

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

Paul Kuck, On Behalf of Himself and All Others Similarly Situated,	)	Civ. No.
	)	
	)	<u>CLASS ACTION</u>
Plaintiff,	)	
	)	COMPLAINT FOR VIOLATION OF
vs.	)	THE FEDERAL SECURITIES LAWS
	)	
VERITAS SOFTWARE CORPORATION, EDWIN J. GILLIS, and GARY L. BLOOM	)	<u>DEMAND FOR JURY TRIAL</u>
	)	
	)	
Defendants.	)	

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Plaintiff, individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his complaint against the above-captioned defendants, alleges upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation made by and through his attorneys, which investigation included, among other things, a review of the public documents, Securities and Exchange Commission (“SEC”) filings, analyst reports, news releases and media reports of Veritas Software Corporation (“Veritas” or the “Company”), as follows:

**JURISDICTION AND VENUE**

1. 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, and Rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated thereunder.
2. The jurisdiction of this Court is based on Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1331 (federal question jurisdiction).

3. Venue is proper in this judicial district pursuant to Section 27 of the Exchange Act. Veritas is incorporated in Delaware.

4. In connection with the acts, transactions and conduct alleged herein, defendants used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and the facilities of a national securities exchange and market.

### **THE PARTIES**

5. Plaintiff, Paul Kuck, purchased shares of Veritas common stock during the Class Period at artificially high prices, as set forth in the accompanying certification, and has been damaged as a result of defendants' conduct as alleged herein.

6. Defendant Veritas is a Delaware corporation that maintains its principal place of business in Mountain View, California. Veritas describes itself as one of the top ten largest software companies in the world, and trades under the symbol "VRTSE" on the NASDAQ.

7. Defendant Edwin J. Gillis ("Gillis") was, at all relevant times, the Company's Executive Vice President and Chief Financial Officer.

8. Defendant Gary L. Bloom ("Bloom") was, at all relevant times, the Company's Chairman of the Board, President, and Chief Executive Officer.

9. Defendants Gillis and Bloom are collectively referred to hereinafter as the "Individual Defendants."

### **SCIENTER**

10. During the Class Period, each of the Individual Defendants were privy to non-public information concerning the Company's second-quarter 2004 results 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.

11. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the defendant officers and/or directors of Veritas, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. The Individual Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein. The Individual Defendants were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

12. As officers and controlling persons of a publicly-held company whose securities were and are registered with the SEC pursuant to the Exchange Act, and was traded on the NASDAQ and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate accurate and truthful information promptly with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects,

and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly traded securities would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

13. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

14. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Veritas securities by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme (i) deceived the investing public regarding Veritas business, operations, management and the intrinsic value of Veritas securities; and (ii) caused Plaintiff and other members of the Class to purchase Veritas securities at artificially inflated prices.

15. In knowing or reckless disregard of the truth, defendants issued and/or participated in the issuance of materially false and misleading statements to the investing public, including press release, as identified below, which contained fraudulent financial manipulations which deceived the investing public who purchased Veritas securities based upon those representations. The Class Period Press Releases contained information which misrepresented Veritas' financials and business prospects, including its projected earnings.

## CLASS ACTION ALLEGATIONS

16. 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 consisting of all persons who purchased Veritas common stock during the period April 21, 2004 to July 6, 2004 inclusive, and who were damaged thereby (the “Class”). Excluded from the Class are the Company, its officers and directors, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns, and any entity in which the Company has a controlling interest or of which the Company is a parent or subsidiary.

17. The members of the Class are located in geographically diverse areas and are so numerous that joinder of all members is impractical. The Company has over 430 million shares of stock outstanding. While the exact number of Class members is unknown to the plaintiff at this time, and can only be ascertained through appropriate discovery, plaintiff believes there are, at a minimum, thousands of members of the Class.

18. 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:

- a. Whether defendants engaged in acts or conduct in violation of the federal securities laws as alleged herein;
- b. Whether defendants had a duty to disclose certain information;
- c. Whether defendants knowingly or recklessly in making materially false and misleading statements or in failing to correct such statements upon learning that they were materially false and misleading during the Class Period;
- d. Whether the market price of the Company’s common stock during the Class Period was artificially inflated because of defendants’ conduct complained of herein; and

e. Whether members of the Class have sustained damages and, if so, the proper measure of damages.

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

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

21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impractical. Furthermore, because the damages suffered by 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. There will be no difficulty in the management of this action as a class action.

### **Fraud on the Market Presumption**

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

- a. Defendants made public misrepresentations or failed to disclose material facts regarding Veritas' financial situation during the Class Period;
- b. the omissions and misrepresentations were material;
- c. the securities of the Company were actively traded at all relevant times on the NASDAQ, an efficient and open market;
- d. the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

e. Plaintiff and the members of the Class, without knowledge of the misrepresented facts, purchased their Veritas securities between the time defendants failed to disclose and/or misrepresented material facts and the time the truth was disclosed.

23. Veritas trades on the NASDAQ. The price of Veritas' stock reflects the effect of news disseminated in the market.

24. Based upon the foregoing, plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market

**The Safe Harbor Provision is Inapplicable**

25. The 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. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. To the extent that the statutory safe harbor is intended to apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker had actual knowledge that the particular forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized and/or approved by an executive officer of Veritas who knew that those statements were false when made.

**SUBSTANTIVE ALLEGATIONS**

26. This is a class action brought on behalf of the purchasers of the securities of Veritas between April 21, 2004 and July 6, 2004, inclusive (the "Class Period"), seeking remedies under the Exchange Act. Veritas describes itself as one of the top ten largest software companies in the world, and trades under the symbol "VRTSE" on the NASDAQ.

27. Before the Class Period, Veritas made multiple restatements of its prior financial results for years 2001-2003, but continued to publicly affirm its earnings expectations for year 2004.

28. During the Class Period, defendants had actual knowledge of or recklessly disregarded the fact that although the Company was involved in negotiations for significant contracts, those negotiations had not advanced far enough to reasonably conclude they would close. Despite the defendants having no reasonable basis to do so, defendants caused the Company to confirm expectations that its revenue for second-quarter 2004 would be \$490 million to \$505 million and earnings per share for the quarter would be between \$0.21 and \$0.23. Defendants confirmed these earnings expectations without reasonable basis and in order to maintain the Company's share price and avoid the negative fallout that would occur as a result of an accurate disclosure of the Company's contractual prospects and financial condition.

### **False and Misleading Statements**

29. On April 21, 2004, the first day of the Class Period, the Company announced positive first-quarter 2004 results, including revenue of \$487 million as compared with \$394 million for the same period the prior year. Defendant Bloom stated:

“Our strong first quarter financial results demonstrate the fundamental strength of our business strategy and the benefit of an improvement in IT spending....We remain focused on the fundamentals of our business and we are highly motivated to drive the company past our *\$2 billion revenue target in 2004.*”

Defendant Gillis further stated:

“Building on the strength of a solid first quarter, we continue to view 2004 as an important growth year for Veritas and expect *revenue for our second quarter to be in the range of \$490 million to \$505 million and diluted earnings per share to be in the range of \$0.21 to \$0.23 on a GAAP basis.*”

30. As a result of the Company's statements concerning its second-quarter 2004 results and future business prospects on April 21, 2004, the Company's stock rose \$1.60 on heavy trading.

31. On June 14, 2004, as the close of the second-quarter neared, the Company was forced to announce its restated results for 2001, 2002, and the first three quarters of 2003. Simultaneously, the defendants caused the Company to announce it was confirming its previous guidance for the second-quarter 2004 of revenue between \$490 and \$505 million and GAAP earnings per share of \$0.21 to \$0.23.

32. As a result of this news, the Company's share price rose \$0.61 to close at \$28.00 per share on June 15, 2004.

33. The above statements were false and misleading when issued because the defendants had no reasonable basis to conclude that substantial contracts the Company was negotiating at the time would close and that the Company would meet its second-quarter 2004 earnings expectations.

### **The Truth Revealed**

34. Only three weeks after the Company confirmed its second-quarter 2004 expectations, on July 6, 2004, the defendants shocked the market by suddenly announcing that the Company's second-quarter 2004 revenues would actually be "in the range of \$475 million to \$485 million" and that its GAAP earnings per share would, in fact, "be in the range of \$0.17 to \$0.19." As a result of this news, the Company's share price plunged from \$26.55 to \$17.00, or 36% on heavy trading volume.

35. As a result of defendants' false and misleading statements during the Class Period, the price of the Company's securities was artificially inflated when Plaintiff and other class members purchased them.

## COUNT I

### **For Violations of Sections 10(b) and Rule 10b-5 Thereunder**

36. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

37. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

38. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Veritas securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

39. 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 Veritas securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

40. 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, operations and future prospects of Veritas as specified herein.

41. 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 Veritas 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 Veritas 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 Veritas securities during the Class Period.

42. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior 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; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was 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 finances, operations, and sales at all relevant times; and (iv) each of these defendants

was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

43. The 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 Veritas operating condition 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 business, operations and earnings throughout the Class Period, 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.

44. 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 Veritas securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Veritas 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 trades, 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 Veritas securities during the Class Period at artificially high prices and were damaged thereby.

45. 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 the truth regarding the problems that Veritas was experiencing, which were not disclosed by defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Veritas securities, 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.

46. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

47. 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.

## COUNT II

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

48. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

49. The Individual Defendants acted as controlling persons of Veritas within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, 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 contend 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 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.

50. In particular, each of these defendants had direct and supervisory 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.

51. As set forth above, Veritas 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 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 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.

#### **DEMAND FOR JURY TRIAL**

52. Plaintiff demands a trial by jury on all issues.

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

Dated: July 7, 2004

ROSENTHAL, MONHAIT, GROSS  
& GODDESS

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