

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

SCOTT SCHULTZ, Individually and On )  
Behalf of All Others Similarly Situated, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
APPLICA INCORPORATED, HARRY D. )  
SCHULMAN and TERRY L. POLISTINA, )  
 )  
Defendants. )  
 )  
\_\_\_\_\_ )

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT FOR VIOLATIONS  
OF FEDERAL SECURITIES LAWS

Plaintiff has alleged the following based upon the investigation of plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Applica Incorporated ("Applica" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and plaintiff believes that substantial additional 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 on behalf of purchasers of the common stock of Applica between November 4, 2004 and April 28, 2005, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

## **JURISDICTION AND VENUE**

2. 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 by the Securities and Exchange Commission (“SEC”) [17 C.F.R. §240.10b-5].

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 21 of the Exchange Act [15 U.S.C. §78aa].

4. Venue is proper in this District pursuant to Section 21 of the Exchange Act, and 28 U.S.C. §1391(b), as and many of the acts and practices complained of herein occurred in substantial part in this District.

5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## **PARTIES**

6. Plaintiff Scott Schultz, as set forth in the accompanying certification, incorporated by reference herein, purchased the common stock of Applica during the Class Period and has been damaged thereby.

7. Defendant Applica engages in the manufacture, marketing, and distribution of small household appliances. The Company markets and distributes kitchen products, home products, pest

control products, pet care products, and personal care products. Applica is incorporated in Florida and maintains its principal place of business at 3633 Flamingo Road, Miramar, FL 33027.

8. (a) Defendant Harry D. Schulman (“Schulman”), at all times relevant, served as the Company’s President and Chief Executive Officer (“CEO”).

(b) Defendant Terry L. Polistina (“Polistina”), at all times relevant, served as the Company’s Senior Vice President and Chief Financial Officer (“CFO”).

(c) Defendants Schulman and Polistina are collectively referred to herein as the “Individual Defendants.”

9. Because of the Individual Defendants’ positions with the Company, they had access to the adverse undisclosed information about its business, operations, products, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company’s operating plans, budgets and forecasts and reports of actual operations compared thereto), 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.

10. 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 above officers of Applica, 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, products, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, 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.

11. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange (the “NYSE”), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to the Company’s financial condition and performance, growth, operations, financial statements, business, products, 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 common stock would be based upon truthful and accurate information. The Individual Defendants’ misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

12. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Applica, each of the Individual Defendants had access to the adverse undisclosed information about Applica’s business prospects and financial condition and performance as particularized herein and knew (or recklessly

disregarded) that these adverse facts rendered the positive representations made by or about Applica and its business issued or adopted by the Company materially false and misleading.

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. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. 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 Applica common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Applica's business, operations, management and the intrinsic value of Applica common stock; (ii) enabled the Company to receive advances under its credit facilities by materially overstating its inventory which had become obsolete; and (iii) caused plaintiff and other members of the Class to purchase Applica common stock at artificially inflated prices.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the common stock of Applica during the Class Period and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant

times, 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.

16. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Applica common shares were actively traded on the NYSE. 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. Record owners and other members of the Class may be identified from records maintained by Applica or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

17. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

18. 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.

19. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the 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 statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Applica; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

20. 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 Class members may be relatively small, the expense and burden of individual litigation make it impossible for 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.

### **SUBSTANTIVE ALLEGATIONS**

21. Defendant Applica describes itself as a “marketer[] and distributor[] of a broad range of branded small household appliances. Applica markets and distributes kitchen products, home products, pest control products, pet care products and personal care products.”

22. Prior to the beginning of the Class Period, Applica was attempting to transition itself away from manufacturing and to marketing and distributing its products. To further that initiative, prior to the Class Period, the Company sold two key manufacturing operations in Hong Kong and Mexico.

23. Throughout the Class Period, defendants issued materially false and misleading statements highlighting the Company’s ability to transform its business and become more profitable. These statements were materially false and misleading because they failed to disclose and misrepresented the following adverse facts, among others: (a) that the Company was experiencing decreasing demand for its products. In particular, demand for two key products, Tide™ Buzz™ Ultrasonic Stain Remover and Home Café™ single cup coffee maker, were not meeting internal expectations; (b) that Applica was materially overstating its net worth by failing to timely writedown

the value of its inventory which had become obsolete and unsaleable; (c) that Applica was experiencing higher product warranty returns, which it had not appropriately reserved for; (d) that Applica's financial statements issued during the Class Period were not prepared in accordance with Generally Accepted Accounting Principles ("GAAP") and therefore were materially false and misleading; and (e) as a result of the foregoing, there was no reasonable basis for the Company's revenue and earnings guidance.

**MATERIALLY FALSE AND MISLEADING STATEMENTS  
MADE DURING THE CLASS PERIOD**

24. The Class Period begins on November 4, 2004. On that date, Applica issued a press release announcing its financial results for its third quarter, the period ended September 30, 2004. For the quarter, the Company reported sales of \$187.8 million and a net loss of \$9.9 million, or \$0.41 per share, including expenses of \$9.2 million related to termination benefits and a loss of \$0.8 million on the sale of Applica's Chinese manufacturing operations. Defendant Schulman, commenting on the results, stated, in pertinent part, as follows:

We have gone through significant changes over the last few months, including the sale of our Chinese manufacturing operations, the renewal of the Black & Decker(R) license, the move of our executive offices and other matters. Additionally, this past week, we sold our Jerdon division. **We believe that these are profound changes that will have a lasting positive effect on the company, and we intend to continue to transform Applica to create long--term shareholder value .** [Emphasis added.]

25. Applica's financial results for the third quarter, the period ended September 30, 2004, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about November 8, 2004, which was signed by defendants Schulman and Polistina.

26. On March 14, 2005, Applica issued a press release announcing its financial results for its fourth quarter and year end of 2004, the period ended December 31, 2004. For the quarter, the

Company reported sales of \$247.5 million and net income of \$5.3 million, or \$0.22 per diluted share.

Defendant Schulman, commenting on the results, stated, in pertinent part, as follows:

We are pleased by our strong performance in the fourth quarter. We remain financially stable despite a difficult year. Management will continue to focus aggressively on improving profitability and the balance sheet. We will increase customer and product contribution margins, maximize supply chain efficiencies and deliver quality products. **We expect that our efforts will position us to be profitable in 2005.** [Emphasis added.]

27. Following its earnings announcement, on March 14, 2005, the Individual Defendants held a conference call with analysts and investors. With regard to the Company's outlook, defendant Polistina stated, in pertinent part, as follows:

As for the first quarter, we should have sales in the \$120 to \$125 million range with a loss of \$0.20 to \$0.25 per share. We should see a big improvement in operating income but we won't record a tax benefit like we did last year. Last year's loss of \$0.19 included a tax benefit of \$0.12 per share. As far as the balance sheet this year, our focus will be on working capital management. Inventory and debt will come down on average compared to 2004. And we expect to end the year \$20 to \$30 million better in both compared to 2004. Capital expenditure is estimated at \$13 million for year. We expect cash taxes to be less than \$5 million for the year. So by year end we're looking for total debt to be below \$135 million. Our plans are to build around -- -- are built around making a profit and meeting or hopefully beating our guidance.

28. Applica's financial results for the fourth quarter and year end of 2004, the period ended December 31, 2004, were repeated in the Company's Report on Form 10-K filed with the SEC on or about March 11, 2005, which was signed by defendants Schulman and Polistina, among others.

29. The statements referenced above in ¶¶24-28 were each materially false and misleading when made because defendants failed to disclose and/or misrepresented the following adverse facts, which were known to defendants, or recklessly disregarded by them, at all relevant times:

(a) that the Company was experiencing decreasing demand for its products. In particular, demand for two key products, Tide™ Buzz™ Ultrasonic Stain Remover and Home Café™ single cup coffee maker, were not meeting internal expectations;

(b) that Applica was materially overstating its net worth by failing to timely writedown the value of its inventory which had become obsolete and unsaleable;

(c) that Applica was experiencing higher product warranty returns, which it had not appropriately reserved for;

(d) that Applica's financial statements issued during the Class Period were not prepared in accordance with GAAP and therefore were materially false and misleading; and

(e) that as a result of the foregoing, there was no reasonable basis for the Company's revenue and earnings guidance.

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

30. On April 20, 2005, Applica issued a press release updating its financial guidance it provided on March 14, 2005. The press release stated, in pertinent part, as follows:

Applica Incorporated (NYSE:APN) today announced that it anticipates it will record a net loss in the first quarter of between \$22 million and \$23 million. The larger than estimated loss is primarily the result of:

- \* a write-down of inventory related to lower-than-anticipated consumer demand;
- \* increased product warranty returns and related expenses; and
- \* additional losses in the Mexico manufacturing operations.

31. Upon this shocking news, shares of Applica common stock closed at \$3.00 per share, a decline of \$1.57 per share, or over 30%, from the previous trading day's close, on heavy trading volume.

32. On April 28, 2005, Applica issued a press release announcing its financial results for the first quarter of 2005, the period ending March 31, 2005. The Company reported sales of \$112.5 million. The press release continued, in pertinent part, as follows:

As previously announced, Applica initiated a product and customer profitability review that resulted in an expected decrease in sales in the first quarter. Additionally, the sales of both the Hong Kong--based manufacturing operations in July 2004 and the Jerdon division in October 2004 contributed to lower sales. Applica's gross profit margin decreased to 16.7% in the three--month period ended March 31, 2005 as compared to 26.1% for the same period in 2004. Gross margins in the first quarter were negatively impacted by:

- inventory write-downs of \$9.4 million related to lower-than-anticipated consumer demand of certain products, primarily related to our ultrasonic stain removal appliance;
- higher product warranty returns and related expenses of \$3.3 million; and
- a loss of \$2.1 million in the Mexico manufacturing operations.

These were partially offset by an improving product mix. Applica reported a net loss for the first quarter of 2005 of \$23.0 million, or \$0.95 per diluted share, compared to a net loss of \$4.5 million, or \$0.19 per diluted share, for the 2004 first quarter.

Applica also announced that it has made a policy change with regard to providing future earnings guidance. Starting this quarter and in the future, Applica will no longer provide quarterly or annual earnings guidance. Further, Applica will not update its outlook for full--year earnings expectations for 2005 as the year progresses.

Defendant Schulman, commenting on the results, stated, in pertinent part, as follows:

We previously announced that we would report a larger net loss than anticipated in the first quarter. The loss was primarily the result of inventory write--downs, the majority of which were related to our ultrasonic stain removal appliance. The decisions we made in the first quarter will allow our product managers to focus on, and accelerate the introduction of, the next generation of this product.

Despite the loss in the quarter, to date, we have paid down approximately \$26 million of debt since year--end and we currently have availability under our bank revolver of approximately \$38 million.

Due to the difficulty in predicting the impact of transition and other issues on our Company, we will no longer be providing guidance. In our quarterly calls, we will continue to provide investors with our perspective on trends in the industry and our operations, our strategic initiatives and those factors critical to understanding our business and operating environment.

33. Upon this news, shares of Applica common stock declined further, falling to \$2.51 per share.

34. Applica's financial results for the first quarter of 2005, the period ended March 31, 2005, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about April 29, 2005, which was signed by defendant s Schulman and Polistina. The 10-Q stated, in pertinent part, as follows:

#### COST OF GOODS SOLD

Included in cost of sales for the first quarter of 2005 are inventory write-downs of approximately \$9.4 million related to lower- than-anticipated consumer demand for two of our products. Also, included in cost of sales for the three months ended March 31, 2005 are restructuring charges of \$0.9 million related to our decision to move the production of Home Café single cup coffee maker from Mexico to third party manufacturers in China. The restructuring charges consist of \$0.3 million in severance charges and \$0.6 million in the acceleration of the depreciation of machinery and equipment used in the manufacturing process.

Included in cost of sales for the three months ended March 31, 2004 are restructuring charges of \$0.9 million primarily related to the downsizing of our Hong-Kong based manufacturing facilities. The Hong Kong based manufacturing operations were sold in July 2004. The inventory write-downs relate to the Household Products reportable segment. All restructuring charges relate to the Manufacturing reportable segment.

\* \* \*

#### SHORT-TERM DEBT

##### Revolving Credit Facility

Applica has a revolving credit facility with a syndicate of banks that provides for borrowings on a revolving basis of up to \$175 million with a \$10 million sublimit for letters of credit (the "credit facility"). The credit facility has a maturity date of November 2009. Advances under the credit facility are governed by Applica's

collateral value, which is based upon percentages of eligible accounts receivable and inventories.

\* \* \*

We continuously have to balance the cost of our products, without compromising quality, with the price constraints from our customers. The prices of raw materials such as copper, steel and plastics have significantly increased in recent years and are expected to continue to be high in the foreseeable future. This has negatively impacted our gross margins by increasing the price we pay for our products and is expected to continue to negatively impact our margins during the remainder of 2005.

We have been focused on making changes to combat the margin pressures resulting from the combination of the inflation of raw materials prices and the deflationary pressures from the retail environment. Steps we have taken include:

- the downsizing and ultimate sale of our Hong Kong-based manufacturing operations;
- the downsizing of our manufacturing operations in Mexico; and
- the establishment of strategic sourcing partners and joint product development relationships.

We are also continuing to focus on innovative products with proprietary technologies, design and higher margins. As part of our focus on new products introductions and brand development, we search for other growth opportunities within and beyond our existing businesses. We believe that the markets and industry in which we compete may provide growth opportunities through strategic acquisitions or mergers. We review these prospects for strategic transactions as they become available.

We continue to rationalize our Mexican manufacturing operations. In 2004, we shifted a significant amount of production from Mexico to third parties in China. As part of the rationalization, we also plan to sell the building housing our factory in Mexico. In 2004, we began to reduce our Mexican manufacturing capacity to reflect only the volume needed for the Mexican marketplace, which will continue throughout 2005.

Additionally, in late 2004, we initiated an annual product and customer profitability review. Through this process, management identifies products sold to customers that do not meet Applica's product profitability threshold. Once those products are identified, management either requests a price increase from the applicable customer or cost reductions from the applicable supplier. If the combination of price increases and cost reductions does not increase the product's profitability to meet the threshold,

Applica will not offer such product to the customer. This initiative will significantly reduce the number of products we offer. As a result, we expect our sales volume to continue to decrease in 2005; however, this process is expected to result in higher gross margin percentages.

\* \* \*

Gross Profit. Applica's gross profit margin decreased to 16.7% for the three months ended March 31, 2005 as compared to 26.1% for the same period in 2004. The gross profit margin decrease was primarily attributed to:

- inventory write-downs of \$9.4 million related to lower- than-anticipated consumer demand for two of our products;
- higher product warranty returns and related expenses of \$3.3 million; and
- higher unabsorbed overhead and inefficiencies of \$2.1 million at our Mexican manufacturing operations as the result of reduced production associated with our downsizing activities during 2004 and the first quarter of 2005.

The majority of the inventory write-downs related to the Tide™ Buzz™ Ultrasonic Stain Remover. Sales of the first generation of this product were lower than we had anticipated. The size of the product and the price were the main reasons given by consumers for not purchasing the product. Based on this information, we decided to close out the first generation of the Tide™ Buzz™ and accelerate the introduction of the next generation. We believe that we have addressed both those factors in the next generation of the Tide™ Buzz™ Ultrasonic Stain Remover.

Additionally, the inventory write-down included the Home Café™ single cup coffee maker. Our Home Café™ sales plan for 2005 was based on promotional campaigns by our alliance partner that did not fully materialize. This resulted in lower- than-anticipated consumer demand for the Home Café™ coffee maker, which resulted in excess inventory. We expect to sell the first generation units in the second half of 2005. The next generation of Home Café™ is scheduled to be launched in the fourth quarter of 2005. The Tide™ Buzz™ and the Home Café™ represented approximately 3.7% of consolidated net sales in 2004.

We have recently experienced an increase in our warranty returns and related expenses. We believe that we have taken appropriate measures to combat these trends in a timely and effective manner. These measures include the contracting of an independent third party quality consultant to oversee the production process at our major suppliers in China and our manufacturing facility in Mexico. We expect unabsorbed overhead and inefficiencies to continue at our Mexican manufacturing operations for the remainder of 2005.

We also anticipate additional severance and asset write-downs as we continue to downsize our manufacturing operations. Additionally, we continue to experience increases in prices for raw materials, including plastic, steel, aluminum and copper in our Mexican manufacturing operations, as well as fuel surcharges and increased freight costs in the first quarter of 2005. We expect these trends to continue for the remainder of 2005, adversely impacting gross profit margins.

35. The market for Applica 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, Applica common stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Applica common stock relying upon the integrity of the market price of Applica common stock and market information relating to Applica, and have been damaged thereby.

36. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Applica 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.

37. 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 Applica business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Applica 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.

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

38. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market, and a course of conduct that artificially inflated Applica's stock price and operated as a fraud or deceit on Class Period purchasers of Applica's stock by misrepresenting the Company's expected financial results. When Defendants' prior misrepresentations and fraudulent conduct came to be revealed and was apparent to investors, shares of Applica declined precipitously - evidence that the prior artificial inflation in the price of Applica's shares was eradicated. As a result of their purchases of Applica stock during the Class Period, plaintiff and other members of the Class suffered economic losses, *i.e.*, damages under the federal securities laws.

39. By misrepresenting the Company's prospects, Defendants presented a misleading image of Applica's business and future growth prospects. During the Class Period, defendants repeatedly emphasized the financial strength and well-being of the Company. These claims caused and maintained the artificial inflation in Applica's stock price throughout the Class Period and until the truth about the Company was ultimately revealed to investors.

40. Defendants' false and materially misleading statements had the intended effect of causing Applica's shares to trade at artificially inflated levels throughout the Class Period - reaching a Class Period high of over \$6.00 per share on December 31, 2004.

41. On April 20, 2005, however, Defendants revealed that the Company would not come near achieving the guidance previously sponsored and/or endorsed by Defendants, that the Company's business was suffering from numerous adverse factors and was marking down inventory

and experiencing increased warranty expenses. Then, on April 28, 2005, Defendants further detailed the impact of these adverse factors on Applica's business. These belated disclosures had an immediate, adverse impact on the price of Applica shares.

42. As a direct result of Defendants' statements on April 20, 2005 and April 28, 2005, which indicated that: (i) the Company would take an inventory write-down of \$9.4 million related to lower- than-anticipated consumer demand for two of our products; and (ii) the Company was experiencing higher product warranty returns and related expenses of \$3.3 million, among other things, Applica's stock price collapsed to \$2.51 per share—a decline of more than 50% from its Class Period high. This dramatic share price decline eradicated much of the artificial inflation from Applica's share price, causing real economic loss to investors who purchased this stock during the Class Period.

43. The decline in Applica stock price at the end of the Class Period was a direct result of the nature and extent of defendants' fraud being revealed to investors and to the market. The timing and magnitude of Applica stock price decline negates any inference that the losses suffered by plaintiff and the other members of the Class was caused by changed market conditions, macroeconomic or industry factors or even Company-specific facts unrelated to defendants' fraudulent conduct. 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 the price of Applica's stock and the subsequent significant decline in the value of the Company's shares when defendants' prior misstatements and other fraudulent conduct was revealed.

### **Additional Scienter Allegations**

44. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew 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 violations 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 Applica, their control over, and/or receipt and/or modification of Applica allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Applica, participated in the fraudulent scheme alleged herein.

45. Defendants were further motivated to engage in this course of conduct in order to enable the Company to receive advances under its credit facilities by materially overstating its inventory which had become obsolete.

### **Applicability of Presumption of Reliance: Fraud on the Market Doctrine**

46. At all relevant times, the market for Applica's common stock was an efficient market for the following reasons, among others:

- (a) Applica stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;
- (b) As a regulated issuer, Applica filed periodic public reports with the SEC and the NYSE;

(c) Applica regularly communicated with public investors via established market communication mechanisms, including through 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; and

(d) Applica was followed by several 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 was publicly available and entered the public marketplace.

47. As a result of the foregoing, the market for Applica common stock promptly digested current information regarding Applica from all publicly available sources and reflected such information in Applica stock price. Under these circumstances, all purchasers of Applica common stock during the Class Period suffered similar injury through their purchase of Applica's common stock at artificially inflated prices and a presumption of reliance applies.

#### **No Safe Harbor**

48. 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. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does 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 knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Applica who knew that those statements were false when made.

## COUNT I

### **Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants**

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

50. 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 regarding Applica's business, operations, management and the intrinsic value of Applica common stock; (ii) enable the Company to receive advances under its credit facilities by materially overstating its inventory which had become obsolete; and (iii) cause plaintiff and other members of the Class to purchase Applica common stock 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.

51. 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 common stock in an effort to maintain artificially high market prices for Applica common stock 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.

52. 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 Applica as specified herein.

53. 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 Applica'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 Applica 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 Applica common stock during the Class Period.

54. 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.

55. 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 Applica's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its common stock. 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.

56. 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 Applica common stock was artificially inflated during the Class Period. In ignorance of the fact that market price of Applica publicly-traded common stock 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 common stock 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 Applica common stock during the Class Period at artificially high prices and were damaged thereby.

57. 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 Applica was experiencing, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their Applica common stock, or, if they had acquired such common stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

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

59. 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 common stock during the Class Period.

## **COUNT II**

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

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

61. The Individual Defendants acted as controlling persons of Applica 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 contends 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.

62. 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.

63. As set forth above, Applica 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 common stock during the Class Period.

**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.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

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LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
197 South Federal Highway, Suite 200  
Boca Raton, FL 33432  
Telephone: (561) 750-3000  
(561) 750-3364 (fax)

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JACK REISE

PAUL J. GELLER  
FLORIDA BAR NO. 984795  
pgeller@lerachlaw.com  
JACK REISE  
FLORIDA BAR NO. 058149  
jreise@lerachlaw.com

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
SAMUEL H. RUDMAN  
DAVID A. ROSENFELD  
MARIO ALBA JR.  
58 South Service Road, Suite 200  
Melville, NY 11747  
Telephone: 631.367.7100  
631.367.1173 (fax)

Attorneys for Plaintiff