

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

	X	
THE SORKIN LLC, individually and On Behalf	:	Civil Action No.
Of All Others Similarly Situated,	:	
	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CLASS ACTION COMPLAINT
	:	FOR VIOLATION OF FEDERAL
FISCHER IMAGING CORPORATION,	:	SECURITIES LAWS
MORGAN NIELDS, GERALD KNUDSON:	:	
and LOUIS RIVELLI	:	<b><u>JURY TRIAL DEMANDED</u></b>
	:	
Defendants.	:	
	X	

**INTRODUCTION**

Plaintiff The Sorkin LLC (“Sorkin”) individually and on behalf of all other persons similarly situated, by its undersigned attorneys, for its complaint against defendants, alleges the following based upon personal knowledge as to itself and its own acts, and information and belief as to all other matters, based upon inter alia, the investigation conducted by and through its attorneys, which included among other things, a review of the defendant’s public documents, conference calls and announcements made by defendants, United States Security and Exchange Commission (“SEC”) filings, regulatory filings and reports, media reports and news articles, wire and press releases published by and regarding Fischer Imaging Corporation (“Fischer Imaging” or the “Company”), security analyst’s reports and advisories about the Company, and information available on the Internet. 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 federal Class Action brought by the Plaintiff on behalf of itself and a Class consisting of all other persons who purchased the publicly traded securities of Fischer Imaging Corporation (NASDAQ: FIMG), between February 14, 2001 and April 1, 2003, inclusive (the "Class Period"), seeking to recover damages caused by Defendants' violations of federal securities laws and pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. 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.

3. On April 1, 2003, Fischer Imaging announced in a press release that based on Fischer's preliminary findings, the Company believes it will be necessary to restate its financial statements for the first three quarters of 2002 and for fiscal years ending December 2000 and 2001.

4. The news shocked the market and investor reaction was severe. The value of the Company's common stock plummeted by 18.36% in one day of trading, from a close of \$5.39 on April 1, 2003 to a closing price \$4.40 on April 2, 2003.

### **JURISDICTION AND VENUE**

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

6. This Court has jurisdiction over the subject matter of this action pursuant to §27 of the

Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.

7. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District. Additionally, the Company maintains its principal executive offices in this Judicial District.

8. In connection with the acts, conduct and other wrongs alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

#### **THE PARTIES**

9. Plaintiff, The Sorkin LLC, purchased Fischer Imaging securities, as set forth in the accompanying certification attached hereto and incorporated herein by reference, and have suffered damages as a result of the wrongful acts of defendants as alleged herein.

10. Defendant Fischer Imaging Corporation, has its principal executive offices located at 12300 North Grant Street, Denver, Colorado 80241. Fischer Imaging designs, manufactures and markets specialty and general-purpose medical imaging systems for the diagnosis and treatment of disease.

11. Defendant, Morgan Nields (“Nields”), was at all relevant times the Chairman of the Board.

12. Defendant, Gerald Knudson, (“Knudson”) has been the Chief Executive Officer of the Company since May 1, 2002.

13. Defendant, Louis Rivelli, (“Rivelli”) was the Chief Executive Officer of the Company at the start of the Class Period until he was replaced by Defendant Knudson.

14. Defendants Niels Knudson and Rivelli, are collectively referred to hereafter as the “Individual Defendants.” During the Class Period, each of the Individual Defendants made various statements regarding the Company’s financial results and condition in Fischer Imaging press releases, SEC filings and other public disclosures.

15. During the Class Period, each of the Individual Defendants, as senior executive officers and/or directors of Fischer Imaging, were privy to non-public information concerning its business, finances, products, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or recklessly disregarded the fact that adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public.

16. Each of the Individual Defendants are liable as a direct participant with respect to the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior executive officers and directors were each a "controlling person" within the meaning of Section 20 of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their position of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of Fischer Imaging's business.

17. The Individual Defendants, because of their positions with the Company, were provided with copies of the Company's reports and press releases alleged herein to be misleading, prior

to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the Individual Defendants had the opportunity to commit the fraudulent acts alleged herein.

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

### **CLASS ACTION ALLEGATIONS**

19. Plaintiff brings this action as a federal class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class (the “Class”), consisting of all those who purchased the securities of Fischer Imaging between February 14, 2001 to April 1, 2003, inclusive, (the “Class Period”) and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

20. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Fischer Imaging securities were actively traded on the NASDAQ National Market (“NASDAQ”). Fischer Imaging has over 9 million shares outstanding.

21. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class.

22. Plaintiffs’ claims are typical of the claims of the members of the Class, because plaintiffs and all of the Class members sustained damages arising out of defendants' wrongful conduct complained of herein.

23. Plaintiff will fairly and adequately protect the interests of the Class members and have

retained counsel who are experienced and competent in class actions and securities litigation.

24. A Class Action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

25. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members, in that defendants have acted on grounds generally applicable to the entire 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 Company's publicly disseminated press releases and statements during the Class Period omitted and/or misrepresented material facts;
- (c) whether defendants breached any duty to convey material facts or to correct material acts previously disseminated;
- (d) whether defendants participated in and pursued the fraudulent scheme or course of business complained of;
- (e) whether the defendants acted willfully, with knowledge or recklessly, in omitting and/or misrepresenting material facts;
- (f) whether the market prices of the Fischer Imaging's securities during the Class Period were artificially inflated due to material non-disclosures and/or misrepresentations complained of herein; and

(g) whether the members of the Class have sustained damages and, if so, what is the appropriate measure of damages.

### **SUBSTANTIVE ALLEGATIONS**

#### **Materially False and Misleading Statements Made During the Class Period**

26. The Class period commences on February 14, 2001. On that day, the Company issued a press release titled "Fischer Imaging Completes Turnaround, Reporting a \$7.5 Million Increase In Earnings for Fiscal 2000."

27. For the fiscal year ending on December 31, 2000, net income increased to \$2,132,000, or \$.28 per share, as compared to a normalized net loss of \$5,393,000, or a loss of \$.77 per share, for the year ending December 31, 1999. Defendant Rivelli commenting on the results stated:

The operating results of our last quarter culminates an overall stellar year for Fischer Imaging and represents a tremendous turnaround

...

We have exceeded our budgeted profitability estimates by over 200% for the fiscal year 2000, which represents a \$7.5 million increase in earnings from the previous year.'

...

The implementation of Fischer's best-in-class manufacturing strategy has significantly increased product quality, reduced lead times and improved gross margins to 50% from 39% in 1999.

28. The Company subsequently filed a Form 10-K with the SEC for the fiscal year of 2000, which reiterated the financial results disseminated in the Company's February 14, 2001 release detailed above.

29. Throughout calendar year 2001, the Company reported continued increases in net incomes and revenues. As a result the stock priced soared to its class period high of \$17.64 on November 7, 2001.

30. On April 26, 2001, in a press release titled “Fischer Imaging Beats Estimates and Continues Profitability Trend With The Announcement of First Quarter Results.” the Company reported that revenues for the first quarter of 2001 were \$11.2 million resulting in net income in the amount of \$412,000 or \$0.05 per share.

31. Subsequently, the Company filed a Form 10-Q, which reiterated the results in the above press release. In the notes to the consolidated financial statements contained in the Form 10-Q, defendants represented that:

In management's opinion, the accompanying unaudited condensed consolidated balance sheets and statements of operations and cash flows contain all adjustments necessary to present fairly the financial position of Fischer Imaging Corporation.

32. In the Summer and Fall of 2001 the pattern of deception continued. On August 13, 2001, in a press release titled “Fischer Imaging Reports Increased Revenues and a 62% Gain in Net Profit With The Release of Second Quarter Results” the Company reported that revenues for the second quarter of 2001 increased \$900,000 to \$12.8 million as compared to \$11.9 million for the same period in the prior year. Net income for the quarter was \$751,000 or \$0.09 per share as compared to \$465,000 or \$0.07 per share for the same period in the prior year.

33. Subsequently, the Company filed a Form 10-Q, which reiterated the results in the above press release. In the notes to the consolidated financial statements contained in the Form 10-Q, defendants represented that:

In management's opinion, the accompanying unaudited condensed consolidated balance sheets and statements of operations and cash flows contain all adjustments necessary to present fairly the financial position of Fischer Imaging Corporation.

34. By November 2001, the price of the stock had climbed to \$16.64 per share, this represented a 375% increase over the closing price of \$3.50 on February 14, 2001, the start of the

class period. On November 1, 2001, the Company announced in a press release that revenues for the third quarter of 2001 increased \$1.1 million, or 9%, to \$12.9 million as compared to \$11.8 million for the same quarter in the prior year. Net income for the quarter increased 151% to \$1 million or \$0.12 per share as compared to \$414,000 or \$0.06 per share for the same period last year. For the nine months ended September 30, 2001 net income has increased by 63% to \$2 million or \$0.23 per share.

35. Subsequently, the Company filed a Form 10-Q, which reiterated the results in the above press release. In the notes to the consolidated financial statements contained in the Form 10-Q, defendants represented that:

In management's opinion, the accompanying unaudited condensed consolidated balance sheets and statements of operations and cash flows contain all adjustments necessary to present fairly the financial position of Fischer Imaging Corporation.

36. On February 13, 2002, Fischer Imaging reported that for fiscal year 2001 the Company had a 54% increase in annual net income over fiscal year 2000. The company claimed that net income increased 54% to \$3,281,000 or \$.37 per share for the year ended December 31, 2001 as compared to net income of \$2,132,000 or \$.28 per share for the year ended December 31, 2000.

37. On April 1, 2002 the Company filed a form 10-K with the SEC. This filing reiterated the financial results distributed in the February 13, 2002 press release detailed above.

38. On April 30, 2002, the Company announced in a press release that net income for the first quarter was \$411,000 or \$0.04 per share for the quarter ended March 31, 2002 as compared to net income of \$207,000 or \$0.02 per share for the same period on the prior year. Commenting on the results, Defendant Knudson, noted:

With the successful completion of this quarter, the stage is now set for Fischer to move ahead

with the expansion of its sales and marketing endeavors. Women's health services is a growing multi-billion dollar industry and Fischer Imaging has a proven track record on which to build. We will leverage our current position with our technologically superior SenoScan Full Field Digital Mammography System and our large installed base of diagnostic MammoTest Stereotactic Breast Biopsy Systems to ensure that our efforts in achieving market penetration are well supported.

Defendant Knudson concluded:

Interest from the medical community for our SenoScan system continues to grow at an accelerated pace with positive feedback confirming that Fischer Imaging is on the right track.

39. Subsequently, the Company filed a Form 10-Q, which reiterated the results in the above press release. In the notes to the consolidated financial statements contained in the Form 10-Q, defendants represented that:

In management's opinion, the accompanying unaudited condensed consolidated balance sheets and statements of operations and cash flows contain all adjustments necessary to present fairly the financial position of Fischer Imaging Corporation.

40. On September 17, 2002, after months of delay, the Company finally reported the results for the second fiscal quarter of 2002, however the Company announced that it would not be issuing a press release at this time but that the Company had filed with the SEC its report on Form 10-Q for the quarter ended June 30, 2002.

41. By the third quarter of 2002 the Company's remained positive despite the fact that revenues were in decline. Revenues for the third quarter were \$11.0 million, as compared to \$12.9 million for the same quarter in the prior year. The Company also reported a net loss for the quarter of \$1.9 million, or \$.21 per share as compared to a net income of \$1 million or \$.11 per share for the same period last year.

42. The Company also reported that year to date revenues were \$30.9 million as compared to \$36.9 million for the same period last year and that year to date earnings per share were

**\$0.90 as compared to \$0.21 for the same period in the prior year.**

43. As calendar year 2002 closed the Company gave no indication that an internal investigation was underway.

44. The statements referenced above in ¶¶ 23-42 were each materially false and misleading when made because they failed to disclose and/or misrepresented the following adverse facts, among others: (i) that the Company had materially overstated its net income and earnings per share; (ii) that the Company improperly booked revenue; (iii) that the Company lacked adequate internal controls and was therefore unable to ascertain the true financial condition of the Company; and (iv) that as a result, the value of the Company's net income and financial results were materially overstated at all relevant times.

45. The Class Period ends on April 1, 2003, the day Fischer Imaging announced in a press release that based on a review being conducted by the company in conjunction with a change in independent auditors, the company would delay the filing of its annual report on Form 10-K for the year ended December 31, 2002.

46. The Company noted that based on its preliminary findings, Fischer Imaging believed it would be necessary to restate its financial statements for the first three quarters of 2002 and the years ended December 31, 2001 and 2000.

47. The news shocked the market and investor reaction was severe. The value of the Company's common stock plummeted by 18.36% in one day of trading, from a close of \$5.39 on April 1, 2003 to a closing price \$4.40 on April 2, 2003.

48. The market for Fischer Imaging's common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures

to disclose, Fischer Imaging's common stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Fischer Imaging common stock relying upon the integrity of the market price of Fischer Imaging's common stock and market information relating to Fischer Imaging, and have been damaged thereby.

37. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Fischer Imaging's common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

38. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Fischer Imaging's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Fischer Imaging and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

#### **ADDITIONAL SCIENTER ALLEGATIONS**

49. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements, issued or disseminated by or in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding the Company and its business practices, their control over and/or receipt of Fischer Imaging's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company were active and culpable participants in the fraudulent scheme alleged herein.

50. 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.

51. The Individual Defendants engaged in such a scheme to inflate the price of Fischer Imaging's common stock in order to protect and enhance their executive positions and the substantial compensation and prestige they obtained thereby.

#### **STATUTORY SAFE HARBOR**

52. The federal statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.

Further, none of the statements pleaded herein which were forward-looking statements were identified as "forward-looking statements" when made. Nor was it stated that actual results "could differ materially from those projected." Nor were the forward-looking statements pleaded accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from the statements made therein. Defendants are liable for the forward-looking statements pleaded because, at the time each of those forward-looking statements was made, the speaker knew the forward-looking statement was false and the forward-looking statement was authorized and/or approved by an executive officer of Fischer Imaging who knew that those statements were false when made.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:**  
**FRAUD-ON-THE-MARKET DOCTRINE**

53. At all relevant times, the market for Fischer Imaging's securities was an efficient market for the following reasons, among others:

- (a) Fischer Imaging's securities met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, the Company filed periodic public reports with the SEC and the NASDAQ;
- (c) Fischer Imaging regularly communicated with public investors via established market communication mechanisms, including the regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services. Each of these releases was publicly available and entered

into the marketplace; and

(d) The Company was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports were publicly available and entered the public marketplace.

54. As a result of the foregoing, the market for the Company's securities promptly digested current information regarding Fischer Imaging from all publicly available sources and reflected such information in Fischer Imaging's securities pricing. Under these circumstances, all purchasers of The Company's securities during the Class Period suffered similar injury through their purchase of Fischer Imaging's securities at artificially inflated prices and a presumption of reliance applies.

### **FIRST CLAIM**

#### **Violation Of Section 10(b) Of The Exchange Act And Rule 10b-5 Promulgated Thereunder Against All Defendants**

55. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein. This claim is asserted against all defendants.

56. During the Class Period, defendant Fischer Imaging and the Individual Defendants, and each of them, 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 Fischer Imaging's securities; and c) cause plaintiff and other members of the Class to purchase the Company's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants Fischer Imaging and the Individual Defendants, and each of them, took the actions set forth herein.

57. These 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 securities in an effort to maintain artificially high market prices for the Company's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. These defendants are sued either as primary participants in the wrongful and illegal conduct charged herein. The Individual Defendants are also sued as controlling persons of Fischer Imaging, as alleged below.

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

59. Fischer Imaging and the Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, business practices, performance, operations and future prospects of the Company as specified herein.

60. These defendants employed devices, schemes and artifices to defraud, while in

possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Fischer Imaging's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about the Company and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Fischer Imaging's securities during the Class Period.

61. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: a) each of the Individual Defendants was a high-level executives and/or director at the Company during the Class Period; b) each of the Individual Defendants, by virtue of his responsibilities and activities as a senior executive officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; c) the Individual Defendants enjoyed significant personal contact and familiarity with each other and were advised of and had access to other members of the Company's management team, internal reports, and other data and information about the Company's financial condition and performance at all relevant times; and d) the Individual Defendants were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

62. These 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 available to them. Such defendants'

material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Fischer Imaging's operating condition, business practices and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's financial condition and performance throughout the Class Period, the Individual Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

63. 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 the Company's securities were artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's publicly-traded securities were 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 on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired Fischer Imaging securities during the Class Period at artificially high prices and were damaged thereby.

64. 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 of the true performance, business practices, future prospects and intrinsic value of the Company, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their Fischer Imaging securities

during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

65. By virtue of the foregoing, Fischer Imaging and the Individual Defendants have each violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

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

### **SECOND CLAIM**

#### **Violation Of Section 20(a) Of The Exchange Act Against the Individual Defendants**

67. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein. This claim is asserted against the Individual Defendants.

68. Each of the Individual Defendants acted as a controlling person of Fischer Imaging within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's actual performance, the Individual Defendants 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 which plaintiff contends are false and misleading. Each of the Individual Defendants was provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff 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.

69. In addition, each of the Individual Defendants had direct involvement in the day-to-day operations of the Company and, therefore, is 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.

70. As set forth above, Fischer Imaging and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their controlling positions, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

#### **STATUTE OF LIMITATIONS**

71. This action is brought within the time limit prescribed by the statute of limitations for sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a), as modified by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. § 78u-4. Plaintiff only became aware of the crucial facts April 1, 2003 when a press release by the Company made on that date first evidenced to the public defendant's divergent representations.

#### **PRAYER FOR RELIEF**

72. WHEREFORE, Plaintiff on behalf of itself and of the Class pray for relief and 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 on behalf of the Class defined herein;

- (b) Awarding plaintiffs and the members of the Class damages in an amount which may be proven at trial, together with interest thereon;
- (c) Awarding plaintiffs and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;
- (d) Awarding such other and further relief as this Court may deem just and proper including any extraordinary equitable and/or injunctive relief as permitted by law or equity to attach, impound or otherwise restrict the defendants' assets to assure plaintiffs have an effective remedy; and
- (e) Such other relief as this Court deems appropriate.

**JURY TRIAL DEMANDED**

73. Plaintiff hereby demands a trial by jury.

Dated: April 10, 2003

Respectfully submitted,

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