the Class Period.

## **COUNT II**

### **VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT**

52. Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs as if set forth fully herein.

53. Defendants Adam, Fortune and Webb, by virtue of their positions, stock ownership and/or specific acts described above, were, at the time of the wrongs alleged herein, each considered a controlling person within the meaning of Section 20(a) of the Exchange Act.

54. Defendants Adam, Fortune and Webb had the power and influence and exercised the same to cause NEON to engage in the illegal conduct and practices complained of herein.

55. 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 Plaintiff and to the other members of the Class for the substantial damages which they suffered in connection with their purchases of NEON common stock during the Class Period.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, prays for judgment as follows:

A. Declaring this action to be a proper class action and certifying Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;

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

C. Awarding Plaintiff the fees and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys, and experts;

D. Granting extraordinary equitable and/or injunctive relief as permitted by law, equity and federal and state statutory provisions sued on hereunder, including attaching, impounding, imposing a constructive trust upon or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that Plaintiff has an effective remedy; and

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

**JURY TRIAL DEMANDED**

Plaintiff demands a jury trial of all issues so triable.

Dated: January 11, 2001

Respectfully submitted,

**LILLEY & GARCIA LLP**

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