

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

BARBARA DIETEL,	X	
ON BEHALF OF HERSELF AND ALL OTHERS	:	NO.
SIMILARLY SITUATED,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	<u>COMPLAINT</u>
	:	
	:	
AOL TIME WARNER, INC.,	:	
STEPHEN M. CASE, WAYNE	:	
H. PACE, J. MICHAEL KELLY,	:	
and ERNST & YOUNG, LLP,	:	<u>JURY TRIAL DEMANDED</u>
	:	
Defendants.	:	
	X	

Plaintiff, by her 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, press releases, reports of securities analysts, 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 ALLEGATIONS**

1. This is a securities class action on behalf of all persons who purchased, converted, exchanged or otherwise acquired the securities of America Online, Inc. (“AOL”) between July 19, 1999 and January 10, 2001 and all persons who purchased, converted, exchanged or otherwise acquired the securities of AOL Time Warner, Inc. (“AOL Time Warner” or the “Company”) between January 11, 2001 and July 17, 2002, inclusive. During the class

period, defendants made material misrepresentations and/or omitted to state material facts. Thus, during the period defendants:

1. Failed to disclose that AOL's online advertising revenues were almost certain to decrease rapidly because significant numbers of AOL's online advertising clients were experiencing financial difficulty and/or were almost certain to go out of business and be unable to fulfill their contractual obligations to AOL;
2. Failed to disclose that AOL and AOL Time Warner booked revenue from one-time payments received from online advertising clients as advertising revenue in order to artificially inflate their revenues derived from online advertising;
3. Falsely represented AOL and AOL Time Warner's revenue from online advertising sales by including in such revenues sums received as one-time payments in connection with the termination of contracts for online advertising;
4. Failed to disclose that AOL artificially inflated its online advertising revenues for fiscal 1Q 01 by counting in such revenues \$16.4 million in online advertising that AOL required an enterprise called 24dogs.com to purchase in order to settle a legal dispute; and,
5. Artificially inflated AOL Time Warner's revenues from online advertising sales by including in such revenues sums that AOL Time Warner received in connection with selling online advertising for online auction site eBay.

Defendant Ernst & Young, LLP ("Ernst & Young") violated the federal securities laws by certifying AOL Time Warner's financial statements as incorporated in AOL Time Warner's Annual Report for its fiscal year 2001 filed with the SEC on March 25,

2002 even though it knew (or 3 recklessly failed to discover) that AOL Time Warner had counted in revenue sums received in connection with selling online advertising for online auction site eBay. When the truth was revealed regarding AOL in an article in The Washington Post on July 18, 2002, AOL Time Warner stock dropped to as low as \$11.75, down from its Class Period high of \$58.51.

### **JURISDICTION AND VENUE**

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) 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 the common law. Venue is proper in this District because plaintiff resides in this District, defendants conduct business in this District, defendant AOL Time Warner maintains its worldwide headquarters in this District, AOL Time Warner’s stock is listed on the New York Stock Exchange, and many of the wrongful acts alleged herein took place or originated 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 the national securities markets.

### **PARTIES**

5. Plaintiff Barbara Dietel (“plaintiff”) purchased shares of AOL Time Warner at an

artificially inflated price as set forth in her certification annexed hereto and was damaged thereby.

6. Defendant AOL Time Warner is a Delaware corporation having its principal place of business at 75 Rockefeller Plaza, New York, New York. The company's stock trades in an efficient market on the New York Stock Exchange.

7. Defendant Ernst & Young is a firm of certified public accountants that maintains its headquarters in the Southern District of New York. Ernst & Young audited AOL Time Warner's materially false and misleading financial statements during the Class Period, issued materially false and misleading opinions with respect to such financial statements, and permitted AOL Time Warner to make use of its unqualified opinion with respect to AOL Time Warner's financial condition in reports filed with the SEC and otherwise. As such, Ernst & Young participated in the fraudulent course of conduct as alleged herein and materially contributed to class members' losses.

8. Defendant Stephen M. Case ("Case") served at times relevant hereto as the Chairman of AOL Time Warner and as the Chairman and Chief Executive Officer of AOL.

9. Defendant Wayne H. Pace served at times relevant hereto as AOL Time Warner's Chief Financial Officer and as an Executive Vice President of AOL Time Warner.

10. Defendant J. Michael Kelly ("Kelly") served at times relevant hereto as AOL's Chief Financial Officer and as a Senior Vice President of AOL. Defendants Case, Pace and Kelly are referred to jointly as the "Individual Defendants".

#### **CLASS ACTION ALLEGATIONS**

11. 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 who purchased, converted, exchanged or otherwise acquired the securities of America Online, Inc. (“AOL”) between July 19, 1999 and January 10, 2001 and all persons who purchased, converted, exchanged or otherwise acquired the securities of AOL Time Warner, Inc. (“AOL Time Warner” or the “Company”) between January 11, 2001 and July 17, 2002, inclusive., inclusive (the “Class”).

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

a. There were over 6 billion shares of AOL Time Warner stock issued and outstanding at times relevant hereto; 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 AOL Time Warner stock during the Class Period.

13. 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 that plaintiff seeks to represent.

14. 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.

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

- a. whether the federal securities laws were violated by defendants' acts as alleged herein;
- b. whether the defendants misstated and/or omitted to state material facts in their public statements and filings with the SEC;
- 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.

#### **DEFENDANTS' FRAUDULENT COURSE OF CONDUCT**

16. AOL Time Warner, Inc. is the parent company of America Online, Inc. and Time Warner Inc. The Company is engaged in AOL Internet services, cable, entertainment, television networks, music and publishing.

17. AOL Time Warner was formed via a merger between America Online, Inc. and Time Warner, Inc. consummated January 11, 2001. Both before and after such merger, information regarding the strength of AOL's online advertising business and the amount of revenues derived therefrom was crucial to investors because the strength of the new combined AOL Time Warner was supposed to derive largely from "synergies" between Time Warner's old media business and production of media content and AOL's ability to

deliver such media content via the Internet and derive revenue from such delivery, including through the sale of online advertising.

18. By late-2000, as dot-com companies collapsed with increasing frequency, many commentators began to question the viability of the online advertising business model. When asked about what appeared to be a recession in the online advertising business in October 2000, AOL's then-President, Robert W. Pittman, offered a resounding answer: "I don't see it, and I don't buy it." In an October 18, 2000 conference call with analysts, defendant Case said, "AOL's advertising growth is right on target... [t]he current advertising environment benefits us because it will drive a flight to quality." In that same call, defendant Kelly, described AOL's advertising and commerce revenue growth as "very healthy" and emphasized, "I can't say that strongly enough."

19. During this same period, AOL's top management was engaged in a course of business intended to make certain that AOL's financial results would bear out these statements of optimism, would not reflect any recession in the online advertising business and, perhaps most importantly, would not miss Wall Street's earnings estimates.

20. AOL maintained records indicating the health of its dot-com and other online advertising customers during late 2000 and assessing the likelihood of customers' abilities to continue to fulfill their contractual obligations to AOL in light of the overall health of the customers' businesses. By late 2000, it had become clear that many dot-com and other customers were in deep trouble and would likely be unable to continue to purchase online advertising from AOL. According to The Washington Post, AOL's internal estimates showed that it feared losing \$23.2 million in revenue in the quarter ended Sept. 30, 2000 and \$108 million in ad revenue in fiscal 2001 (July 2000

to June 2001) due to the precarious circumstances of dot-com and other customers.

21. To combat this trend in the short term, AOL then took steps to maximize its short-term revenues from customers that were not likely to be around for the long term. It did so by renegotiating struggling customers' ad deals to shorten the term of the contract.

Customers would then pay AOL a fee for breaking the deal early, and that fee would be incorporated into the new, shorter-term ad deal, effectively creating more revenue for AOL in the short term. AOL would then count all of the revenue, including the fee for renegotiating a shorter-term deal, as ad revenue.

22. AOL booked approximately \$56 million from fees connected with termination or restructuring of advertising contracts with struggling customers between July 2000 through March 2001. AOL did not fully disclose this practice until November 2001.

23. MovieFone Inc. was an online ticketing company acquired by AOL in late 1999. Prior to such acquisition, MovieFone had won a \$23.8 million arbitration award against a British company known as Wembley. AOL gained the legal right to enforce such award, which had not been collected, after the merger.

24. Rather than seeking to take legal action to collect the award in cash, AOL found a way to parlay the legal award into much-needed online advertising revenue for 1Q 01. It negotiated with Wembley to have Wembley pay the award by buying \$16.4 million worth of online advertising for Wembley's nascent online dog racing site, 24dogs.com.

25. In the rush to book the revenue in the quarter ending September 30, 2000, AOL personnel produced their own online ads for 24dogs.com and began running such ads even before the deal with Wembley was concluded so that they could run as many of the ads (and book as much of the resulting revenue) as possible during 1Q 01.

26. The results were ridiculous. AOL's web sites were plastered with images of dogs, and 24dogs.com's web site, which was under construction, crashed because of all of the unexpected customer traffic generated by the advertisements. AOL's important objective had been achieved, however— it ran enough ads to generate \$16.4 million in much-needed online advertising revenues.

27. On July 25, 2001, AOL Time Warner entered into an agreement with online auctioneer eBay to sell ads for eBay.

28. AOL Time Warner then counted as revenue the advertising sales revenue from sales that its sales force made for eBay, even though such sums were paid over to eBay (minus a sales commission) after receipt.

29. AOL Time Warner was not contractually required to pay eBay the full sum due for the sale of such advertising in the event customers did not pay for the advertising. Rather, eBay retained the risk that customers who bought eBay ads from AOL Time Warner salespeople would not pay for the ads.

30. In its Annual Report for the year ending December 31, 2001 on Form 10K, filed with the SEC on March 25, 2002, AOL Time Warner reported total revenues of \$38.2 billion, including \$8.5 billion in revenues from advertising and commerce.

31. Such revenues were materially misleading and/or overstated because AOL Time Warner included in such revenues sums that AOL Time Warner received in connection with selling online advertising for online auction site eBay even though the eBay revenues were ultimately paid over to eBay and not retained by AOL Time Warner.

32. AOL Time Warner's Annual Report for the year ending December 31, 2001 on Form 10K, filed with the SEC on March 25, 2002 contained the following statement:

## REPORT OF INDEPENDENT AUDITORS

### **The Board of Directors, AOL Time Warner Inc.**

We have audited the accompanying consolidated balance sheet of AOL Time Warner Inc. ("AOL Time Warner") as of December 31, 2001 and 2000, and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three years in the period ended December 31, 2001. Our audits also included the financial statement schedule and supplementary information listed in the index at Item 14 (a). These financial statements, schedule and supplementary information are the responsibility of AOL Time Warner's management. Our responsibility is to express an opinion on these financial statements, schedule and supplementary information based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of AOL Time Warner at December 31, 2001 and 2000, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2001, in conformity with accounting principles generally accepted in the United States. Also, in our opinion, the related financial statement schedule and supplementary information, when considered in relation to the basic financial statements taken as a whole, present fairly in all material respects the information set forth therein.

ERNST & YOUNG LLP

New York, New York  
January 28, 2002

33. Such Auditor's Report was materially misleading by virtue of the facts set forth in ¶¶ 27-31, supra.

34. By artificially inflating the reported revenues of AOL and AOL Time Warner as alleged herein, defendants violated Regulation S-X (17 C.F.R. § 210.10-01(a)) which requires that annual reports and interim financial statements comply with GAAP and creates a presumption that financial statements not in compliance with GAAP are misleading and inaccurate.

35. In addition defendants, with the acquiescence of Ernst & Young, have violated Section 13(b)(2) of the Exchange Act which requires them to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer..."

36. Defendant Ernst & Young deceived the investing public by issuing the unqualified audit opinion on AOL Time Warner's financial statements referenced in ¶ 32, supra. Ernst & Young provided unqualified audit opinions relating to the above-referenced

financial statements knowing that its audit opinions would be disseminated to the investing public. Defendant Ernst & Young knew or recklessly failed to discover that such audit opinions were materially misleading based on the fact that such audit opinions confirmed financial statements that Ernst & Young knew were materially misleading because of the artificial inflation of AOL TimeWarner's advertising revenues as alleged herein.

### **STATUTORY SAFE HARBOR**

37. The statutory safe harbor provided for forward-looking statements does not apply here as the false statements alleged herein were not forward-looking.

### **FRAUD ON THE MARKET**

38. 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 regarding AOL Time Warner and AOL as alleged herein;
- b. The omissions and misrepresentations were material;
- c. During the Class Period, AOL Time Warner and AOL's common stock were traded on a developed national stock exchange, namely the New York Stock Exchange, which is an open and efficient market;
- d. AOL Time Warner and AOL filed periodic reports with the SEC;
- e. AOL Time Warner and AOL were followed by securities analysts;
- f. The market rapidly assimilated information about AOL Time Warner and AOL that was publicly available and communicated by the foregoing means and

that information was promptly reflected in the price of AOL Time Warner and AOL's common stock; and

g. The misrepresentations and omissions alleged herein would tend to induce a reasonable investor to misjudge the value of AOL Time Warner and AOL's common stock.

### **SCIENTER**

39. The Individual Defendants acted with scienter in that they knew that the financial statements issued and disseminated by AOL Time Warner and/or AOL were materially false and misleading, or that the statements therein were made and distributed with reckless disregard for facts that AOL Time Warner and AOL either knew or should have known. The Individual Defendants knew or recklessly disregarded the fact that such misleading statements would be distributed and disseminated to the investing public, and substantially participated in and/or acquiesced in the issuance and dissemination of such statements in violation of the federal securities laws.

40. The Individual Defendants either knew that such statements were false and misleading or acted with reckless disregard of such falsity since, as senior officers of AOL Time Warner and/or AOL, the Individual Defendants knew of (or alternatively had free and unfettered access to materials that would have revealed) the overstating of AOL Time Warner and/or AOL's advertising revenues. If the Individual Defendants did not have actual knowledge of the misrepresentations and omissions alleged, then they were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether statements disseminated by AOL Time Warner and AOL were true.

41. The Individual Defendants also had substantial economic motives to conceal the true facts regarding AOL Time Warner and AOL's accounting and advertising sales, including the following. By concealing such facts Individual Defendants Case and Kelly were able to artificially inflate the value of their own substantial holdings in AOL Time Warner and AOL stock and options and exercise hundreds of thousands of call options to purchase AOL Time Warner stock that would not have been "in the money" and/or would have been "in the money" to a lesser extent were it not for the artificial inflation of AOL Time Warner's share price as alleged herein.

42. Defendant Ernst & Young acted with scienter in that: a) it knew that AOL Time Warner and AOL's financial statements, which included Ernst & Young's unqualified opinion, issued or disseminated in the name of AOL Time Warner and AOL, were materially false and misleading, or were made with reckless disregard of facts that Ernst & Young knew or should have known as AOL Time Warner and AOL's auditor; b) knew or recklessly disregarded that such documents would be issued or disseminated to the investing public; and c) knowingly and substantially participated or acquiesced in the issuance and/or dissemination of such documents in violation of the federal securities laws.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS  
FOR VIOLATIONS OF SECTION 10(B) OF THE SECURITIES EXCHANGE  
ACT OF 1934 AND RULE 10B-5 PROMULGATED THEREUNDER**

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

44. During the Class Period, the defendants carried out a plan, scheme and course of

conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including plaintiff and other Class members, as alleged herein; (b) artificially inflate and maintain the market price of AOL Time Warner and AOL common stock; and (c) cause plaintiff and other members of the Class to purchase AOL Time Warner and AOL stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants took the actions set forth herein.

45. 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 AOL Time Warner and AOL common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued as primary participants in the wrongdoing alleged.

46. 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, defendants 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 Regulations 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.

47. 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 AOL Time Warner and AOL and their financial condition, as set forth more particularly herein, and engaged in practices and a course of business which operated as a fraud and deceit upon the purchasers of AOL Time Warner and AOL securities during the Class Period.

48. 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.

49. Defendants' material misrepresentations and/or omissions were made knowingly or recklessly and for the purpose and effect of artificially inflating the market price of AOL Time Warner and AOL stock.

50. 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 AOL Time Warner and AOL's common stock was artificially inflated during the Class Period. In ignorance of the fact that the market price of AOL Time Warner and AOL's shares was artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by the defendants during the Class Period, plaintiff and the other members of the Class acquired AOL Time

Warner and/or AOL common stock during the Class Period at artificially inflated prices and were damaged thereby.

51. 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 AOL Time Warner and AOL shares had been artificially inflated by defendants' actions, plaintiff and other members of the Class would not have purchased or otherwise acquired their AOL Time Warner and AOL 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 that they paid.

52. By virtue of the foregoing wrongful conduct by defendants, plaintiff and the other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 20(A) OF THE SECURITIES EXCHANGE ACT OF 1934**

53. Plaintiff repeats and realleges each and every allegation contained above as though fully set forth herein, including the allegations of scienter set forth at ¶¶ 39 through 42, supra.

54. The Individual Defendants acted as controlling persons of AOL Time Warner and/or AOL within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, and participation in and/or awareness of the AOL Time Warner and AOL's operations, the Individual Defendants had the power to influence and control and did influence and

control, directly or indirectly, the decision-making of AOL Time Warner and AOL, including the wrongful acts alleged herein.

55. The Individual Defendants, by reason of their high-level executive positions, were the controlling persons of AOL Time Warner and AOL and had the power and influence to cause, and did cause, AOL Time Warner and AOL to engage in the conduct complained of herein. Thus, the Individual Defendants controlled the public dissemination of the false and misleading information alleged herein and were culpable participants in the wrongful conduct alleged herein.

56. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of AOL Time Warner and/or AOL and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations alleged herein, and exercise the same. Such transactions included, without limitation, AOL Time Warner and AOL's issuance and dissemination of misleading statements in its public filings with the SEC and otherwise.

57. As set forth above, Defendants each violated § 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons of defendant AOL Time Warner and AOL, the Individual Defendants are liable pursuant to § 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the Class suffered damages in connection with their purchases of AOL Time Warner and AOL common stock.

#### **JURY DEMAND**

58. Plaintiff demands a trial by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff, on behalf of herself 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 his counsel as class counsel;

B. Awarding damages against defendants, jointly and severally, including disgorgement of all unjust enrichment, for damages suffered as a result of defendants' violation of the securities laws.

C. Awarding plaintiff and the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' and expert witnesses' fees and other costs; and,

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

DATED: New York, New York

July 26, 2002

KAPLAN FOX & KILSHEIMER LLP

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