

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

Civil Action No.

UFCW LOCAL 880 – RETAIL FOOD EMPLOYERS JOINT PENSION FUND, On Behalf of  
Itself and All Others Similarly Situated,

Plaintiff,

v.

NEWMONT MINING CORP., WAYNE W. MURDY, PIERRE LASSONDE and BRUCE D.  
HANSEN,

Defendants.

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**PLAINTIFF’S CLASS ACTION COMPLAINT FOR VIOLATION  
OF THE FEDERAL SECURITIES LAWS**

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## **INTRODUCTION AND SUMMARY OF THE ACTION**

1. This is a securities fraud class action on behalf of persons who purchased the publicly traded securities of Newmont Mining Corporation (“Newmont” or the “Company”) between July 28, 2004 and April 26, 2005 (the “Class Period”), against Newmont and its top officers, for violations of the federal securities laws arising out of defendants’ dissemination of false and misleading statements concerning the Company’s operational status and financial expectations.

2. Based in Denver, Colorado, Newmont boasts it is the world’s largest gold producer, has the largest market capitalization among world gold producers, and is the only gold company listed on the S&P 500 Index. The Company has significant mining operations in the United States, Australia, Peru, Indonesia, Canada, Uzbekistan, Bolivia, New Zealand, Ghana and Mexico.

3. Despite making repeated positive statements about the Company’s operations and financial expectations throughout the Class Period, defendants shocked the market on April 26, 2005 by disclosing that the Company’s Q1 2005 earnings would fall short by two-thirds of what analysts had been expecting based on the Company’s frequent guidance and investor presentations. Unbeknownst to investors, Newmont’s Peruvian, Indonesian, Australian and New Zealand mines had grossly underperformed.

4. The investment community was shocked, causing Newmont’s stock price to fall precipitously from its April 26, 2005 closing price of \$40.25 per share to less than \$38 per share on April 27, 2005, on extremely high volume of approximately 300% of the average daily trading volume. Meanwhile, because the Company’s stock had traded at inflated prices throughout the Class Period, Newmont was able to place over \$600 million worth of notes in March 2005, just weeks before the truth about the Company’s operational and financial difficulties would be disclosed.

5. The true facts, which were known by each of the defendants but concealed from the investing public during the Class Period, were as follows:

(a) Newmont had been processing only stockpiled low-grade ore at certain mines, which costs more to process;

(b) Newmont's costs for commodities used in mining had increased, increasing total production costs and cash production costs;

(c) The amount of copper and gold Newmont stated it could extract in 2005 was overstated; and

(d) As a result of operating difficulties in the Q1 2005, Newmont's cash generation had declined by 50% and its exploration costs would significantly increase.

#### **JURISDICTION AND VENUE**

6. The claims asserted herein arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5. Jurisdiction is conferred by §27 of the 1934 Act, 15 U.S.C. §78aa.

7. Venue is proper here pursuant to §27 of the 1934 Act. Acts and transactions giving rise to the violations of law complained of occurred here.

#### **THE PARTIES**

8. Plaintiff UFCW Local 880 – Retail Food Employers Joint Pension Fund purchased Newmont publicly traded securities as detailed in the attached Certification and was damaged thereby.

9. Defendant Newmont is a gold producer with assets or operations in the United States, Australia, Peru, Indonesia, Canada, Uzbekistan, Bolivia, New Zealand, Ghana and Mexico. During

the fiscal year ended December 31, 2004, Newmont reported it had proven and probable gold reserves of 92.4 million equity ounces and an aggregate land position of approximately 51,500-square miles (133,500 square kilometers). Newmont predominantly operates in a single industry, namely exploration for and production of gold and copper. Newmont's major operations are in North America, South America, Indonesia and Australia/New Zealand. Newmont also has two significant development projects in Ghana, West Africa. Newmont also has a Merchant Banking Segment and an Exploration Segment. During the Class Period, Newmont had approximately 446 million shares of common stock outstanding, which shares traded in an efficient market on the New York Stock Exchange.

10. Defendant Wayne W. Murdy ("Murdy") has served as Newmont's Chairman of the Board and Chief Executive Officer ("CEO") since 2001, and as a director since 1999. Murdy previously served as Newmont's President from 1999 to 2002, as Executive Vice President and Chief Financial Officer ("CFO") from 1996 to 1999 and as Senior Vice President and CFO from 1992 to 1996.

11. Defendant Pierre Lassonde ("Lassonde") has served as Newmont's President and as a director of Newmont since 2002. Lassonde previously served as Co-Chief Executive Officer of Franco-Nevada Mining Corporation Limited from 1999 to 2002 and President thereof from 1982 to 2002, as President and CEO of Euro-Nevada Mining Corporation Limited from 1985 to 1999 and as a director of Normandy Mining Limited from 2001 to 2002.

12. Defendant Bruce D. Hansen ("Hansen") has served as Newmont's Senior Vice President and CFO since July 1999. Hansen served as Vice President, Project Development, at

Newmont from May 1997 to July 1999. Previously Hansen served as Senior Vice President, Corporate Development, of Santa Fe Pacific Gold Corporation from April 1994 to May 1997.

13. The defendants identified in ¶¶10-12 are referred to herein as the “Individual Defendants.” The Individual Defendants are liable for the false statements pleaded herein, as those statements are each “group-published” information for which they are responsible.

### **FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD**

14. On July 28, 2004, defendants issued a press release entitled “Newmont Mining Corporation Reports Second Quarter Net Income of \$37.5 Million (\$0.08 per share); Mid-Year Exploration Results Exceed Expectations.” The press release stated in relevant part:

Newmont Mining Corporation today announced second quarter net income of \$37.5 million (\$0.08 per share). This compares to net income of \$90.8 million (\$0.22 per share) for the second quarter of 2003. Net income for the second quarter was impacted by non-cash asset impairment charges that decreased net income by \$47.8 million (\$0.11 per share). During the quarter, Newmont sold 1.64 million equity ounces of gold at total cash costs of \$240 per ounce.

Wayne W. Murdy, Chairman and Chief Executive Officer, said: “The decline in second quarter net income was the result of planned mine closures and divestitures, processing lower grade material and non-cash asset impairment charges. Despite lower ounces sold, cash flow generation from operations for the quarter was \$243 million. ***For the full year, we expect gold sales of in excess of seven million ounces, with the second half’s sales weighted towards the fourth quarter.*** Our development projects are proceeding on schedule, and our exploration results have exceeded expectations, particularly at our two projects in Ghana. We are optimistic about our ability, similar to 2003, to grow reserves from exploration in 2004.”

15. On July 30, 2004, defendants announced that Newmont’s Vice President and Controller, David Peat, had suddenly resigned. Russell Ball, who had been with Newmont for more than ten years in various audit, accounting and financial positions, and was then the Group Executive for Investor Relations, was appointed Newmont’s Controller.

16. On October 27, 2004, defendants issued a press release entitled “Newmont Announces Third Quarter Net Income of \$128.7 million (\$0.29 per share); Nine Month Net Income of \$252.9 million (\$0.57 per share).” The press release stated in relevant part:

Newmont Mining Corporation today announced third quarter net income applicable to common shares of \$128.7 million (\$0.29 per share) compared with net income of \$114.4 million (\$0.28 per share) for the third quarter of 2003. Net cash provided by operating activities for the quarter increased 32% to \$339.3 million from \$256.7 million for the third quarter of 2003. Newmont sold 1.73 million equity ounces of gold at total cash costs of \$233 per ounce during the quarter.

Wayne W. Murdy, Chairman and Chief Executive Officer, said, “Our higher third quarter cash flow and earnings reflected the strength and flexibility of our asset portfolio. We continue to expect equity gold sales of approximately seven million ounces for 2004. We also remain optimistic for reserve growth in 2004 through our ongoing exploration success in Ghana and elsewhere.”

17. On October 27, 2004, defendants also issued a press release entitled “Newmont Increases Quarterly Dividend by 33%.” The press release stated in relevant part as follows:

The Board of Directors of Newmont Mining Corporation today declared an increased quarterly dividend of \$0.10 per share, payable December 21, 2004 to holders of record at the close of business on December 1, 2004. ***This represents a 33% increase over the prior quarterly dividend of \$0.075 per share.***

\* \* \*

Wayne W. Murdy, Chairman and Chief Executive Officer of Newmont, commented: ***‘The Board of Directors’ decision to increase the dividend by 33% reflects the Company’s strong cash flow generation, balance sheet, financial flexibility and our continued favorable outlook for the gold price.*** The Board of Directors will continue to evaluate the dividend policy going forward in light of the Company’s long-term objective of providing shareholders with an S & P 500-type dividend yield.”

18. On February 3, 2005 defendants issued a press release entitled “Newmont Reports Record Equity Gold Reserves of 92.4 Million Ounces at Year-End 2004.” The press release stated in relevant part:

Newmont Mining Corporation reported record proven and probable gold reserves of 92.4 million equity ounces for year-end 2004, based on a gold price assumption of \$350 per ounce.

Commenting on the exploration results, Chairman and Chief Executive Officer Wayne W. Murdy said, "In 2004, we again exceeded our goal of replacing depletion through exploration and had another year of reserve growth, adding 8.6 million equity ounces."

Describing the exploration results, President Pierre Lassonde said, "Our reserve growth highlights the strength of our exploration team, our extensive land position and our proprietary technologies. We had another outstanding year in Ghana, adding 4.1 million equity ounces and increasing equity reserves by 35% to 16.0 million ounces. Nevada also more than replaced depletion, adding 3.2 million ounces and increasing reserves to a record 34.0 million equity ounces."

The Company also updated its equity gold reserve price sensitivity. As illustrated below, if calculated at gold prices of \$375 and \$400 per ounce, gold reserves would increase to approximately 98 million ounces and 101 million ounces, respectively. The full impact of higher gold prices on our equity gold reserves is constrained by limited drill data on the margins of known mineralization.

#### **2004 Exploration Highlights**

- In Ghana, reserves increased by 4.1 million equity ounces to 16.0 million equity ounces.
- In Nevada, reserves net of depletion grew to a 39-year record of 34.0 million equity ounces, with 2.3 million ounces added at Phoenix.
- In Peru, 4.5 million equity ounces were added at Minas Conga.
- In Indonesia, Batu Hijau replaced equity gold reserves net of depletion.

19. On February 24, 2005, defendants issued a press release entitled "Newmont Announces Fourth Quarter Net Income of \$182 million (\$0.41 per share); 2004 Net Income of \$435 million (\$0.98 per share)." The press release stated in relevant part:

Newmont Mining Corporation today announced fourth quarter net income of \$181.6 million (\$0.41 per share) compared with net income of \$153.1 million (\$0.36 per share) for the fourth quarter of 2003. Newmont earned net income of \$434.5 million (\$0.98 per share) for 2004. Fourth quarter and 2004 highlights included:

- Equity gold sales for the fourth quarter of 1.8 million ounces at total cash costs of \$226 per ounce; equity gold sales for 2004 of 7.0 million ounces at total cash costs of \$231 per ounce;
- Net cash provided by operating activities for the fourth quarter of \$587 million and 2004 net cash provided by operating activities of \$1.6 billion; and
- Cash and cash equivalents, marketable securities and investments exceeded debt by \$490 million at year-end.

Wayne W. Murdy, Chairman and Chief Executive Officer, said, “We ended the year with a strong fourth quarter, benefiting from rising gold prices. Our record \$1.6 billion cash flow from operations in 2004 demonstrated the strength of our portfolio and our leverage to the gold price. We remain optimistic about gold prices given the current macro-economic and market fundamentals.”

(Footnotes omitted.)

20. On March 15, 2005, defendants issued a press release entitled “Newmont Announces 2004 Form 10-K Filing; Reported Net Income Increased by \$9 Million to \$443 Million.” The press release stated in relevant part:

Newmont Mining Corporation today announced the filing with the Securities and Exchange Commission of its Annual Report on Form 10-K for 2004.

The Company booked a net \$8.8 million (\$0.02 per share) non-cash, deferred tax adjustment to its previously released, unaudited financial statements for 2004. The net deferred tax adjustment resulted primarily from a release of valuation allowances on deferred tax assets.

As a result of the adjustment, net income for 2004 increased from \$434.5 million (\$0.98 per share) to \$443.3 million (\$1.00 per share). Net cash provided by operating activities for 2004 remained unchanged at \$1.56 billion.

The Company also reclassified \$784 million from Cash and cash equivalents to Marketable securities and other short term investments in its Consolidated Balance Sheet as of December 31, 2004. The reclassification relates to the definition of auction rate securities as having stated or contractual maturity dates for the underlying security in excess of 90 days.

21. On March 17, 2005, defendants issued a press release entitled “Newmont Announces Pricing of 30-Year \$600 Million Public Note Offering.” The press release stated in relevant part:

Newmont Mining Corporation today announced the pricing of its offering of \$600 million of 30-year 5.875 % Notes due 2035. Moody’s Investors Service assigned a Baa1 rating to the Notes while Standard & Poor’s Ratings Services raised its corporate credit and unsecured debt ratings on Newmont Mining Corporation, including the Notes, to BBB+.

The proceeds will be used to fund capital investments, including a potential 200 megawatt power plant in Nevada, and for general corporate purposes. Pending receipt of permits and approvals, construction of the Nevada power plant is intended to begin in the second half of this year and could reduce total cash costs in Nevada by up to \$20 per ounce, starting in mid-2008.

Wayne Murdy, Chairman and Chief Executive Officer of Newmont, said, “We’re pleased with the investor demand for this 30-year bond issue, which provides Newmont with greater financial flexibility and liquidity in a period of renewed capital investment.”

Citigroup Global Markets Inc. and J.P. Morgan Securities Inc. were the joint book-running managers for the offering and UBS Securities LLC was the lead manager for the offering.

### **THE TRUTH BEGINS TO EMERGE**

22. Suddenly, on April 27, 2005, before the markets opened, defendants shocked the market, issuing a press release entitled “Newmont Announces First Quarter Net Income of \$84 Million (\$0.19 per share),” which stated in relevant part:

Newmont Mining Corporation today announced first quarter net income of \$84 million (\$0.19 per share) compared with net income of \$87 million (\$0.20 per share) for the first quarter of 2004. First quarter highlights included:

- Consolidated gold sales of 2.0 million ounces at consolidated costs applicable to sales of \$239 per ounce;
- Net cash provided by operating activities of \$188 million after a working capital increase of \$78 million; and
- Cash and cash equivalents, marketable securities and short-term investments of \$2.2 billion.

**Wayne W. Murdy, Chairman and Chief Executive Officer, said, “As we are seeing throughout the industry, rising input commodity prices adversely impacted operating costs during the quarter.** Production was also temporarily impacted by geotechnical factors at Batu Hijau. Consistent with prior guidance, we anticipate significantly stronger operating performance in the second half of the year as we start to benefit from new stripping capacity and higher grades. Our project development efforts are ahead of schedule, and we continue to see positive exploration results at Phoenix, Minas Conga and Ahafo.”

\* \* \*

## 2005 GUIDANCE

The Company expects consolidated gold sales in the range of 8.5-8.7 million ounces at consolidated costs applicable to sales of \$225-\$235 per ounce in 2005. For 2005, Newmont expects equity gold sales in the range of 6.6-6.8 million ounces, essentially unchanged from previous guidance, at total cash costs of \$240-\$250 per ounce, slightly higher than prior guidance. In addition, the Company expects consolidated copper sales of 695 million pounds at consolidated costs applicable to sales of \$0.48 per pound and equity copper sales of 395 million pounds at total cash costs of \$0.77 per pound in 2005. Newmont will discontinue providing guidance for equity sales and total cash costs beginning in the second quarter of 2005. The Company reiterated that gold sales will be weighted to the second half of the year as new stripping capacity is put into service, generally higher grades are accessed, and Leeville begins production.

In a change from the prior practice of reporting exploration, research and development as a single line item in the income statement, Newmont is now reporting exploration separately from advanced projects, research and development for greater transparency. For 2005, exploration expenditures are expected in the range of \$150-\$160 million, while advanced projects, research and development expenditures are estimated in the range of \$60-\$70 million. Exploration expenditures remain in line with prior guidance while efforts will be focused in Ghana, Peru and Nevada.

Consolidated capital expenditures are expected to be \$1.00-\$1.25 billion.

23. On this news, Newmont’s stock fell precipitously from its April 26, 2005 closing price of \$40.25 per share to less than \$38 per share on April 27, 2005 (before closing below \$37 per share on April 28, 2005) on extremely high volume of more than 14 million shares.

## **DEFENDANTS' SCIENTER**

24. Defendants are Newmont and its top officers and directors: CEO Murdy, President Lassonde and CFO Hansen. Each ran Newmont as a manager, dealing with important issues facing Newmont's business, and controlled the grossly inflated statements concerning Newmont's Class Period operational and financial status, and Newmont's ability to achieve its target revenues and earnings, in order to inflate the Company's profits.

25. Each of the Individual Defendants, by virtue of their high-level positions with Newmont, directly participated in the management of Newmont, was directly involved in the day-to-day operations of Newmont at the highest levels and was privy to confidential proprietary information concerning Newmont and its business, operations, products, growth, financial statements and financial condition and was aware of or deliberately disregarded that false and misleading statements were being made by and regarding the Company. Because of their managerial positions with Newmont, each of the Individual Defendants had access to the adverse undisclosed information about Newmont's business, financial condition and prospects and knew (or deliberately disregarded) that the adverse facts alleged herein rendered the positive representations made during the Class Period materially false and misleading.

26. Each Individual Defendant was personally familiar with the problems Newmont faced and thus the quality of the Company's revenues/receivables because they monitored Newmont's revenue, closely monitoring the performance of Newmont's operations via reports from Newmont's Finance Department, which were generated and provided to the Individual Defendants on a regular basis. As a result of their monitoring, each Individual Defendant was aware that Newmont would be unable to meet its projected results.

27. Each of the Individual Defendants participated in or failed to prevent the false reports regarding Newmont's operational and financial condition during the Class Period to maintain the Company's high stock price, and to complete the \$600 million note sale in March 2005.

### **LOSS CAUSATION/ECONOMIC LOSS**

28. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated Newmont's stock price and operated as a fraud or deceit on Class Period purchasers of Newmont stock by misrepresenting the Company's business success and future business prospects. Defendants achieved this façade of success, growth and strong future business prospects by blatantly misrepresenting the Company's business prospects. Later, however, when defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, Newmont stock fell precipitously as the prior artificial inflation came out of Newmont's stock price. As a result of their purchases of Newmont stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

29. During the Class Period, the defendants presented a misleading picture of Newmont's business and prospects. Thus, instead of truthfully disclosing during the Class Period that Newmont's business was not as healthy as represented, defendants caused Newmont to falsely represent its projected gold and copper extractions and forecasted revenues and earnings.

30. These false claims of strong future results and the success of the Company's mining operations caused and maintained the artificial inflation in Newmont's stock price throughout the Class Period and until the truth was revealed to the market.

31. Defendants' false and misleading statements had the intended effect and caused Newmont stock to trade at artificially inflated levels throughout the Class Period, permitting insiders to justify the payment of millions of dollars in bonuses and other incentive compensation to themselves and to place over \$600 million worth of notes during the Class Period.

32. On April 27, 2005, defendants were forced to publicly disclose that: (a) Newmont had been processing only low-grade ore, which costs more to process; (b) Newmont's costs for commodities used in mining had increased such that total production costs and direct cash production costs increased; (c) the amount of copper and gold Newmont stated it could extract in 2005 was overstated; and (d) as a result of operating difficulties in Q1 2005, Newmont's cash generation had declined by 50% and its exploration costs were significantly increasing. As investors and the market became aware that Newmont's actual business prospects were poorer than represented, which had been obfuscated by defendants, the prior artificial inflation came out of Newmont's stock price, damaging investors.

33. As a direct result of defendants' admissions and the public revelations regarding the truth about Newmont's previous representations and its actual business prospects going forward, Newmont's stock price plummeted over 6%, on unusually high volume, falling from \$40.25 on April 26, 2005 to \$37.70 per share on April 27, 2005, a one day drop of \$2.55 per share, on 300% of the Company's average daily trading volume. This drop removed the inflation from Newmont's stock price, causing real economic loss to investors who had purchased the stock during the Class Period. In sum, as the truth about defendants' fraud and Newmont's business performance was revealed, the Company's stock price plummeted, the artificial inflation came out of the stock and

plaintiff and other members of the Class were damaged, suffering economic losses of approximately \$2.55 per share.

34. The 6% decline in Newmont's stock price at the end of the Class Period was a direct result of the nature and extent of defendants' fraud finally being revealed to investors and the market. The timing and magnitude of Newmont's stock price declines negate any inference that the loss suffered by plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the defendants' fraudulent conduct. During the same period in which Newmont's stock price fell almost 6% as a result of defendants' fraud being revealed, the Standard & Poor's 500 securities index was flat. The economic loss, *i.e.*, damages, suffered by plaintiff and other members of the Class was a direct result of defendants' fraudulent scheme to artificially inflate Newmont's stock price and the subsequent significant decline in the value of Newmont's stock when defendants' prior misrepresentations and other fraudulent conduct was revealed.

#### **CLASS ACTION ALLEGATIONS**

35. This is a class action on behalf of purchasers of Newmont publicly traded securities between July 28, 2004 and April 26, 2005, excluding defendants (the "Class"). Excluded from the Class are officers and directors of the Company, as well as their families and the families of the defendants. Class members are so numerous that joinder of them is impracticable.

36. Common questions of law and fact predominate and include: (i) whether defendants violated the 1934 Act; (ii) whether defendants omitted and/or misrepresented material facts; (iii) whether defendants knew or recklessly disregarded that their statements were false; and

(iv) whether the prices of Newmont's publicly traded securities were inflated during the Class Period and the extent of and appropriate measure of damages.

37. Plaintiff's claims are typical of those of the Class. Prosecution of individual actions would create a risk of inconsistent adjudications. Plaintiff will adequately protect the interests of the Class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

### **FIRST CLAIM FOR RELIEF**

#### **For Violations of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants**

38. Plaintiff incorporates by reference ¶¶1-37 herein.

39. Defendants violated §10(b) and Rule 10b-5 by:

(a) Employing devices, schemes and artifices to defraud;

(b) Making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) Engaging in acts, practices and a course of business that operated as a fraud or deceit upon the Class in connection with their purchases of Newmont publicly traded securities.

40. Class members were damaged as they paid artificially inflated prices for Newmont's publicly traded securities in reliance on the integrity of the market.

### **SECOND CLAIM FOR RELIEF**

#### **For Violations of §20(a) of the 1934 Act Against All Defendants**

41. Plaintiff incorporates by reference ¶¶1-40.

42. The Individual Defendants acted as controlling persons of the Company within the meaning of §20(a) of the 1934 Act, 15 U.S.C. §78t(a), as alleged herein. By virtue of their stock ownership, and high-level positions, and participation in and/or awareness of the Company's operations, 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 that plaintiff contends are false and misleading. Newmont controlled the Individual Defendants and all of its employees.

43. By reason of such wrongful conduct, the defendants are liable pursuant to §20(a) of the 1934 Act. As a direct and proximate result of the wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's publicly traded securities during the Class Period.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff, on behalf of itself and the Class, prays for judgment as follows:

A. Declaring this action to be a class action properly maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding plaintiff and other members of the Class damages together with interest thereon;

C. Awarding plaintiff and other members of the Class costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements; and

D. Awarding plaintiff and other members of the Class such equitable/injunctive or other and further relief as may be just and proper under the circumstances.

**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: June 8, 2005

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