

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

		X Index No.
GLENN LUKSIK, On Behalf of Himself and All	:	
Others Similarly Situated,	:	CLASS ACTION COMPLAINT
	:	FOR VIOLATIONS OF THE FEDERAL
Plaintiff,	:	SECURITIES LAWS
	:	
vs.	:	
	:	
ARIBA, INC.; MORGAN STANLEY & CO.	:	
INCORPORATED; KEITH J. KRACH AND	:	
EDWARD P. KINSEY,	:	
	:	
Defendants.	:	
	:	
	:	
	:	X

Plaintiff, by his undersigned attorneys, individually and on behalf of the Class described below, upon information and belief, based upon, inter alia, the investigation of counsel, which includes, among other things, a review of public announcements made by defendants, Securities and Exchange Commission ("SEC") filings made by defendants, and press releases, and media reports, except as to the paragraph applicable to the named plaintiff which is alleged upon personal knowledge, brings this Complaint (the "Complaint") against defendants named herein, and alleges as follows:

SUMMARY OF ACTION

1. This is a securities class action alleging that the Registration Statement filed with the SEC on or about June 21, 1999, and the Prospectus filed with the SEC on or about June 23, 1999 for the issuance and initial public offering of 5 million shares of Ariba, Inc. ("Ariba" or the "Company") common stock (the "Offering"), contained material misrepresentations and/or omissions. The

Registration and Prospectus are referred to herein collectively as the "Prospectus." Defendants are Ariba and two members of its senior management team, who were responsible for the materially false and misleading statements made in the Prospectus, and a co-manager of Ariba's Offering, who engaged in a pattern of conduct to surreptitiously extract inflated commissions greater than those disclosed in the Offering materials, among other acts of misconduct.

JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78aa), Section 22 of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. § 77v) and 28 U.S.C. § 1331.

3. Plaintiff brings this action pursuant to the Securities Exchange Act of 1934, as amended (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5), and pursuant to Sections 11 (15 U.S.C. § 77k), 12(a)(2) (15 U.S.C. § 77l) and 15 (15 U.S.C. § 77o) of the Securities Act of 1933. Venue is proper in this District as defendants conduct business in this District and the wrongful conduct alleged herein took place in this District.

4. 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 national securities markets.

PARTIES

5. Plaintiff Glenn Luksik purchased shares of Ariba issued in connection with and traceable to the Offering.

6. Defendant Ariba is a Delaware corporation with its principal place of business at 1565 Charleston Road, Mountain View, CA 94043. Ariba purports to be a business-to-business (B2B) e-commerce platform and network services provider. In the Offering, pursuant to the Prospectus, Ariba issued to the investing public 5 million shares of its common stock at a price of \$23 per share.

7. Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") was, at all relevant times herein, a registered broker-dealer and member of the National Association of Securities Dealers, Inc. ("NASD"). Morgan Stanley was a co-manager of the Offering and substantially participated in the wrongs alleged herein. At all relevant times, Morgan Stanley had a duty to promptly disseminate truthful and accurate information with respect to the Offering and Ariba.

8. Defendant Keith J. Krach ("Krach") was, at all relevant times herein, President, Chief Executive Officer and Chairman of the Board of Ariba. Krach signed the Prospectus.

9. Defendant Edward S. Kinsey ("Kinsey") was, at relevant times herein, Vice President and Chief Financial Officer of Ariba. Kinsey signed the Prospectus.

10. Defendants Krach and Kinsey are referred to herein collectively as the "Individual Defendants."

11. In addition to Morgan Stanley, Dain Rauscher Wessels, a division of Dain Rauscher Incorporated ("Dain Rauscher"); Deutsche Bank Securities, Inc. ("Deutsche Bank"); and Merrill Lynch,

Pierce, Fenner & Smith Incorporated ("Merrill Lynch") served as co-managers of the Offering. Each of these companies maintains operations and conducts extensive business activities in this District.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who acquired the common stock of Ariba pursuant to or traceable to the Prospectus between June 23, 1999 and December 23, 1999 (the "Class"). On December 23, 1999, Ariba filed its Form 10-K, for the fiscal year ended September 30, 1999, with the SEC.

13. Members of the Class are so numerous that joinder of all members is impracticable. Specifically:

a. There were 5 million shares of Ariba common stock issued pursuant to the Prospectus; and

b. While the exact number of Class members is unknown to the plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of Class members who acquired Ariba shares pursuant to the Prospectus.

14. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the other members of the Class have sustained damages because of defendants' unlawful activities alleged herein. Plaintiff has retained counsel competent and experienced in class and securities litigation and intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by plaintiff. Plaintiff has no interests which are contrary to or in conflict with those of the Class which plaintiff seeks to represent.

15. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

16. 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 of common to the Class are:

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

b. whether the Prospectus omitted and/or misrepresented material facts about the Offering;

c. whether defendants participated directly or indirectly in the course of conduct complained of herein; and

d. whether the members of the Class have sustained damages as a result of defendants' conduct, and the proper measure of such damages.

CONTROL PERSON LIABILITY

17. The Individual Defendants, by reason of their executive positions with Ariba and, in the case of Krach, his board membership, were controlling persons of the Company and had the power and influence, and exercised the same, to cause Ariba to engage in the conduct complained of herein. Thus, the Individual Defendants controlled the public dissemination of the false and misleading information in the Prospectus and were controlling persons of the Company as set forth in Section 15 of the Securities Act.

SUBSTANTIVE ALLEGATIONS

18. On or about June 23, 1999, Ariba and the Individual Defendants made an initial public offering of 5 million shares of Ariba common stock pursuant to the Prospectus. The primary purpose of the Offering was to obtain additional equity capital, create a public market for Ariba common stock and facilitate Ariba's future access to public markets, according to the Prospectus.

19. The Prospectus cover stated, in relevant part:

PRICE \$23 A SHARE			

	PRICE TO	UNDERWRITING	
	PUBLIC	DISCOUNTS	
		AND	
		COMMISSIONS	PROCEEDS TO ARIBA
	-----	-----	-----

Per Share	\$23.00	\$1.61	\$21.39
Total.....	\$115,000,000	\$8,050,000	\$106,950,000

[. . .]

ARIBA HAS GRANTED THE UNDERWRITERS THE RIGHT TO PURCHASE UP TO AN ADDITIONAL 750,000 SHARES OF COMMON STOCK TO COVER OVER-ALLOTMENTS. MORGAN STANLEY & CO. INCORPORATED EXPECTS TO DELIVER THE COMMON STOCK TO PURCHASERS ON JUNE 28, 1999.

20. Thus according to the Prospectus, the underwriting group was to receive a commission of \$1.61 per share, or a total of \$8,050,000, based upon the spread between the per share proceeds to Ariba (\$21.39) and the Offering price to the public (\$23 per share). Pursuant to the Prospectus and under the terms contained in an underwriting agreement, Ariba agreed to sell 1,760,500 shares to

Morgan Stanley, and 806,500 shares to each of the other three co-managers (*i.e.* Dain Rauscher, Deutsche Bank and Merrill Lynch), and a total of 820,000 shares, in varying amounts ranging from 50,000 to 220,000 shares, to each of the other nine members of the underwriting syndicate.

21. With regard to the selling price of the shares and the underwriting discounts and commissions, the Prospectus also stated:

The underwriters initially propose to offer part of the shares of common stock directly to the public at the public offering price set forth on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of \$.97 per share under the public offering price. Any underwriter may allow, and such dealers may reallow, a concession not in excess of \$.10 per share to other underwriters or to certain dealers. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representatives.

22. The Prospectus further stated:

At our request, the Underwriters have reserved for sale, at the initial public offering price up to 467,800 shares of the common stock offered by us in this offering for employees, directors, officers and business associates of Ariba and their friends and family. The number of shares of common stock available for sale to the general public will be reduced to the extent such persons purchased the reserved shares. Any reserved shares not so purchased will be offered by the underwriters to the general public on the same basis as the other shares offered hereby.

* * * * *

In order to facilitate the offering of common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may over-allot in connection with the offering, creating a short position in the common stock for their own account. In addition, to cover over-allotments or to stabilize the price of the common stock, the underwriters may bid for, and purchase, shares of common stock on the open market. Finally, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the distributed shares of common stock in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the common stock above independent of market levels. The underwriters are not required to engage in these activities, and may end any of these activities at any time.

23. The market anticipated that the price of the Ariba shares would skyrocket in subsequent trading and investors who bought at the Offering price of \$23 per share could make huge profits by reselling the shares at much higher prices in the aftermarket. Consequently, the right to purchase shares at the Offering price of \$23 per share was extremely valuable and highly coveted.

24. Unbeknownst to investors, and contrary to the representations on the cover page of the Prospectus and other related statements in the Prospectus set forth above, Morgan Stanley solicited and received additional, excessive and undisclosed commissions from certain investors in exchange for which it allocated to those investors material portions of the restricted number of Ariba shares issued in connection with the Offering.

25. The additional, excessive and undisclosed commissions were paid by, among other means, the following practice: in exchange for Offering share allocations, customers agreed to and did pay Morgan Stanley excessive commissions on transactions in other securities (commissions greater than those contemplated under NASD and SEC regulations – and which, when added to the 7% commission disclosed on the front page of the Prospectus, caused Morgan Stanley to receive greater underwriting commissions and fees than were disclosed in the Ariba Prospectus). In some cases, the amount of the commissions was determined ex post facto by arrangements including specific formulas tied to investors' profits on the Offering, generated, with Morgan Stanley's knowledge, by the resale of such shares at elevated prices.

26. In addition, and unbeknownst to investors, Morgan Stanley entered into agreements with customers whereby Morgan Stanley agreed to allocate Ariba shares to those customers in the Offering in exchange for which the customers agreed to purchase additional Ariba shares in the

aftermarket at pre-determined prices. Such tie-in arrangements were designed to and did maintain, distort and/or inflate the market price for Ariba shares in the aftermarket and were thus an undisclosed benefit to Morgan Stanley with respect to the additional shares that it had an option to purchase as well as a method of locking-in additional commissions on transactions in Ariba securities that otherwise would have been left to the free choice of its customers.

27. On June 28, 1999, as reported in the Company's Form 10-Q filed with the SEC on August 16, 1999, the Company completed an initial public offering in which it sold 5,750,000 shares of Common Stock, including 750,000 shares in connection with the exercise of the underwriters' over-allotment option, at \$23 per share. The Company received \$121.1 million in cash, net of underwriting discounts, commissions and other offering costs. The price of the stock shot up \$90 per share on the first day of trading.

28. Unbeknownst to investors who purchased in the after-market, the increase in share price was a result, in part, of the tie-in agreements, which locked in demand for Ariba shares in the after-market at levels well above the Offering price, thereby unlawfully and deceptively manipulating the market in Ariba shares.

29. The truth began to emerge on December 6, 2000, when The Wall Street Journal began to publish articles regarding a joint SEC and U.S. Attorneys' investigation into the payment by certain investors of extra-large, undisclosed "kickbacks" for allocations of "Hot IPOs" that singled out Morgan Stanley, Goldman Sachs, Bear Stearns and Credit Suisse as firms having received requests for information in connection with the probe, and which identified the Ariba Offering as an offering in which shares were allocated to customers in exchange for the customers' agreement to purchase additional

shares in the after-market. The December 6, 2000 article also identified the initial public offering of United Parcel Service, Inc., also underwritten by Morgan Stanley, as an offering in which shares were allocated to customers in exchange for the customers' agreement to purchase additional shares in the after-market. Subsequent articles also identified Robertson Stephens and Lehman Brothers as among those from whom the SEC was seeking information.

30. With regard to the joint SEC and U.S. Attorneys investigation of Morgan Stanley and other underwriters, The Wall Street Journal stated, in an article published on December 7, 2000:

Federal authorities have launched an investigation examining whether Wall Street securities firms have asked some big investors to pay unusually large trading commissions in exchange for hot initial public-stock offerings, people familiar with the matter say.

* * * *

The authorities are scrutinizing ways in which Wall Street dealers may have sought and obtained larger-than-typical commissions in return for giving coveted allocations of IPOs to certain investors. Some of the arrangements could have included specific formulas tied to investors' profits on offerings, the people familiar with the probe say. Many of the offerings doubled or more in their first day of trading during an IPO mania that began in late 1998.

In most cases, a majority of IPO shares are allocated to institutional investors, including fast-trading hedge funds, which cater to wealthy individuals; these funds are among Wall Street dealers' best customers because they routinely generate the largest stock-trading commissions. The probe focuses on whether some investors and dealers took that arrangement a step further by linking IPO profits to commission levels in ways that came to resemble kickbacks to the dealers from the investors, the people say.

* * * *

For example, at times dealers asked investors to pay commissions equaling 25% to 40% or more of the investors IPO profits on those particular dealers' IPOs, according to traders and people with knowledge of the probe. In other instances, investors paid big commissions to a dealer the day after receiving a lucrative IPO allocation, according to one person with knowledge of the probe.

Sometimes, traders say, the commissions were routed to dealers through a series of trades, sometimes with offsetting purchases and sales of equal amounts of the same stock conducted solely to generate commissions. [Emphasis added.]

31. With regard to Morgan Stanley and the Ariba Offering, a related article published in the Wall Street Journal on December 6, 2000, stated:

Now it is clear that many big players view pledges of after-market buying as an integral part the IPO game. Consider the November 1999 initial offering of United Parcel Service Inc., underwritten by Morgan Stanley. Stephen O'Neill, head trader at the Mitchell Hutchins unit of UBS AG's PaineWebber, says his firm won the right to buy 10,000 shares at the offering price after agreeing beforehand to buy 30,000 more shares once trading had begun. "If we hadn't put in an after-market order, maybe we would have gotten 7,500 shares instead," Mr. Neill figures.

Seven months later, Morgan Stanley underwrote the initial offering of Ariba Inc. Amerindo Investment Advisors, a mutual-fund group, obtained a top-tier allocation of 100,000 shares, well above the 50,000 to 75,000 it often gets in IPOs, says Gary Tanaka, a founding partner. He believes he got more because he had told Morgan Stanley of his intention to buy Ariba in the after-market, where he in fact did buy another 100,000 shares. "We probably got more of an initial allocation" because of it, Mr. Tanaka says. If a firm agrees to buy shares in the after-market, "the bankers know you are real then, and it will influence them for a bigger allocation.

A spokeswoman for Morgan Stanley declines to address the specific examples, citing client confidentiality. In general ways, says Mr. Anda, the firm's co-head of global equity capital markets, "probably the biggest single factor" in allocating IPO shares is "who has really done the work" in researching the stock and trying to understand the company's story. [Emphasis added.]

Defendants False and Misleading Statements and Violations of SEC and NASD Regulations

32. The statements in the Prospectus and referenced in ¶¶19 -22 were materially false and misleading because they contained the following misstatements and/or omissions of material facts, among others:

(a) that Morgan Stanley had solicited and received additional, excessive and undisclosed fees, commissions and other economic benefits in connection with the allocation of Offering shares by virtue of the acts, conduct and transactions described above; and

(b) that Morgan Stanley had entered into tie-in and other similar arrangements with certain customers, as described herein, which were designed to and did maintain, distort and/or inflate the market price for Ariba shares in the aftermarket.

33. Ariba was required to comply with SEC regulations in connection with the Prospectus. Item 501 of Regulation S-K specifically governs the forepart of the Registration Statement and outside front cover page of the Prospectus. Item 501(b)(3) required Ariba to disclose therein the underwriters' discounts and commissions and Item 501(b)(8) required Ariba to identify the "nature of the underwriting arrangements."

34. The Prospectus violated Regulation S-K and was materially false and misleading because it failed to show in the table, or to otherwise disclose the commissions received by Morgan Stanley and "the nature of the underwriting arrangements."

35. Item 508 of SEC Regulation S-K governed disclosures in the Prospectus regarding the Plan of Distribution of the Offering shares. With regard to underwriter compensation, Regulation S-K, Item 508 (e) provides:

Underwriters Compensation. Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.

Instructions to Paragraph 508(e)

1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Show separately in each table the cash commissions paid by the registrant and selling security holders. ***Also show in the table commissions paid by other persons. Disclose any finder's fee or similar payments in the table.*** [Emphasis added.]

36. The Prospectus violated Regulation S-K and was false and misleading because it failed to show in the table, or to otherwise disclose that Morgan Stanley received additional excessive and unlawful commissions "paid by other persons."

37. With regard to offering transactions, Regulation S-K, Item 508 (l) (1) required as follows:

Briefly describe any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. ***Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transaction that affects the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price.*** Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time. [Emphasis added.]

38. The Prospectus violated Regulation S-K and was materially false and misleading because it failed to disclose that, in connection with the Offering, Morgan Stanley intended to conduct, and that it subsequently did conduct, transactions that stabilized and affected the offering securities price, as set forth herein.

39. NASD, which operates subject to SEC oversight, is the self-regulatory organization of the securities industry responsible for the regulation of the NASDAQ Stock Market. Since the Offering occurred on the NASDAQ market, the defendants were subject to NASD conduct rules.

40. NASD Conduct Rule 2110 requires that: "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles." The NASD publishes guidelines to the Conduct Rules. Guideline IM-2110-1 (b) states that it is a violation of Rule 2110 for a member to "fail to make a bona fide public distribution at the public offering price of securities of a public offering which trade at a premium in the secondary market."

41. Morgan Stanley violated NASD conduct rule 2110, and the Prospectus was materially false and misleading, because the Prospectus contained the following misstatements and/or omissions of material fact: Morgan Stanley did not make a bona fide public distribution of the Offering securities because it accepted kickbacks in exchange for Offering allocations, took steps to stabilize and distort the market for Ariba shares, and thereby offered the securities to the public at prices in excess of the public offering price of the securities.

42. NASD Conduct Rule 2440 governs Fair Prices and Commissions and, in relevant part, requires that a member:

shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and market therefor.

43. Guideline IM-2440 2110-1 (b) states, in relevant part,

It shall be deemed a violation of Rule 2110 and Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable. [. . .] (a)(4) A mark-up of 5% or even less may be considered unfair or unreasonable under the 5% policy.

44. Morgan Stanley violated NASD conduct rule 2110, and the Prospectus was materially false and misleading, because the Prospectus contained the following misstatements and/or omissions of material fact: in the connection with the Offering and aftermarket sales of the shares, Morgan Stanley charged customers commissions that were unfair, unreasonable, and in excess of 5% as consideration for receiving allocations of shares in the Offering.

45. Moreover, in the SEC Division of Market Regulation, Staff Legal Bulletin No. 10, dated August 25, 2000, the SEC specifically stated that the tie-in arrangements alleged herein are a violation of Regulation M, which governs market manipulation. Indeed, the Staff Legal Bulletin states:

Tie-in agreements are a particularly egregious form of solicited transaction prohibited by Regulation M. As far back as 1961, the Commission addressed reports that certain dealers participating in distributions of new issues had been making allotments to their customers only if such customers agreed to make some comparable purchase in the open market after the issue was initially sold. The Commission said that such agreements may violate the anti-manipulative provisions of the Exchange Act, particularly Rule 10b-6 (which was replaced by Rules 101 and 102 of Regulation M) under the Exchange Act, and may violate other provisions of the federal laws.

Solicitations and tie-in agreements for aftermarket purchases are manipulative because they undermine the integrity of the market as an independent pricing mechanism for the offered security. Solicitations for aftermarket purchases give purchasers in the offering the impression that there is a scarcity of the offered securities. This can stimulate demand and support the pricing of the offering. Moreover, traders in the aftermarket will not know that the aftermarket demand, which may appear to validate the offering price, has been stimulated by the distribution participants. Underwriters have an incentive to artificially influence aftermarket activity because they have underwritten the risk of the offering, and a poor aftermarket performance could result in reputational and subsequent financial loss.

46. Accordingly, Defendants have violated Rules 101 and 102 of Regulation M.

COUNT I
(Against All Defendants
For Violation of Section 11 of the Securities Act of 1933)

47. Plaintiff repeats and realleges the allegations set forth above as if set forth fully herein, except to the extent that any such allegation may be deemed to sound in fraud.

48. Ariba is named as the issuer of the Ariba shares offered pursuant to the Prospectus filed with the SEC on June 23, 1999 and is therefore strictly liable to plaintiff and the class. Krach is named in this Count as a director of Ariba on the date the Prospectus became effective and Krach and Kinsey are named in this count as persons who signed the Prospectus.

49. Morgan Stanley is named in this Count as the underwriter with respect to the Offering.

50. As set forth above, there were untrue statements of material fact, or omissions of material fact, from the Prospectus.

51. This action is brought within one year after discovery of the untrue statements and omissions in and from the Prospectus should have been made through the exercise of reasonable diligence, and within three years of the effective date of the Prospectus.

52. By virtue of the foregoing, plaintiff and the other members of the class are entitled to damages under Section 11(e) from the defendants and each of them, jointly and severally.

COUNT II
(Against Morgan Stanley
For Violation of Section 12(a)(2) of the Securities Act of 1933)

53. Plaintiff repeats and realleges the allegations set forth above as if set forth fully herein, except to the extent that such allegation may be deemed to sound in fraud.

54. This Count is brought by plaintiff pursuant to Section 12(a)(2) of the Securities Act, 15 U.S.C. § 771(a)(2), on behalf of the Class against Morgan Stanley.

55. The statements referred to herein above were each made in a "prospectus" as that term is defined in Section 2(a)(10) of the Securities Act, 15 U.S.C. § 77b(a)(10), contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. Morgan Stanley acted to sell shares of Ariba in the form of common stock by way of the Prospectus. The actions included participating in the preparation of the Prospectus and other materials used in the sale of Ariba shares.

56. Plaintiff and the other members of the Class purchased or acquired the Company's common stock pursuant to a Prospectus. Plaintiff and the other members of the class did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in or made in connection with the Prospectus.

57. By reason of the conduct alleged herein, Morgan Stanley violated Section 12(a)(2) of the Securities Act. Accordingly, purchasers who acquired the Ariba shares in the Offering and pursuant to the Prospectus have the right to rescind and recover the consideration paid for the Company's shares and may rescind and tender their shares of the Company to the defendants sued herein. Class members who have sold their Ariba shares are entitled to rescissory damages.

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

COUNT III

(Against Krach and Kinsey) For Violation of Section 15 of the Securities Act

59. Plaintiff repeats and realleges the allegations set forth above as if set forth fully herein, except to the extent that such allegation may be deemed to sound in fraud.

60. Defendants Krach and Kinsey are alleged to be Control Persons with respect to the Offering of Ariba shares or through stock ownership, agency or otherwise.

61. Because of their positions of control with respect to the Offering and their knowledge of Ariba's business, they are controlled persons within the meaning of Section 15 of the Securities Act.

62. By virtue of the foregoing, plaintiff and the other members of the Class are entitled to damages against Krach and Kinsey, jointly and severally.

COUNT IV

(For Violations Of Section 10(b) Of The 1934 Act And Rule 10b-5 Promulgated Against All Defendants)

63. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein.

64. During the Class Period, defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Ariba common stock; and (iii) cause plaintiff and other members of the Class to purchase Ariba stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

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

66. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and performance so that the market prices of the Company's publicly traded securities would be based on truthful, complete and accurate information.

67. Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the Offering of Ariba common shares of Ariba stock as specified herein, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Ariba securities during the Class Period.

68. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were readily available to them.

Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing inter alia, (a) that Morgan Stanley received additional, excessive and undisclosed commissions from its customers in exchange for allocations of Offering stock; (b) that Morgan Stanley had arranged for its customers to purchase Ariba shares in the after-market, which artificially inflated and sustained the after-market price of the Offering shares and thereby benefitted Morgan Stanley; and (c) that Morgan Stanley also received undisclosed commissions in the form of excessive commissions from its customers in connection with the purchase of other securities.

69. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Ariba's common stock was artificially inflated during the Class Period. In ignorance of the fact that the market price of Ariba's shares were artificially inflated, and relying directly or indirectly on the false and misleading statements made by the defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired Ariba common stock during the Class Period at artificially inflated high prices and were damaged thereby.

70. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known that the price of Ariba shares had been artificially inflated by the defendants' fraudulent scheme, plaintiff and other members of the Class would not have purchased or otherwise acquired their Ariba securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

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

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

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

A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and certifying plaintiff as class representative of the Class and its counsel as class counsel;

B. Against defendants, jointly and severally for damages suffered, as a result of defendants' violation of the securities laws;

C. Awarding plaintiff and the members of the Class and Subclasses, prejudgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;

D. Awarding rescission or recessionary damages to members of the class who no longer hold their Ariba stock; and

E. Awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: March 20, 2001

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