

1 Joseph J. Tabacco, Jr. (75484)
Jennifer S. Abrams (178203)
2 **BERMAN DEVALERIO PEASE**
TABACCO BURT & PUCILLO
3 425 California Street, Suite 2025
San Francisco, California 94104
4 Telephone (415) 433-3200
Facsimile (415) 433-6882

5 Nicole Lavallee (165755)
6 **BERMAN DEVALERIO PEASE**
TABACCO BURT & PUCILLO
7 10550 Wilshire Blvd., Suite 803
Los Angeles, CA 90024
8 Telephone (310) 474-3500
Facsimile (310) 446-5282

9 Attorneys for Plaintiff James H. Coltrain, Jr.
10

11 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
12 **Western Division**

13 _____)
14 JAMES H. COLTRAIN, JR., on behalf)
of himself and all others)
15 similarly situated,)

16 Plaintiff,)

17 v.)

18 GENESISINTERMEDIA, INC., RAMY EL-)
BATRAWI, DOUGLAS E. JACOBSON,)
19 COURTNEY SMITH, ORBITEX)
MANAGEMENT, INC., ORBITEX GLOBAL,)
20 COURTNEY SMITH & COMPANY,)
ULTIMATE HOLDINGS LTD., ADNAN)
21 KHASHOGGI,)

22 Defendants.)
23 _____)
24

No. CV 01-09125(GAF)(CTx)

CLASS ACTION

COMPLAINT FOR VIOLATION
OF THE FEDERAL SECURITIES
LAWS

JURY TRIAL DEMANDED

1 Plaintiff, individually and on behalf of all other persons
2 similarly situated, by his undersigned attorneys, alleges upon
3 personal knowledge as to himself and his own acts, and upon
4 information and belief as to all other matters based upon an
5 investigation conducted by and through his attorneys.

6 **INTRODUCTION**

7 1. Plaintiff brings this class action on behalf of himself
8 and all other persons who purchased the common stock of
9 GenesisIntermedia, Inc. ("GenesisIntermedia" or the "Company")
10 from December 21, 1999 to September 25, 2001 (the "Class Period").

11 2. Headquartered in Van Nuys, GenesisIntermedia markets
12 products and services through television, radio, print media and
13 the Internet. Until September 25, 2001, when NASDAQ halted
14 trading, the Company's stock traded under ticker symbol "GENI."¹

15 3. As detailed below, for nearly two years, the defendants
16 engaged in a complex scheme to manipulate the market in
17 GenesisIntermedia stock and to artificially inflate its price,
18 reaping millions of dollars in illegal profits.

19 4. The defendants' scheme began with a secret payment of
20 more than \$3 million to defendant Courtney Smith, a financial
21 commentator, in return for his efforts to tout the Company's stock
22 during his appearances on CNBC, CNN and Bloomberg Television.

23 _____
24 ¹ Prior to May 2001, the Company's name was
"GenesisIntermedia.com."

1 Between December 1999 and March 2001, Smith recommended
2 GenesisIntermedia stock at least 18 times, describing it as a
3 "double your money pick." The defendants reinforced Smith's
4 bullish statements with their own false and misleading statements
5 about the Company and its prospects, and engaged in heavy insider
6 trading that gave the appearance of demand and momentum in the
7 stock.

8 5. Defendants' combined efforts drove the price of
9 GenesisIntermedia stock up from less than \$1.50 per share in
10 December 1999 to more than \$8 per share by February 2000, and
11 their buying during and subsequent to this time continued to
12 support the stock at artificially inflated prices ranging from \$14
13 to \$28 through the end of March 2001.

14 6. Smith's last televised recommendation of
15 GenesisIntermedia stock was in March 2001. By that time,
16 defendants had moved on to another financial commentator. In May
17 2001, GenesisIntermedia shares soared more than 42%, from roughly
18 \$11.50 to nearly \$17 per share, in just one week following a buy
19 recommendation from Rafi Khan, an ex-stockbroker banned from the
20 securities industry and on probation for income tax evasion. His
21 report was issued after several days of meetings with
22 GenesisIntermedia executives at the Company's offices. Again, the
23 defendants accompanied the financial commentator's statements with
24 their own false and misleading statements and with heavy insider

1 trading activity - all of which caused a run-up in the Company's
2 stock price from roughly \$8 per share in March 2001 to more than
3 \$17 per share through mid- and late-summer 2001.

4 7. The defendants personally profited from this artificial
5 inflation. For example, defendant Ultimate Holdings (Khashoggi)'s
6 trading activities generated roughly \$7 million in short-swing
7 profits, which it remitted to the Company; the Company then
8 bounced back \$5 million of those illegal profits to Ultimate
9 Holdings (Khashoggi).

10 8. The endgame came in September 2001. At that time, an
11 undisclosed person or entity lent more than 7.2 million shares of
12 GenesisIntermedia stock to Native Nations Securities, Inc.
13 ("Native Nations"), a small securities firm in New Jersey run by
14 the former office manager for former junk bond king Michael
15 Milken.

16 9. Given the number of shares involved, they could only
17 have come from one of two people: defendant El-Batrawi or
18 defendant Ultimate Holdings (Khashoggi). As of August 20, 2001,
19 defendant El-Batrawi owned 10,375,469 shares; as of August 31,
20 2001, Ultimate Holdings (Khashoggi) owned 9,460,443 shares. Thus,
21 these two defendants together owned nearly 19 million of the
22 Company's roughly 23 million shares outstanding.

23 10. Native Nations loaned the 7.2 million shares to MJK
24 Clearing, Inc. ("MJK"), which re-loaned the shares to at least

1 four other securities firms. When the stock market re-opened
2 after a three-day closure in the wake of the September 11, 2001
3 terrorist attacks, the price of GenesisIntermedia stock fell,
4 prompting those other firms to turn to MJK for additional moneys.

5 11. MJK advanced millions of dollars and then looked in turn
6 to Native Nations for payment. However, Native Nations responded
7 that a "rogue employee" had doctored its books to hide the
8 identity of the person or entity that had loaned the 7.2 million
9 shares, and that \$60 million was now "missing."

10 12. Native Nations' failure to remit funds to MJK put MJK
11 below the minimum capital requirements of the Securities and
12 Exchange Commission ("SEC") and resulted in its seizure by the
13 Securities Investors Protection Corp. - the largest failure of a
14 U.S. brokerage firm in the past 30 years.

15 13. On September 25, 2001, after the close of trading,
16 NASDAQ halted the Company's stock, pending an investigation.
17 Before trading ended, however, defendant El-Batrawi had sold more
18 than \$1.7 million worth of his stock.

19 14. The SEC has since announced a formal investigation.

20 15. Plaintiff brings this action to recover the millions of
21 dollars in damages that class members have suffered as a result of
22 the defendants' wrongful conduct.

23 **JURISDICTION AND VENUE**

24 16. This Court has jurisdiction over the subject matter of

1 this action pursuant to Section 27 of the 1934 Act, and 28 U.S.C.
2 § 1331.

3 17. Venue is proper in this Judicial District pursuant to
4 Section 27 of the Exchange Act and 28 U.S.C. §1391(b). Many of
5 the acts and transactions constituting the violations of law
6 alleged herein, including the preparation and dissemination to the
7 investing public of false and misleading information, occurred in
8 substantial part in this Judicial District. In addition,
9 defendant GenesisIntermedia maintains its executive offices within
10 this Judicial District.

11 18. In connection with the acts, transactions and conduct
12 alleged herein, the defendants, directly and indirectly, used the
13 means and instrumentalities of interstate commerce, including the
14 United States mails, interstate telephone communications and the
15 facilities of the national securities exchanges.

16 **PARTIES**

17 19. Plaintiff James H. Coltrain, Jr. purchased
18 GenesisIntermedia stock as described in the attached
19 certification, and was damaged thereby.

20 20. Defendant GenesisIntermedia is headquartered in Van
21 Nuys, California. It markets and sells proprietary and licensed
22 products through network and cable television channels,
23 newspapers, magazines, radio and the Internet.

1 21. At relevant times, defendant Ramy El-Batrawi ("El-
2 Batrawi") was Chairman and Chief Executive Officer for the Company.
3 El-Batrawi has known defendant Khashoggi for fifteen years and
4 worked with him on deals for years before the events alleged in
5 this complaint. During the Class Period, he and Khashoggi spoke
6 almost every day.

7 22. At relevant times, defendant Douglas E. Jacobson
8 ("Jacobson") was Chief Financial Officer of the Company.

9 23. Defendants El-Batrawi and Jacobson are sometimes
10 referred to in this complaint as the "Individual Defendants."

11 24. At relevant times, Defendant Courtney Smith ("Smith")
12 was a columnist for CBSMarketWatch.com, an editor of the *Wall*
13 *Street Winners* newsletter, and a frequent guest on CNBC, CNNfn and
14 Bloomberg Television. From 1997 to December 31, 1999, Smith was
15 chief investment officer for defendant Orbitex Management, Inc.
16 He then worked as global strategist for defendant Orbitex Global
17 from January 1, 2000 until December 31, 2000. In addition, from
18 January 2000 to the present, Smith worked as president and chief
19 investment officer of defendant Courtney Smith & Company.

20 25. At relevant times, defendant Orbitex Management, Inc.
21 ("Orbitex") was an investment management company located at 410
22 Park Avenue, 18th Floor, New York, NY 10022. Orbitex is part of
23 the Orbitex Group of Companies.

24 26. At relevant times, defendant Orbitex Global ("Orbitex

1 Global") was an investment management firm located in Zurich,
2 Switzerland. It is also part of the Orbitex Group of Companies.

3 27. At relevant times, Courtney Smith & Company ("Courtney
4 Smith & Co.") was an investment management firm with a business
5 address at Box 7603, New York, NY 10150. It was founded in
6 January 2000 by defendant Smith.

7 28. At relevant times, defendant Ultimate Holdings, Ltd.
8 ("Ultimate Holdings") was a Bermuda investment company. It was
9 owned by defendant Khashoggi. For most of the Class Period,
10 Ultimate Holdings was the Company's second-largest shareholder, at
11 times holding more than 9 million, or 40%, of the roughly 23
12 million shares outstanding.

13 29. Defendant Adnan Khashoggi ("Khashoggi") is a Saudi
14 financier and arms dealer, and the director and president of
15 defendant Ultimate Holdings. In 1986, Khashoggi was identified as
16 a key moneyman in the Iran-Contra scandal in which the Reagan
17 administration employed a network of Swiss bank accounts to divert
18 profits from arms sales in Iran to Nicaraguan rebels. Khashoggi
19 is currently wanted by police in Thailand on suspicion of loan
20 fraud in connection with the collapse of the Bangkok Bank of
21 Commerce in May 1996. He is a friend and past business partner of
22 defendant El-Batrawi, and repeatedly called and visited the
23 Company's offices during the Class Period.

24

1 next day, the stock price rose 50%, trading at 29 times its
2 average volume over the prior three months.

3 34. Six weeks later, on February 8, 2000, Smith predicted on
4 Bloomberg TV that the Company's shares would rise between three
5 and five-fold. At this time, Smith was a global strategist for
6 defendant Orbitex Global, as well as the president and chief
7 investment officer for defendant Courtney Smith & Company. The
8 next day, the stock price rose 77%, trading at 24 times its
9 average volume.

10 35. Appearing on CNBC two weeks later, on February 25, 2000,
11 Smith called GenesisIntermedia a "Double Your Money Pick." In
12 response, the stock price soared 70%, trading at 21 times its
13 average volume.

14 36. A month later, on or about March 29, 2000, the
15 defendants gave Smith 216,000 shares of Company stock. The stock
16 was then trading at nearly six times the price that it was at
17 before his recommendations began.

18 37. On February 24, 2000, the day before Smith touted the
19 stock as a "Double Your Money Pick," defendant Ultimate Holding
20 (Khashiggi) purchased 4,800 shares of GenesisIntermedia stock,
21 capturing the 70% gain the following day.

22 38. Between April 2000 and March 2001, Smith recommended
23 GenesisIntermedia stock at least 15 more times on CNN, CNBC and
24

1 Bloomberg Television, thereby sustaining the stock at artificially
2 inflated prices ranging from \$15 to \$18 dollars per share.

3 39. Smith's recommendations were pure hype. For example,
4 Smith said during his television appearances that he was attracted
5 by GenesisIntermedia's "Centerling" division, which operates
6 kiosks in 32 shopping malls. However, when later confronted by a
7 reporter with the fact that, according to the Company's public
8 filings, less than 1 percent of revenues came from that division,
9 Smith replied: "That disturbs me."

10 **The Efforts To Conceal The Stock Paid To Smith.**

11 40. As detailed above, on or about March 29, 2000,
12 defendants paid defendant Smith 216,000 shares of Company stock
13 for his repeated buy recommendations. However, in order to
14 conceal this payment from the investing public, the shares were
15 not given to Smith directly. Instead, the defendants concocted a
16 transaction in which the Company agreed to buy DoWebsites.com, a
17 website developed and owned by Smith, for the 216,000 shares, and
18 entered into the deal not with Smith, but with an entity called
19 United Pacific Alliance, a small New York-based exporting company
20 owned by Angela Chen, one of Smith's friends.

21 41. Angela Chen has since admitted that she received a fee
22 for her Company's service as go-between in the transaction.

23
24

1 42. In a March 31, 2000 press release, the Company announced
2 that it had acquired DoWebsites.com. The release stated in
3 pertinent part:

4 GenesisIntermedia.com, Inc. (Nasdaq: GENI) ...
5 announced that it had acquired DoWebsites.com,
6 Inc., the leading portal for webmasters.
7 DoWebsites.com provides tools and resources for
8 all webmasters, from beginners to professionals.
9 This provides a powerful synergy to GENI's newly
10 launched Internet Education and Mentoring
11 Program, as current and future subscribers to the
12 program can utilize the complimentary array of
13 resources found on DoWebsites.com. This
14 combination makes GENI and DoWebsites.com the
15 largest provider of tools and resources for those
16 developing websites for business and for
17 pleasures.

18
19 "This is GENI's second portal acquisition joining
20 the rapidly-expanding CENTERLINQ network," stated
21 Ramy El-Batrawi, Chairman Chief Executive
22 Officer. "This further enhances our business
23 plan of investing in and developing new
24 technologies and Internet-related businesses. We

1 anticipate that this will create an immediate and
2 sustainable boost to our presence and
3 profitability in the Internet space.”
4

5 The addition of DoWebsites.com to GENI’s
6 mentoring capabilities enable GENI to capitalize
7 on the explosive growth associated with the need
8 for experience, innovative site developers and
9 programmers, as well as the tools, resources and
10 marketing expertise that new and experience
11 webmasters desire.
12

13 GENI will benefit from opportunities to cross-
14 sale additional products and services, as the
15 existing mentors, consultants and sales team can
16 drive traffic to www.dowebsites.com. and the site
17 will prompt users to gain additional site
18 development and marketing advantages through the
19 mentoring programs. Because Traffic from
20 DoWebsite.com will generate a substantially
21 greater amount of leads for mentoring, GENI will
22 have increased opportunities to sell Internet
23 advertising banners, on which it can earn profits
24 of up to 53%, to some of the most popular search

1 engines.

2
3 "The acquisition of DoWebsites.com adds another
4 valuable link to GENI's Internet mentoring
5 capabilities," stated El-Batrawi, "Webmasters
6 and site developers who use the mentoring program
7 now have an additional resource for web-
8 enhancement tools and services, and visitors to
9 DoWebsites.com have the ability to access the
10 many advantages of GENI's mentoring program.
11 There are multiple routes to drive traffic
12 between DoWebsites.com and GENI's mentoring
13 operations, and we expect the combined operations
14 to magnify exposure for every facet of our
15 operations, thus driving increased revenues
16 through fulfillment of a greater variety of high-
17 demand services.

18
19 Direct access to DoWebsites.com will also be
20 added to CENTERLINQ, GENI's fast-growing
21 interactive, multi media marketing and promotion
22 network, so that upwards of 22 million consumers
23 can learn about the features and benefits of
24 GENI's comprehensive mentoring resources.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

"We also anticipate that our mentoring capabilities will help us identify possible acquisition candidates, fueling even additional future profit potential. We foresee exponential growth possibility as we will be providing valuable services to webmasters plus boosting our ability to find new, exciting concepts for development. Ultimately, both of these purposes work to enhance shareholder value."

There are tens of millions of websites, each with its own webmasters. The number of global Internet users grows daily, and the number of potential webmasters increases just as fast due to the space on the World Wide Web that users receive when they initiate service with an Internet service provider (ISP). DoWebsites.com's extensive range of resources helps the novice webmasters, as well as the most advanced level, providing instruction, mentoring and tools.

1 43. The Company also described the transaction its April
2 2001 Form 10-K filing with the SEC, which was signed by defendant
3 Jacobson.

4 44. These statements were materially false and misleading
5 because they failed to mention Smith, even though Smith had
6 become, by virtue of the number of shares that he received in
7 return for his efforts to promote the Company, one of its largest
8 outside shareholders. They also failed to disclose that the
9 Company was purchasing the site solely as a means for channeling
10 secret compensation to Smith for his promotion efforts.

11 45. The representation that the site would generate
12 "increased revenues" was also materially false and misleading.
13 The website purchase served no legitimate business purpose. As
14 Smith himself later admitted: "[i]t didn't have much of anything
15 when we sold it." Almost immediately after it was acquired, the
16 Company shut the site down and began writing-off its purchase
17 price.

18 46. On May 23, 2001, more than a year after Smith received
19 his stock from the Company and after he had touted the Company's
20 stock at least 15 more times, the press discovered and revealed
21 the payment to Smith. By then, however, the defendants' scheme
22 had already kept the stock price artificially inflated for nearly
23 18 months, causing substantial harm and damages to Plaintiff and
24 the class.

1 **Further Inflation Of The Company's**
2 **Stock Price By Means Of The Kahn Report.**

3 47. Smith's last recommendation was in March 2001. By that
4 time, the defendants had moved on to another financial commentator
5 - an ex-stockbroker named Rafi Khan. Kahn was banned from the
6 securities industry by the SEC after settling a civil complaint by
7 the agency charging him with stock manipulation in connection with
8 his promotion of short-squeeze schemes in 1993 and 1995. He was
9 also on probation after pleading guilty to income tax fraud in
10 1999.

11 48. Following several days of meetings with
12 GenesisIntermedia executives at the Company's offices in May 2001,
13 Kahn issued a buy recommendation in a four-page report (the "Kahn
14 Report") that was faxed and e-mailed to numerous investors. In
15 the wake of the Kahn Report, the Company's share price rose 42%
16 over a one-week period, increasing from about \$11.50 to \$16.25 per
17 share.

18 49. In his Report, Kahn indicated that a "short squeeze"
19 would drive up the price of Company shares. In a short squeeze,
20 investors who have loaned shares to others demand them back,
21 forcing the borrowers to buy shares and driving up the price of
22 the stock, thereby creating losses for the short sellers who have
23 bet that the stock price will fall.

1 50. Again, insider trading preceded this announcement. In
2 April and May 2001, before the Kahn Report was issued, Ultimate
3 Holdings bought 879,114 shares of GenesisIntermedia stock at
4 prices as low as \$7.88. In June 2001, after the Kahn Report,
5 Ultimate Holdings sold 747,800 of those shares for as much as
6 \$16.82 each, earning the firm a profit of nearly \$7 million.

7 51. Under the Securities Exchange of 1934, because Ultimate
8 Holdings owned more than 10% of the Company and the purchase and
9 sale transactions occurred within six months of each other, those
10 profits were legally considered to be "short-swing profits." As
11 required by law, Ultimate Holdings remitted these illegal profits
12 to the Company. However, Ultimate Holdings almost immediately
13 received roughly \$5 million of those profits back when the Company
14 used those funds to repay loans owed to Ultimate Holdings.

15 52. Thus, the defendants took advantage of the artificial
16 inflation to reap more than \$7 million of illegal profits through
17 just this one transaction.

18 53. During this same time period, the defendants accompanied
19 the financial commentator's statements with their own false and
20 misleading statements and with insider trading activity -
21 partially financed with loans secured by the Company - all of
22 which caused a run-up in the Company's stock.

23 54. For example, on August 17, 2001, defendant El-Batravi
24 borrowed \$22.7 million from defendant Khashoggi to buy 1,329,500

1 shares of Company stock. El-Batrawi secured the loan with
2 GenesisIntermedia shares he owned worth \$140 million, effectively
3 increasing Khashoggi's interest in the Company to roughly 75
4 percent.

5 55. About two weeks later, on September 4, 2001, defendant
6 El-Batrawi issued a letter to shareholders in which he stated, in
7 part:

8 GenesisIntermedia continues to make strides to
9 fulfill our promise of shareholder value and
10 growth. However, we remain concerned about the
11 short selling that is still occurring with
12 respect to our common shares. Managing corporate
13 growth becomes more challenging when people are
14 betting against your success, so we encourage all
15 of our shareholders to contact your brokers and
16 have your shares taken out of street name or put
17 into a cash account, or even better, have your
18 broker deliver the physical stock certificates to
19 you. By doing this, a short seller would not be
20 able to borrow your stock for short sales without
21 your permission. When your stock is held in a
22 margin account, brokers can loan it out.

1 I feel more confident than ever that my own
2 personal investment in GenesisIntermedia is a
3 sound decision based on an investment philosophy
4 oriented toward long-term growth. That is why I
5 recently purchased an additional 1,329,500 shares
6 for my own account through open market
7 transactions. This brings my total personal
8 holdings to 10,375,469 shares. I believe I am
9 investing in a solid growth platform. ...

10 56. These statements were materially false and misleading
11 because they failed to disclose that defendant El-Batravi's
12 "personal investment" in the Company and his purported purchases
13 "on my own account" were actually purchases made with \$22.7
14 million from defendant Khashoggi. Moreover, while urging
15 shareholders to take steps to prevent short-selling of the
16 Company's shares, even stating that it was hindering corporate
17 growth, the defendants failed to disclose that defendants Ultimate
18 Holdings (Khashoggi) and/or El-Batravi had in the past, or
19 intended in the future, to loan shares used to short the stock.

20 57. On July 13, 2001, defendant Ultimate Holdings
21 (Khashoggi) executed a private sale of 500,000 shares of
22 GenesisIntermedia to a Bahamas-based mutual fund advised by the
23 Orbitex Group of Companies at a 21.7% discount to the market
24 price. The Orbitex mutual fund received the shares at \$14 per

1 share, while the stock closed that day at \$17.89 per share.
2 Orbitex and Orbitex Global, as already discussed above, employed
3 defendant Smith in 1999 and 2000 when Smith was making televised
4 recommendations of GenesisIntermedia stock in return for payment.

5 58. The sale to Orbitex was massive, as by comparison, the
6 stock had traded an average of 323,000 shares per day in the prior
7 three months. The fund acquiring the stock, Orbitex
8 Communications & Information Technology Fund, was at that time one
9 of the worst-performing mutual funds in the world. It had
10 underperformed 99% of all funds in the previous year, losing 76%
11 of its value.

12 59. United Holdings(Khashoggi) repurchased many of shares
13 over the next eight days at full prices. As John Coffee, a
14 professor of law at Columbia University, stated: "There is no
15 simple logical explanation for these inconsistent transactions,
16 selling well below market and immediately buying back at the
17 market price."

18 **The Endgame.**

19 60. The endgame came in September 2001. At that time, an
20 undisclosed person lent more than 7.2 million shares of
21 GenesisIntermedia stock to Native Nations, a small securities firm
22 in New Jersey run by the former office manager for former junk
23 bond king Michael Milken.

24 61. Given the number of shares involved, they could only

1 have come from defendant El-Batrawi or defendant Ultimate Holdings
2 (Khashoggi). As of August 20, 2001, defendant El-Batrawi owned
3 10,375,469 shares; as of August 31, 2001, Ultimate Holdings owned
4 9,460,443 shares. Thus, they together owned nearly 19 million of
5 the Company's 23 million shares outstanding.

6 62. Native Nations then loaned the 7.2 million shares to MJK
7 Clearing, Inc. ("MJK"), which in turn re-loaned the shares to at
8 least four other securities firms. When the securities market's
9 re-opened after a three-day closure following the September 11,
10 2001 terrorist attacks, the price of GenesisIntermedia stock fell,
11 prompting the other firms to turn to MJK for additional funds.

12 63. MJK, in turn, looked to Native Nations for money.
13 However, Native Nations responded that a "rogue employee" had
14 doctored its books to hide the identity of the person that had
15 loaned it the 7.2 million shares and that the \$60 million was now
16 "missing."

17 64. Native Nations' failure to remit funds to MJK put MJK
18 below the SEC's minimum capital requirements, prompting its
19 seizure by the Securities Investors Protection Corp. and causing
20 the largest failure of a U.S. brokerage firm in the past 30 years.

21 65. On September 25, after the end of trading, NASDAQ halted
22 trading in the Company's stock pending an investigation. Only
23 hours before trading was halted, however, defendant El-Batrawi
24 sold more than \$1.7 million worth of his stock.

- 1 i) whether the securities laws were violated by the
2 defendants acts alleged herein;
- 3 ii) whether during the Class Period, the defendants engaged
4 in a scheme to manipulate the price of Company stock and
5 issued false and misleading statements;
- 6 iii) whether the defendants acted knowingly or with conscious
7 recklessness manipulated the Company share price and
8 made false and misleading statements;
- 9 iv) whether the market prices of the Company's stock during
10 the Class Period were artificially inflated; and
- 11 v) whether the members of the Class have sustained damages
12 and, if so, the proper measure of those damages.

13 70. Plaintiff's claims are typical of the claims of the
14 Class. Plaintiff and members of the Class sustained damages
15 arising out of the defendants' wrongful conduct in violation of
16 federal law, as complained of herein.

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

22 72. A class action is superior to other available methods
23 for the fair and efficient adjudication of the controversy since
24 joinder of all members of the Class is impracticable.

1 77. As a direct and proximate result of the defendants'
2 wrongful conduct, Plaintiff and the other Class members suffered
3 harm and damages in connection with their purchases of
4 GenesisIntermedia stock during the Class Period, in an amount to
5 be determined at trial.

6 **COUNT II**
7 **(Against All Defendants For Violation of**
8 **§ 20(a) of the 1934 Act)**

9 78. Plaintiff re-alleges and incorporates by reference each
10 of the above paragraphs as though fully set forth herein.

11 79. The Defendants named in this count acted as controlling
12 persons within the meaning of § 20(a) of the 1934 Act. By reason
13 of their positions as officers and/or directors of
14 GenesisIntermedia, their ownership of GenesisIntermedia stock,
15 their employment of Smith, they had the power and authority to
16 control the defendants and are therefore liable for the primary
17 violations of the securities laws alleged in this complaint.

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

20 A. Declaring this action to be a proper class action
21 maintainable under Rule 23 of the Federal Rules of Civil
22 Procedure;

23 B. Awarding Plaintiff and the other Class members damages
24 against the defendants for the their wrongful conduct, together
with interest thereon;

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

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

6 **JURY DEMAND**

7 Plaintiff demands a jury trial on all issues that may be so
8 tried.

9 Dated: October 25, 2001

**BERMAN DEVALERIO PEASE
TABACCO BURT & PUCILLO**

10
11 _____
Jennifer S. Abrams

12 Joseph J. Tabacco, Jr.
13 425 California Street, Suite 2025
San Francisco, CA 94104
14 Telephone: (415) 433-3200
Facsimile: (415) 433-6382

15 Nicole Lavallee
16 **BERMAN DEVALERIO PEASE
TABACCO BURT & PUCILLO**
17 10550 Wilshire Blvd., Suite 803
Los Angeles, CA 90024
18 Telephone (310) 474-3500
Facsimile (310) 446-5282

19 Michael G. Lange
Todd A. Seaver
20 **BERMAN DEVALERIO PEASE
TABACCO BURT & PUCILLO**
21 One Liberty Square
Boston, MA 02109
22 Telephone (617) 542-8300
Facsimile (617) 542-1194
23
24