

ORIGINAL

FILED

04 JAN 16 PM 2:46

U.S. DISTRICT COURT  
DISTRICT OF CALIFORNIA  
DEPUTY

1 Michael D. Braum (167416)  
2 STULL, STULL & BRODY  
3 10940 Wilshire Boulevard  
4 Suite 2300  
5 Los Angeles, CA 90024  
6 Tel: (310) 209-2468  
7 Fax: (310) 209-2087

8 Richard B. Brualdi  
9 Kevin T. O'Brien  
10 Gaitri Boodhoo  
11 THE BRUALDI LAW FIRM  
12 29 Broadway,  
13 New York, NY 10006  
14 Tel: (212) 952-0602  
15 Fax: (212) 952-0608

16 Laurence D. Paskowitz  
17 PASKOWITZ & ASSOCIATES  
18 60 East 42nd Street  
19 46th Floor  
20 New York, NY 10165  
21 Tel: (212) 685-0969  
22 Fax: (212) 685-2306

23 Roy L. Jacobs  
24 ROY JACOBS & ASSOCIATES  
25 60 East 42nd Street  
26 46th Floor  
27 New York, NY 10165  
28 Tel: (212) 867-1156  
29 Fax: (212) 504-8343

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00121 JM (A JB)  
"BY FAX"

EASTSIDE INVESTORS, LLP, on Behalf  
of Itself and All Others Similarly Situated,

Plaintiff,

v.

ADVANCED MARKETING SERVICES,  
INC., MICHAEL NICITA and EDWARD  
LEONARD,

Defendants.

CASE NO.

CLASS ACTION

COMPLAINT FOR VIOLATION OF  
FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

CR

1 Plaintiff Eastside Investors, LLP ("Plaintiff") alleges the following Complaint on  
2 information and belief, except for those matters which pertain to Plaintiff and its own acts, which  
3 are alleged upon personal knowledge. Those allegations averred on information and belief are  
4 based upon the investigation conducted by and through counsel, which included, among other  
5 things, a review of the defendants' public documents, announcements made by defendants, United  
6 States Securities and Exchange Commission ("SEC") filings, wire and press releases published by  
7 and regarding Advanced Marketing Services, Inc. ("Advanced Marketing" or "AMS" or "the  
8 Company"), and information readily obtainable on the Internet.

### 9 NATURE OF THE CASE

- 10 1. This is a securities fraud class action asserted on behalf of all purchasers of  
11 Advanced Marketing securities from January 16, 1999 through January 13, 2004 (the "Class  
12 Period"). The defendants in this action are Advanced Marketing; Michael Nicita ("Nicita"), its  
13 President, COO and CEO; and Edward Leonard ("Leonard"), its Chief Financial Officer, Executive  
14 Vice President and Secretary.
- 15 2. Defendant Advanced Marketing is a wholesaler of general interest books to  
16 membership warehouse clubs and certain specialty retailers, certain e-commerce companies and  
17 traditional bookstores.
- 18 3. On January 14, 2004, Advanced Marketing announced that it will restate its  
19 previously filed financial statements for each of the fiscal years in the five-year period ended March  
20 31, 2003. The Company also issued revised earnings guidance for the fiscal year ending March 31,  
21 2004.
- 22 4. The Company admitted that the estimated circulation communicated to publishers for  
23 some cooperative advertising publications was greater than actual subsequent circulation, and that  
24 certain accrued liabilities related to cooperative advertising were inappropriately recorded as  
25 income. The Company also determined that the advertising revenue and related costs, and the  
26 inappropriately recognized income, should be deferred until the Company completes the process of  
27 reaching appropriate resolutions with customers and vendors.
- 28



THE PARTIES

1  
2           12. Plaintiff purchased shares on November 18, 2003, within the Class Period, as set  
3 forth in the attached Certification.

4           13. Defendant Advanced Marketing describes itself as "a leading global provider of  
5 customized wholesaling, distribution and custom publishing services to the book industry. The  
6 Company provides a full range of value-added services that provide AMS customers with book-  
7 buying advice and expert supply chain management, including advertising and promotional support,  
8 to ensure the success of their book programs." In the fiscal year ending March 31, 2003 (the  
9 Company's financial fiscal year ends annually each March 31), Advanced Marketing reported \$911  
10 million in revenues, and \$11 million in net income. Its approximately 19 million shares of  
11 outstanding stock trade actively on the New York Stock Exchange under the symbol "MKT." The  
12 Company maintains its principal executive offices at 5880 Oberlin Drive, Suite 400, San Diego, CA  
13 92121.

14           14. Defendant Nicita is Advanced Marketing's President, Chief Executive Officer, Chief  
15 Operating Officer, and a member of the Board of Directors, positions he held throughout the Class  
16 Period. In fiscal 2003, Nicita received \$482,000 in salary and other compensation. In 2002, he  
17 received \$711,000 in salary, bonus and other compensation; and in 2001, he received \$827,000 in  
18 salary, bonus and other compensation. Nicita owns 182,000 shares of AMS stock, including shares  
19 he may acquire within 60 days.

20           15. Defendant Leonard is Advanced Marketing's Chief Financial Officer and an  
21 Executive Vice President, positions he has held since April 1999. In fiscal 2003 (ending March 31,  
22 2003), Leonard received \$337,000 in salary other compensation. In fiscal 2002, he received  
23 \$382,000 in salary, bonus and other compensation; and in fiscal 2001, he received \$435,000 in  
24 salary, bonus and other compensation. Leonard owns 206,000 shares of AMS stock, including  
25 shares he may acquire within 60 days.

26           16. Defendants Nicita and Leonard will from time to time be referred to herein as "the  
27 Individual Defendants."  
28

**SUBSTANTIVE ALLEGATIONS**

1  
2 17. Advanced Marketing Services, Inc. provides global customized services to book  
3 retailers and publishers. It is a leading wholesaler of general interest books to the membership  
4 warehouse clubs and certain specialty retailers, certain e-commerce companies and traditional  
5 bookstores. General interest books include bestsellers; basic reference books, including computer  
6 and medical books; books regarding business and management, cookbooks; gift books, including art  
7 and coffee table books; calendars; travel books; regional books; mass market books; regional books;  
8 mass market paperbacks; children's books; and Spanish-language. In addition, to a lesser extent, it  
9 sells pre-recorded audiocassettes (books on tape). In conjunction with its product sales, it provides  
10 product selection advice, vendor managed inventory ("VMI") services, specialized merchandising  
11 and product development services, promotion and advertising, and logistical and handling services  
12 to membership warehouse clubs and other retailers operating in the United States of America  
13 ("U.S."), Canada, Mexico, the United Kingdom ("U.K."), Australia, Singapore and certain other  
14 Pacific Rim countries. It is also the largest independent contract distributor for small to medium-  
15 sized publishers in North America, providing a full range of sales, fulfillment and collection  
16 services.

17 18. The misstatements relating to historical financial statements apply to the five fiscal  
18 years ending on March 31, 2003. In the first such fiscal year, the 1998 fiscal year, AMS reported  
19 revenues of \$438 million, and net income of \$9.1 million. In fiscal 1999, AMS reported \$501  
20 million in revenues, and \$12.5 million in net income. In fiscal 2000, AMS reported \$628 million in  
21 revenues, and \$17.1 million in net income. In fiscal 2001, AMS reported \$714 million in revenues,  
22 and \$20.8 million in net income. In fiscal 2002, AMS reported \$756 million in revenues, and \$23  
23 million in net income. Finally, in fiscal 2003, AMS reported \$912 million in revenues, and a  
24 decline to \$11.1 million in net income.

25 19. During the period in which financial results were misstated, top AMS insiders  
26 benefitted from the exercise of stock options and/or the sale of shares in the open market, in  
27 addition to receiving handsome salaries and perquisites.  
28

1 20. For example, in the June 26, 2000 Proxy Statement, it is disclosed that defendant  
2 Nicita realized \$3,158,112 through the exercise of stock options. In the 2001 Proxy Statement,  
3 defendant Nicita is likewise reported to have realized \$1.5 million in fiscal 2001 through the  
4 exercise of stock options. Defendant Leonard realized \$113,000 that same year. In fiscal 2002, that  
5 year's Proxy Statement lists Nicita as having benefitted in the same manner by \$1.3 million. The  
6 value of Nicita's unexercised options as of that same fiscal year end was between \$1.5 and \$3.5  
7 million.

8 21. The Company's purported financial performance led to high share prices that  
9 benefitted the Individual Defendants. In fiscal 2000, the stock rose from about \$6 per share to close  
10 at over \$11 per share. In fiscal 2001, the stock climbed to over \$15 per share. In fiscal 2002, prices  
11 climbed to well over \$20 per share.

12 **THE TRUTH BEGINS TO EMERGE**

13 22. On January 14, 2004, Advanced Marketing announced that it will restate its  
14 previously filed financial statements for the fiscal years in the five-year period ended March 31,  
15 2003. The Company also issued revised earnings guidance for the fiscal year ending March 31,  
16 2004.

17 23. In a press release issued on that date, AMS revealed that:

18 The restatement results from the Company's ongoing review of its cooperative  
19 advertising practices and related accounting, and relates primarily to the timing and  
20 quantification of recognition of revenue and reversal of accrued liabilities. The effect  
21 of the restatement currently is expected to be a total reduction to cumulative net  
22 income for the five-year period of between approximately \$3.0 million and \$9.0  
23 million. Cumulative net income for the five-year period, as previously reported, was  
24 \$85.0 million.

22 The Company's review has established that for the five-year period: (1) the estimated  
23 circulation communicated to publishers for some cooperative advertising  
24 publications was greater than actual subsequent circulation; and (2) certain accrued  
25 liabilities related to cooperative advertising were inappropriately reversed into  
26 income. The Company has determined that the advertising revenue and related costs,  
27 and the income from the accrued liabilities reversed, should be deferred until the  
28 Company completes the process of reaching appropriate resolutions with customers  
and vendors.

27 24. This news sent the stock down 15%, to close at a price of \$10.15 per share. Trading  
28 volume was a heavy 1,174,000 shares. During the period affected by the restatement, Advanced

1 Marketing Stock traded as high as \$25 per share. The Company stated that it was working to  
2 finalize amended annual financial statements, and that until these were released "historical financial  
3 statements should not be relied upon."

4 25. In addition to casting doubt on the integrity of management, these admissions  
5 exposed AMS to a greater likelihood of liability of incurring lawsuits from publishers and  
6 cooperative advertisers, and governmental investigations. AMS is already under investigation by  
7 the United States Attorney for the Southern District of California and the SEC, although it claimed  
8 in its press release that this restatement was independent of those investigations.

#### 9 CLASS ACTION ALLEGATIONS

10 26. Plaintiff brings this action as a federal class action pursuant to Federal Rules of Civil  
11 Procedure 23(a) and (b)(3) on behalf of a class (the "Class"), consisting of all purchasers of  
12 Advanced Marketing securities between January 16, 1999 and January 13, 2004 inclusive (the  
13 "Class Period") and who were damaged thereby. Excluded from the Class are defendants, the  
14 officers and directors of the Company, members of their immediate families and their legal  
15 representatives, heirs, successors or assigns and any entity in which defendants have or had a  
16 controlling interest.

17 27. The members of the Class are so numerous that joinder of all members is  
18 impracticable. While the exact number of Class members is unknown to Plaintiff at this time and  
19 can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or  
20 thousands of members in the proposed Class.

21 28. Plaintiff's claims are typical of the claims of the members of the Class, because  
22 plaintiffs and all of the Class members sustained damages arising out of defendants' wrongful  
23 conduct complained of herein.

24 29. Plaintiff will fairly and adequately protect the interests of the Class members and has  
25 retained counsel who are experienced and competent in class actions and securities litigation.

26 30. A Class Action is superior to all other available methods for the fair and efficient  
27 adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the  
28 damages suffered by individual members of the Class may be relatively small, the expense and

1 burden of individual litigation make it impossible for the members of the Class to individually  
2 redress the wrongs done to them. There will be no difficulty in the management of this action as a  
3 class action.

4 31. Questions of law and fact common to the members of the Class predominate over  
5 any questions that may affect only individual members, in that defendants have acted on grounds  
6 generally applicable to the entire Class. Among the questions of law and fact common to the Class  
7 are:

- 8 a. Whether the federal securities laws were violated by Defendants' acts as  
9 alleged herein;
- 10 b. Whether Defendants breached their fiduciary duties by engaging in fraudulent  
11 activity; and
- 12 c. Whether the members of the Class have sustained damages and, if so, what is  
13 the appropriate measure of damages.

14 **ADDITIONAL SCIENTER ALLEGATIONS**

15 32. As alleged herein, defendants acted with scienter in that defendants knew that the  
16 public documents and statements issued or disseminated in the name of the Company were  
17 materially false and misleading; knew that such statements or documents would be issued or  
18 disseminated to the investing public; and knowingly and substantially participated or acquiesced in  
19 the issuance or dissemination of such statements or documents as primary violations of the federal  
20 securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of  
21 information reflecting the true facts regarding Advanced Marketing, their control over, and/or  
22 receipt and/or modification of Advanced Marketing's allegedly materially misleading misstatements  
23 and/or their associations with the Company which made them privy to confidential proprietary  
24 information concerning Advanced Marketing, participated in the fraudulent scheme alleged herein.

25 33. Defendants knew and/or recklessly disregarded the falsity and misleading nature of  
26 the information which they caused to be disseminated to the investing public. The ongoing  
27 fraudulent scheme described in this complaint could not have been perpetrated over a substantial  
28

1 period of time, as has occurred, without the knowledge and complicity of the personnel at the  
2 highest level of the Company, including the Individual Defendants.

3 **Applicability Of Presumption Of Reliance:**  
4 **Fraud-On-The-Market Doctrine**

5 34. At all relevant times, the market for Advanced Marketing's publicly traded securities  
6 was an efficient market for the following reasons, among others:

7 a. Advanced Marketing's stock met the requirements for listing, and was listed  
8 and actively traded on the NYSE, a highly efficient and automated market;

9 b. As a regulated issuer, Advanced Marketing filed periodic public reports with  
10 the SEC and the NYSE;

11 c. Advanced Marketing regularly communicated with public investors via  
12 established market communication mechanisms, including through regular disseminations of press  
13 releases on the national circuits of major newswire services and through other wide-ranging public  
14 disclosures, such as communications with the financial press and other similar reporting services;  
15 and

16 d. Advanced Marketing was followed by several securities analysts employed  
17 by major brokerage firms who wrote reports which were distributed to the sales force and certain  
18 customers of their respective brokerage firms. Each of these reports was publicly available and  
19 entered the public marketplace.

20 35. As a result of the foregoing, the market for Advanced Marketing's publicly traded  
21 securities promptly digested current information regarding Advanced Marketing from all publicly  
22 available sources and reflected such information in Advanced Marketing's stock price. Under these  
23 circumstances, all purchasers of Advanced Marketing's publicly traded securities during the Class  
24 Period suffered similar injury through their purchase of Advanced Marketing's publicly traded  
25 securities at artificially inflated prices and a presumption of reliance applies.

26 **NO SAFE HARBOR**

27 36. The statutory safe harbor provided for forward-looking statements under certain  
28 circumstances does not apply to any of the allegedly false statements pleaded in this complaint.

1 Many of the specific statements pleaded herein were not identified as "forward-looking statements"  
2 when made. To the extent there were any forward-looking statements, there were no meaningful  
3 cautionary statements identifying important factors that could cause actual results to differ  
4 materially from those in the purportedly forward-looking statements. Alternatively, to the extent  
5 that the statutory safe harbor does apply to any forward-looking statements pleaded herein,  
6 defendants are liable for those false forward-looking statements because at the time each of those  
7 forward-looking statements was made, the particular speaker knew that the particular forward-  
8 looking statement was false, and/or the forward-looking statement was authorized and/or approved  
9 by an executive officer of Advanced Marketing who knew that those statements were false when  
10 made.

11 **FIRST CLAIM**

12 **Violation Of Section 10(b) Of**  
13 **The Exchange Act and Rule 10b-5**  
14 **Promulgated Thereunder Against All Defendants**

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

17 38. During the Class Period, defendant Advanced Marketing and the Individual  
18 Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended  
19 to and, throughout the Class Period, did: a) deceive the investing public, including plaintiff and  
20 other Class members, as alleged herein; b) artificially inflate and maintain the market price of  
21 Advanced Marketing's publicly traded securities; and c) cause plaintiff and other members of the  
22 Class to purchase Advanced Marketing's publicly traded securities at artificially inflated prices. In  
23 furtherance of this unlawful scheme, plan and course of conduct, defendants Advanced Marketing  
24 and the Individual Defendants, and each of them, took the actions set forth herein.

25 39. These defendants: a) employed devices, schemes, and artifices to defraud; b) made  
26 untrue statements of material fact and/or omitted to state material facts necessary to make the  
27 statements not misleading; and c) engaged in acts, practices, and a course of business which  
28 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to  
maintain artificially high market prices for Advanced Marketing's securities in violation of Section

1 10(b) of the Exchange Act and Rule 10b-5. These defendants are sued as primary participants in the  
2 wrongful and illegal conduct charged herein. The Individual Defendants are also sued as  
3 controlling persons of Advanced Marketing, as alleged below.

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

13 41. Advanced Marketing and the Individual Defendants, individually and in concert,  
14 directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the  
15 mails, engaged and participated in a continuous course of conduct to conceal adverse material  
16 information about the business, business practices, performance, operations and future prospects of  
17 Advanced Marketing as specified herein.

18 42. These defendants employed devices, schemes and artifices to defraud, while in  
19 possession of material adverse non-public information and engaged in acts, practices, and a course  
20 of conduct as alleged herein in an effort to assure investors of Advanced Marketing's value and  
21 performance and continued substantial growth, which included the making of, or the participation in  
22 the making of, untrue statements of material facts and omitting to state material facts necessary in  
23 order to make the statements made about Advanced Marketing and its business operations and  
24 future prospects in the light of the circumstances under which they were made, not misleading, as  
25 set forth more particularly herein, and engaged in transactions, practices and a course of business  
26 which operated as a fraud and deceit upon the purchasers of Advanced Marketing's securities during  
27 the Class Period.

28

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

12           44. These defendants had actual knowledge of the misrepresentations and omissions of  
13 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to  
14 ascertain and to disclose such facts, even though such facts were available to them. Such  
15 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for  
16 the purpose and effect of concealing Advanced Marketing's operating condition, business practices  
17 and future business prospects from the investing public and supporting the artificially inflated price  
18 of its securities. As demonstrated by defendants' overstatements and misstatements of the  
19 Company's financial condition and performance throughout the Class Period, the Individual  
20 Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged,  
21 were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps  
22 necessary to discover whether those statements were false or misleading.

23           45. As a result of the dissemination of the materially false and misleading information  
24 and failure to disclose material facts, as set forth above, the market price of Advanced Marketing's  
25 securities were artificially inflated during the Class Period. In ignorance of the fact that market  
26 prices of Advanced Marketing's publicly traded securities were artificially inflated, and relying  
27 directly or indirectly on the false and misleading statements made by defendants, or upon the  
28 integrity of the market in which the securities trade, and/or on the absence of material adverse

1 information that was known to or recklessly disregarded by defendants but not disclosed in public  
2 statements by defendants during the Class Period, plaintiff and the other members of the Class  
3 acquired Advanced Marketing securities during the Class Period at artificially high prices and were  
4 damaged thereby.

5 46. At the time of said misrepresentations and omissions, plaintiff and other members of  
6 the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other  
7 members of the Class and the marketplace known of the true performance, business practices, future  
8 prospects and intrinsic value of Advanced Marketing, which were not disclosed by defendants,  
9 plaintiff and other members of the Class would not have purchased or otherwise acquired their  
10 Advanced Marketing publicly traded securities during the Class Period, or, if they had acquired  
11 such securities during the Class Period, they would not have done so at the artificially inflated prices  
12 which they paid.

13 47. By virtue of the foregoing, Advanced Marketing and the Individual Defendants have  
14 each violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

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

### 18 SECOND CLAIM

#### 19 Violation of Section 20(a) of the Exchange Act Against 20 the Individual Defendants

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

23 50. Each of the Individual Defendants acted as a controlling person of Advanced  
24 Marketing within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of  
25 their high-level positions with the Company, participation in and/or awareness of the Company's  
26 operations and/or intimate knowledge of the Company's actual performance, the Individual  
27 Defendants had the power to influence and control and did influence and control, directly or  
28 indirectly, the decision-making of the Company, including the content and dissemination of the

1 various statements which plaintiff contends are false and misleading. Each of the Individual  
2 Defendants was provided with or had unlimited access to copies of the Company's reports, press  
3 releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or  
4 shortly after these statements were issued and had the ability to prevent the issuance of the  
5 statements or cause the statements to be corrected.

6 51. In addition, each of the Individual Defendants had direct involvement in the day-to-  
7 day operations of the Company and, therefore, is presumed to have had the power to control or  
8 influence the particular transactions giving rise to the securities violations as alleged herein, and  
9 exercised the same.

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

16 **WHEREFORE**, plaintiff prays for relief and judgment, as follows:

- 17 1. Determining that this action is a proper class action, designating plaintiff as Lead  
18 Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal  
19 Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;
  - 20 2. Awarding compensatory damages in favor of plaintiff and the other Class members  
21 against all defendants, jointly and severally, for all damages sustained as a result of  
22 defendants' wrongdoing, in an amount to be proven at trial, including interest  
23 thereon;
  - 24 3. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this  
25 action, including counsel fees and expert fees; and
  - 26 4. Such other and further relief as the Court may deem just and proper.
- 27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: January 16, 2004

Michael D. Braun  
STULL, STULL & BRODY

By:



Michael D. Braun  
10940 Wilshire Boulevard  
Suite 2300  
Los Angeles, CA 90024  
Tel: (310) 209-2468  
Fax: (310) 209-2087

Richard B. Brualdi  
Kevin T. O'Brien  
Gaitri Boodhoo  
THE BRUALDI LAW FIRM  
29 Broadway,  
New York, NY 10006  
Tel: (212) 952-0602  
Fax: (212) 952-0608

Laurence D. Paskowitz  
PASKOWITZ & ASSOCIATES  
60 East 42nd Street  
46th Floor  
New York, NY 10165  
Tel: (212) 685-0969  
Fax: (212) 685-2306

Roy L. Jacobs  
ROY JACOBS & ASSOCIATES  
60 East 42nd Street  
46th Floor  
New York, NY 10165  
Tel: (212) 867-1156  
Fax: (212) 504-8343

Attorneys for Plaintiff

**PLAINTIFF'S CERTIFICATE**

Eastside Investors, LLP ("Plaintiff"), declares, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the complaint against Advanced Marketing Services, Inc., and certain other defendants, and authorizes its filing.
2. Plaintiff did not acquire the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action or any other litigation under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. Plaintiff represents and warrants that it is fully authorized to enter into and execute this certification through its undersigned managing partner.
5. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as approved by the court.
6. Plaintiff has made no transaction(s) during the Class Period in the common shares of Advanced Marketing, except those set forth below:

Purchases			Sales		
Date(s)	Number of Shares	Price	Date(s)	Number of Shares	Price
11-18-03	50	70.91			

7. During the three years prior to the date of this Certification, Plaintiff has not sought to serve or served as a representative party for a class in an action filed under the federal securities laws.
8. I declare under penalty of perjury, this 16<sup>th</sup> day of January, 2004 that the information above accurate.

*Lawrence Bass*  
 Managing Partner

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ATTACHMENT A

**IV. CAUSE OF ACTION**

Defendants made material misrepresentations and omissions, using interstate mail and wires which were relied upon by plaintiff causing him injury, which defendants made with knowledge, or a reckless disregard of the truth, violating Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and is filed under Rule 23 F.R.C.P. as a class action and under the Private Securities Litigation Reform Act of 1995.

ORIGINAL CIVIL COVER SHEET

JS-44

(Rev. 07/99)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as permitted by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

(a) PLAINTIFFS EASTSIDE INVESTORS, LLP, on Behalf of Itself and All Others Similarly Situated

DEFENDANTS ADVANCED MARKETING SERVICES, INC., MICHAEL NICITA and EDWARD LEONARD

"BY FAX"

U.S. DISTRICT COURT DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF State of New York

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) San Diego

DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) STULL, STULL & BRODY 310-209-2468 10940 Wilshire Boulevard, Suite 2300 Los Angeles, CA 90024

ATTORNEYS (IF KNOWN) '04 CV 00121 JM (AJB)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
2 Federal Question (U.S. Government Not a Party)
3 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

SEE ATTACHMENT "A"

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and sub-items.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.o.p. 23 DEMAND \$ JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE 1-16-04

SIGNATURE OF ATTORNEY OF RECORD

#100314 \$150,000

CR