

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

BRUCE EDWARD SIMONS, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

NASH FINCH COMPANY, RON MARSHALL
and ROBERT B. DIMOND,

Defendants.

Civil Action No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Bruce Edward Simons, individually and on behalf of all other persons similarly situated, by his undersigned attorneys, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, inter alia, the investigation conducted by and through his attorneys, which included, among other things, a review of the public documents and announcements made by the defendants, Securities and Exchange Commission (“SEC”) filings, and press releases regarding Nash Finch Company (“Nash Finch” or the “Company”), and plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action brought by plaintiff on behalf of himself and a Class consisting of all other persons who purchased Nash Finch common stock during the period from July 10, 2000 through and including November 8, 2002 (the “Class Period”), to recover damages caused by the defendants’ violation of federal securities laws. During the Class Period, the defendants issued

and/or failed to correct false and misleading financial statements and press releases concerning the Company's publicly reported revenues and earnings directed to the investing public.

JURISDICTION AND VENUE

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

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

4. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination to the investing public of false and misleading information, occurred in substantial part in this Judicial District. Moreover, the Company's corporate headquarters is located in this Judicial District.

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

THE PARTIES

6. Plaintiff, Bruce Edward Simons, purchased shares of Nash Finch common stock as set forth in the accompanying Certification of Named Plaintiff.

7. Defendant Nash Finch Company is incorporated in the state of Minnesota and

maintains its corporate headquarters at 7600 France Avenue South, Edina, Minnesota 55435. According to the Company, Nash Finch is a food distribution and retail company consisting of three primary operating segments: food retailing, food distribution and military food distribution. The Company's food retailing segment is made up of 110 Company-owned stores. During the Class Period, Nash Finch common stock was actively traded on the NASDAQ New Markets exchange ("NASDAQNM") under the ticker symbol NAFC.

8. Defendant Ron Marshall ("Marshall") was the Chief Executive Officer and served as a Director of Nash Finch, at all relevant times herein. Marshall made various statements regarding Nash Finch's financial results and condition in Nash Finch press releases and signed the Company's 10K and 10Q SEC filings during the relevant Class Period.

9. Defendant Robert Dimond ("Dimond") has served as Nash Finch's Chief Financial Officer and Executive Vice-President since September 13, 2000. As such, Dimond is responsible for Nash Finch's financial, treasury and accounting functions and signed the Company's 10K and 10Q SEC filings during the relevant Class Period.

10. Defendants Marshall and Dimond are collectively referred to hereafter as the "Individual Defendants."

11. By reason of their positions with the Company, the Individual Defendants had access to internal Company documents, reports and other information, including the adverse non-public information concerning the Company's financial condition, and future prospects, and attended management and/or board of directors meetings. As a result of the foregoing, they were responsible for the truthfulness and accuracy of the Company's public filings and press releases described herein.

12. Nash Finch, and the Individual Defendants as officers and directors of a publicly-held

company, had a duty to promptly disseminate truthful and accurate information with respect to Nash Finch and to promptly correct any public filings or statements issued by or on behalf of the Company which had become false or misleading.

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

14. Defendants are liable, jointly and severally, as direct participants in and co-conspirators of, the wrongs complained of herein.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class (the "Class") consisting of all persons who purchased Nash Finch common stock during the Class Period. Excluded are the defendants, any entity in which the defendants have a controlling interest or is a parent or subsidiary of or is controlled by the Company, and the officers, directors, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns of the defendants.

16. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes there are, at a minimum, thousands of members of the Class who traded during the Class Period. The Company had approximately 12 million shares of its common stock outstanding and actively trading on the New

York Stock Exchange as of November 8, 2002.

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

- i) whether the federal securities laws were violated by defendants' acts as alleged herein;
- ii) whether the Company issued false and misleading financial statements during the Class Period;
- iii) whether defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- iv) whether the market prices of the Company's securities during the Class Period were artificially inflated because of the defendants' conduct complained of herein; and
- v) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

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

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

20. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by the individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members

individually to redress the wrongs done to them. Plaintiff anticipates no unusual difficulties in the management of this action as a class action.

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

- i) defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- ii) such omissions and misrepresentations were material;
- iii) the securities of the Company traded in an efficient market;
- iv) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- v) plaintiff and the other members of the Class purchased Nash Finch stock between the time the defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

22. Based upon the factors set forth in the preceding paragraph, plaintiff and the other members of the Class are entitled to the presumption of reliance upon the integrity of the market.

NO STATUTORY SAFE HARBOR

23. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the false statements pleaded in this Complaint because none of the statements pleaded herein are "forward-looking" statements nor were they identified as "forward-looking statements" when made. Nor did meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in any purportedly forward looking statements. In the alternative, to the extent that the statutory safe harbor does apply

to any statements pleaded herein which are deemed to be forward-looking, defendants are liable for those false forward-looking statements because at the time each of those statements was made the speaker actually knew those forward-looking statement were false and/or the statement was authorized and/or approved by an executive officer of Nash Finch who actually knew that the statements were false when made.

SUBSTANTIVE ALLEGATIONS

Background

24. In June 2000, Nash Finch's former Chief Financial Officer, John A. Haedicke ("Haedicke"), filed suit against the Company alleging he had been fired in April 2000, due to the fact that he refused to overstate the Company's earnings. Specifically, the lawsuit claimed that Haedicke had "corrected certain irregularities in the financial records of Nash Finch" and refused to follow orders from at least one Company officer to "take certain improper actions regarding those records, which would have had the effect of overstating the income and earnings of the company."

25. Shortly after Haedicke was fired by Nash Finch in April 2000, the Company filed its Form 10-Q with the SEC on May 4, 2000. This filing assured the investing public the Company's reported financial results were presented in conformity with Generally Accepted Accounting Principles ("GAAP").

Materially False and Misleading Statements Made During the Class Period

26. The Class Period begins on July 10, 2000, the day that Nash Finch stock traded above \$8.18 per share (which is the price that the stock fell to following the announcement at the end of the Class Period).

27. On November 2, 2000, Nash Finch issued a press release announcing its preliminary

financial results for the third quarter of fiscal year 2000 with the headline “Nash Finch Reports 133 Percent Increase In Third-Quarter EPS” (period ending October 7, 2000). The Company announced third quarter net earnings of \$4 million, or \$0.35 per share, up from \$1.7 million, or \$0.15 per share, from the same period in fiscal 1999. Defendant Marshall was quoted in the press release as stating “[o]ur performance dramatically improved over last year and is illustrated by our sharply improved net earnings and earnings per share. I’m pleased that our profitability continues to grow.” These financial results were reiterated and confirmed in the Company’s Form 10-Q filed with the SEC on November 15, 2000. This SEC filing assured the investing public the Company’s reported financial results were presented in conformity with GAAP.

28. On February 26, 2001, Nash Finch issued a press release announcing its preliminary financial results for the fourth quarter of fiscal 2000 (period ending December 30, 2000). The headline of the press release announced that the Company had “Strong Fiscal 2000 and Fourth-Quarter Results.” Specifically, the Company announced earnings of \$5.2 million, or \$0.45 cents per share, excluding an extraordinary charge, compared to \$4.2 million, or \$0.37 per share, excluding non-recurring items, for the same period in fiscal 1999. Additionally, the Company reported comparable earnings for fiscal 2000 of \$15.8 million, or \$1.38 per share, excluding an extraordinary charge from the early extinguishment of debt, compared to \$9.4 million, or \$0.83 per share, in fiscal 1999, excluding non-recurring items. Defendant Marshall was quoted in the press release as stating “[o]ur operating results have improved dramatically year-over-year with comparable EPS and EBITDA increasing 66 percent and 19 percent, respectively.” These financial results were reiterated and confirmed in the Company’s Form 10-K405 filed with the SEC on March 23, 2001. This SEC filing assured the investing public the Company’s reported financial results were

presented in conformity with GAAP.

29. On April 19, 2001, the Company issued a press release announcing its preliminary financial results for the first quarter of fiscal year 2001 (period ending March 24, 2001). The headline of the release reads “Nash Finch Company’s First-Quarter E.P.S. Increases 40%.” The Company announced first quarter net earnings of \$3.3 million, or \$0.28 per share, a 43% increase over the same period for fiscal 2000. Additionally, the Company reported a 24% increase in EBITDA over the same period for fiscal 2000. Defendant Marshall was quoted as stating “[t]he results of refocusing our business over the past three years are reflected in our improved revenues, and even more dramatically in our significantly improved earnings.” These financial results were reiterated and confirmed in the Company’s Form 10-Q filed with the SEC on May 4, 2001. This SEC filing assured the investing public the Company’s reported financial results were presented in conformity with GAAP.

30. On My 12, 2001, Nash Finch issued a press release announcing its preliminary financial results for the second quarter of fiscal year 2001 (period ending June 16, 2001). The Company announced second quarter net earnings of \$5.3 million, or \$0.44 per diluted share, a 20% increase over the same period for fiscal 2000. Additionally, the Company reported EBITDA of \$28.5 million, a 12% increase over the same period for fiscal 2000. In this release Nash Finch also revised upwards the Company’s 2001 earnings outlook from the \$1.55 to \$1.65 per share range to the \$1.70 to \$1.75 per share range. Defendant Marshall was quoted as stating “[w]e had a strong first quarter, with the momentum continuing through the second quarter and we fully expect into the rest of the year.” These financial results were reiterated and confirmed in the Company’s Form 10-Q filed with the SEC on July 20, 2001. This SEC filing assured the investing public the Company’s reported

financial results were presented in conformity with GAAP.

31. On November 1, 2001, Nash Finch issued a press release announcing its preliminary financial results for the third quarter of fiscal year 2001 with the headline “Nash Finch Third Quarter Earnings Increase 50%” (period ending October 6, 2001). The Company reported third quarter net earnings of \$6 million, or \$0.50 per diluted share, a 50% increase over the \$4 million, or \$0.35 per share reported for the same period in fiscal 2000. The Company also reported an EBITDA increase of 18% over the same period for fiscal 2000. Defendant Marshall was quoted as stating “[t]his is our eighth consecutive quarter of year-over-year improvement in comparable earnings and we are very pleased with our performance.” These financial results were reiterated and confirmed in the Company’s Form 10-Q filed with the SEC on November 19, 2001. This SEC filing assured the investing public the Company’s reported financial results were presented in conformity with GAAP.

32. On February 20, 2002, Nash Finch issued a press release announcing its preliminary financial results for the fourth quarter of fiscal year 2001 as well as the entire fiscal year 2001 (period ending December 29, 2001). The headline of the press release touted record net profits and EBITDA for 2001 with analyst expectations exceeded. The Company reported fourth quarter net earnings of \$6.7 million, or \$0.55 per diluted share, excluding an extraordinary item, an increase from \$5.2 million, or \$0.45 per share reported for the same period in fiscal 2000. The Company also reported total 2001 revenues of \$4.107 billion compared to \$3.956 billion for fiscal 2000. Defendant Marshall was quoted as stating “[w]e remain confident in a very bright future, despite the intensely competitive market.” These financial results were reiterated and confirmed in the Company’s Form 10-K filed with the SEC on February 8, 2002. This SEC filing assured the investing public the Company’s reported financial results were presented in conformity with GAAP.

33. On April 18, 2002, Nash Finch issued a press release announcing its preliminary financial results for the first quarter of fiscal year 2002 touting record financial performance (period ending March 23, 2002). The Company reported first quarter net earnings of \$5.9 million, or \$0.48 per diluted share, compared to \$4.3 million, or \$0.36 per share reported for the same period in fiscal 2001. Defendant Dimond was quoted as stating “We are also pleased to announce that we are increasing our earnings guidance for fiscal 2002 from that previously provided by 5 cents, to range between \$2.44 and \$2.49 per diluted share.” These financial results were reiterated and confirmed in the Company’s Form 10-Q filed with the SEC on April 26, 2002. This SEC filing assured the investing public the Company’s reported financial results were presented in conformity with GAAP.

34. On July 15, 2002, the Company announced second quarter earnings were up 27 percent. Specifically, the Company reported earnings of nearly \$8.1 million, or 66 cents a share, up from \$6.4 million or 53 cents a share in the previous year. Defendant Marshall commented on these financial results: “[o]ur earnings performance illustrates our ability to deliver results in an intensely competitive marketplace made even more difficult by a sluggish economy.” Defendant Dimond added: “[d]espite the competitive environment, we remain confident about the future.”

THE TRUTH IS REVEALED

35. On September 26, 2002, the Company announced that it expected results for the third quarter ending October 5, 2002 to be below expectations. On October 30, 2002 the Company announced that it had postponed its third quarter earnings until November 18, 2002.

36. On November 8, 2002, the Company issued a press release with the headline: “Nash Finch Explains Postponement of Earnings Release.” The Company reported that this decision was prompted by the review of the Company’s practices and procedures relating to certain promotional

allowances provided to the Company by vendors that reduce the cost of the goods sold (also known as slotting fees).

37. Slotting fees are monies paid by food manufacturers to supermarkets in order to have their products placed on desirable shelf-space. These fees are often paid in the form of credits which reduce the cost of the goods sold to the supermarkets. A food retailer would then hold these fees back as retained income until such time as they may need to place them back into their financial statements during a bad quarter to increase profits. Many other large retailers have recently come under scrutiny for their accounting methods related to such fees, and it is clear from the suit filed by Haedicke in June 2000 that Nash Finch has been engaged in fraudulent accounting methods at least since May 2000, when he was terminated. These Company's practices and procedures are now the subject of an informal inquiry by the SEC.

38. In relation to news that regulators are conducting an informal inquiry, Nash Finch's shares lost nearly a third of its value and plummeted \$3.85, or 32% to close at \$8.18 on November 11, 2002. On November 18, 2002, the Company announced that it has postponed its third quarter 2002 earnings.

39. The statements referenced above in paragraphs 27-34 were each materially false and misleading and omitted material facts in that, as further described herein, the defendants knew, or recklessly disregarded, that the Company was engaged in improper accounting practices which affected the accuracy of its financial results and that contrary to the statements in documents filed with the SEC during the Class Period, Nash Finch's financial statements issued during the Class Period were not prepared in accordance with GAAP. Indeed, on October 30, 2002, Nash Finch announced that it would be delaying the release of its third quarter financial results and on November

8, 2002 the Company announced that it was complying with an informal SEC investigation into its practices related to promotional allowances, also known as slotting fees.

40. The market for the Company's stock has been open, well-developed and efficient at all times during the Class Period. As a result of the defendants' materially false and misleading statements and failures to disclose set forth herein, the Company's stock traded at artificially inflated prices during the Class Period.

41. The financial statements and related press releases by the Company identified above contained statements that were materially false and misleading when made. Despite Nash Finch's representations to the contrary, the Company's Class Period financial statements did not comply with GAAP, causing Nash Finch to investigate and consider restating its financial statements.

42. The SEC requires that publicly-traded companies present their financial statements in accordance with GAAP 17 C.F.R. § 210.4-01(a)(1). Financial statements filed with the SEC which are not prepared in accordance with GAAP "will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided." 17 C.F.R. § 210.4-01(a)(1).

43. The defendants violated the following GAAP principles, among others:

- a. the principle that a conservative approach be taken providing early recognition of unfavorable events and minimizing the amount of income reported. (See Statement No. 4 of the Accounting Principles Board ("APB Nos.") at 4, ¶¶ 28, 35, 171);
- b. the principle that the financial information presented should be complete (See APB No. 4, ¶¶ 28, 35, 88, 171);
- c. the principle of fair presentation ("presents fairly"). (See APB No. 4, ¶¶ 109, 138, 189);

- d. the principle of adequacy and fairness of disclosure. (See APB No 4, ¶¶ 81, 106, 189, 199);
- e. the principle of materiality concerning information that is significant enough to affect evaluations or decisions. (See APB No. 4, ¶¶ 25, 128);
- f. the principle that the substance of transactions rather than form should be reflected. (See APB No. 4, ¶¶ 25, 35, 127);
- g. the principle that informed judgment based on background and knowledge should be applied. (See APB No. 4, ¶¶ 25,35, 124,173, 174);
- h. the principle that items included in the financial statements be reliably corroborated by outside evidence (verifiability). (See APB No. 4, ¶¶ 23 35,90);
- i. the principle that the financial statements contain and disclose relevant, understandable, and timely information for the economic decisions of the user. (See APB No. 4, ¶¶ 23, 88, 89, 92);
- j. the principle that the financial statements provide reliable financial information about the enterprise for the economic decisions of the user. (See e.g., APB No. 4, ¶¶ 77, 78, 107, 108); and
- k. the principle that accounts receivable must be reported in the financial statements at net realizable value (See e.g., ARB-43, Chapter 3 A; Financial Accounting Standard No. 5, Accounting for Contingencies).

44. During the Class Period, Nash Finch materially misled the investing public thereby inflating the price of Nash Finch's common stock by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make the Company's statements, as set forth herein, not false and misleading. Throughout the Class Period, each defendant knew or recklessly disregarded that Nash Finch's true financial results were not as represented in those reports, releases and statements, because in order to generate the appearance of prospering performance and favorable financial results, defendants had to, and did, violate GAAP. As a result of these false and misleading statements, the Company's shares were traded at artificially inflated

prices, causing damage to plaintiff and the other members of the Class when the Company revealed that its previously filed financial statements were the subject of an investigation.

SCIENTER ALLEGATIONS

45. The facts alleged herein, compel a strong inference that the Individual Defendants made material false and misleading statements to the investing public with scienter in that the Individual Defendants knew that the public statements issued or disseminated in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements as primary violators of the federal securities laws. Moreover, the Individual Defendants caused Nash Finch to engage in irregular accounting practices and, in turn, caused Nash Finch to report artificially inflated financial results.

46. As set forth elsewhere herein in detail, Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding Nash Finch and its business practices, their control over and/or receipt of Nash Finch's allegedly materially misleading misstatements and/or their associations with Nash Finch which made them privy to confidential proprietary information concerning Nash Finch were active and culpable participants in the fraudulent scheme alleged herein.

47. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants.

COUNT I

(VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 BROUGHT AGAINST ALL DEFENDANTS)

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

49. During the Class Period, defendants directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which it knowingly or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud and deceit upon plaintiff and the other members of the Class, and made various deceptive and untrue statements of material facts and omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading to plaintiff and the other members of the Class. The purpose and effect of the scheme, plan, and unlawful course of conduct was, among other things, to deceive the investing public, including plaintiff and the other members of the Class, and to induce plaintiff and the other members of the Class to purchase Nash Finch common stock during the Class Period at artificially inflated prices.

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

51. As a result of the defendants' dissemination of and/or failure to correct the false and misleading statements set forth above, the market price of Nash Finch common stock was artificially inflated during the Class Period. Unaware of the false and misleading nature of the statements

described above and the deceptive and manipulative devices and contrivances employed by the defendants, plaintiff and the other members of the Class relied, to their detriment, on the integrity of the market price of the stock in purchasing Nash Finch common stock. Had plaintiff and the other members of the Class known the truth, they would not have purchased Nash Finch shares or would not have purchased them at the inflated prices that they did.

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

53. By reason the foregoing, the defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and are liable to plaintiff and the other members of the Class for damages which they suffered in connection with their purchases of Nash Finch stock during the Class Period.

COUNT II

(VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT BROUGHT AGAINST THE INDIVIDUAL DEFENDANTS)

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

55. The Individual Defendants acted as controlling persons of the Company within the meaning of section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and active participation in and/or awareness of the Company's day-to-day operations, and/or intimate knowledge of the Company's expansion plans and implementation thereof, each Individual Defendant had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the

various statements that plaintiff alleges are false and misleading. The Individual Defendants were provided with, or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged herein to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

56. In particular, the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

57. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to section 20(a) of the Exchange Act. As a direct and proximate result of the 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 her behalf and on behalf of the Class, prays for judgment as follows:

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

B. Awarding monetary damages against all of the defendants, jointly and severally, in favor of plaintiff and the other members of the Class for all losses and damages suffered as a result of the wrongdoings alleged herein, including punitive damages where appropriate, together with interest thereon;

C. Awarding plaintiff the fees and expenses incurred in this action, including

reasonable allowance of fees for plaintiffs attorneys and experts;

D. Granting plaintiff and the other members of the Class such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: January 8, 2003

ZIMMERMAN REED

By: _____

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