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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT SCHEMP, On Behalf of Himself and)	Case No.
All Others Similarly Situated,)	
)	<u>CLASS ACTION</u>
Plaintiff,)	
)	COMPLAINT FOR VIOLATION OF THE
vs.)	FEDERAL SECURITIES LAWS
)	
MIKOHN GAMING CORPORATION d/b/a)	
PROGRESSIVE GAMING)	
INTERNATIONAL CORPORATION,)	
RUSSEL H. McMEEKIN and MICHAEL A.)	
SICURO,)	
)	
Defendants.)	
)	<u>DEMAND FOR JURY TRIAL</u>

NATURE OF THE CASE

1. This is a securities fraud class action on behalf of all purchasers of the publicly traded securities of Mikohn Gaming Corporation d/b/a Progressive Gaming International Corporation (“Mikohn” or the “Company”) between January 23, 2005 and October 19, 2005 (the “Class Period”), against Mikohn and certain of its officers and directors for violations of the Securities Exchange Act of 1934 (the “1934 Act”).

2. Mikohn supplies integrated casino management systems software and games for the gaming industry worldwide. The Company develops and distributes various slot and table games, plus management and progressive jackpot software systems. It operates in two segments, Table and Slot Games, and Systems. The Table and Slot Games segment develops, acquires, licenses, and distributes proprietary and nonproprietary branded and nonbranded table and slot games. The Systems segment licenses its management and progressive jackpot systems. These systems enable casinos to track the wagers placed by both table and slot players, and the performance of each table and slot game.

3. In January 2005, defendants announced the Company’s intention to acquire VirtGame Corp., a provider of open architecture gaming software. Defendants knew that VirtGame shareholders would vote in favor of the stock-for-stock acquisition in September 2005 provided the defendants were able to conceal the truth, including but not limited to the impact of Financial Accounting Standards Board Statement No. 153 (“SFAS 153”), which applies to exchanges of non-monetary assets. Because the VirtGame acquisition was to be a stock-for-stock acquisition, defendants believed it was imperative that there be no disclosure of any adverse information at that time. Although SFAS 153 was issued in December 2004, and would (and did) become effective in

June 2005, defendants concealed from the Company's (and VirtGame's) shareholders the impact it would have on the Company's financial statements.

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

(a) that defendants failed to disclose that the application of SFAS 153 would have a material adverse impact on the Company's third quarter 2005 financial results;

(b) that defendants issued false financial projections for the third quarter 2005 that failed to properly account for non-monetary transactions in accordance with Generally Accepted Accounting Principles ("GAAP");

(c) that defendants knew their claim that "[t]he [VirtGame] deal is expected to close in the second quarter of fiscal 2005" would never be fulfilled if the truth concerning the Company's *true* prospects was revealed to VirtGame shareholders; and

(d) that, as described in ¶¶28-32, the Company's estimated performance metrics were materially false and misleading.

5. On October 20, 2005, Mikohn's shares plummeted 31% after the Company reported an unexpected third-quarter loss. Mikohn revealed for the first time the adverse impact of SFAS 153, stating that it would not recognize \$6 million from "two complex software licensing transactions" as revenue in the period, contrary to the Company's earlier projections which assumed the incorporation of these sales. In response to these revelations just days following the completion of the Company's stock-for-stock acquisition of VirtGame, the Company's shares fell \$3.75 to \$9.28, or 28%, on Nasdaq Composite trading after reaching a low of \$8.87. The decline more than wiped out the stock's advance for the year, leaving it down 11%. This reduction in sales resulted in

an *operating loss* for the quarter of \$.09 a share *compared with a previous forecast of a \$.09 per share profit*.

6. During the Class Period, defendants made positive but false statements about Mikohn's results and business, including its third quarter 2005 projections, while concealing material adverse information about the true value of the Company's software licensing transactions. As a result, Mikohn's stock traded at artificially inflated levels, permitting the Individual Defendants and the Company to consummate a \$20 million acquisition using the Company's inflated stock as currency.

JURISDICTION AND VENUE

7. Jurisdiction is conferred by §27 of the 1934 Act. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act and Rule 10b-5.

8. Venue is proper in this District pursuant to §27 of the 1934 Act. Many of the false and misleading statements were made in or issued from this District.

9. The Company's principal executive offices are located at 920 Pilot Road, Las Vegas, Nevada, where the day-to-day operations of the Company are directed and managed.

THE PARTIES

10. Plaintiff Robert Schemp purchased Mikohn publicly traded securities as described in the attached certification and was damaged thereby.

11. Defendant Mikohn supplies integrated casino management systems software and games for the gaming industry worldwide. The Company develops and distributes various slot and table games, plus management, and progressive jackpot software systems.

12. Defendant Russel H. McMeekin (“McMeekin”) was Chief Executive Officer and President of Mikohn during the Class Period. Defendant McMeekin actively participated in concealing, among other things, the impact of SFAS 153 on the Company’s business prospects.

13. Defendant Michael A. Sicuro (“Sicuro”) was Executive Vice President, Chief Financial Officer, Secretary and Treasurer of Mikohn during the Class Period. Defendant Sicuro actively participated in concealing, among other things, the impact of SFAS 153 on the Company’s business prospects.

14. The defendants named in ¶¶12-13 are collectively referred to herein as the “Individual Defendants.”

SCIENTER, FRAUDULENT SCHEME AND COURSE OF BUSINESS

15. Mikohn’s top officers and directors, including the Individual Defendants, had knowledge of Mikohn’s problems with generating legitimate sales and earnings growth to the extent the market expected and were motivated to conceal such problems. The slowing economy and potential decline in growth was the most important factor facing Mikohn in 2005. Mikohn’s growth was dependent on two factors: internal growth and the successful acquisitions of other companies. Defendants sought to keep the stock price high so as to make acquisitions less dilutive, *i.e.*, the higher the price at which Mikohn stock traded, the fewer number of shares Mikohn would have to issue to make the acquisition. Therefore, defendants knew it was imperative to maintain the highest stock price possible. Defendants were motivated to artificially inflate the share price to reduce the number of shares issued. The VirtGame acquisition was viewed as an opportunity to benefit from defendants’ scheme in the proposed stock-for-stock acquisition. Not only were defendants intent upon making the acquisition less dilutive to the Company (and defendants’ personal Mikohn holdings), they also wanted to ensure that the adverse impact of SFAS 153 was concealed from

VirtGame shareholders until *after* the transaction had been consummated. Revealing the adverse information prior to the acquisition would not only cause the transaction to become more dilutive (vis-à-vis the potential increase in shares used as currency to consummate the acquisition), but would also jeopardize the VirtGame shareholders' vote to endorse the acquisition.

16. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Mikohn securities was a success, as it (i) temporarily deceived the investing public regarding Mikohn's prospects and business; (ii) artificially inflated the prices of Mikohn's publicly traded securities; (iii) caused plaintiff and other members of the Class to purchase Mikohn publicly traded securities at inflated prices; and (iv) permitted Mikohn to consummate the VirtGame acquisition using \$20 million worth of the Company's inflated stock.

BACKGROUND TO THE CLASS PERIOD

17. Defendants knew that SFAS 153, which was issued in December 2004, would adversely impact Mikohn's results when it became effective in June 2005. However, defendants sought to conceal any information concerning the impact of its application to the Company's future results. The defendants knew that VirtGame shareholders would vote on and approve the acquisition in September 2005 *only* if defendants concealed the impact of SFAS 153 until *after* the vote. As a result, they knew it was vital to the closing of the acquisition to keep the stock price artificially inflated and to avoid the disclosure of any adverse information during the Class Period.

FALSE AND MISLEADING STATEMENTS

18. On January 23, 2005, the Company issued a press release entitled "Progressive Gaming International Intends to Acquire VirtGame," which stated in part:

Progressive Gaming International Corporation (the Company), a leading supplier of integrated casino management systems and games for the gaming industry world-wide, announced today that it has entered into an exclusive agreement to negotiate to acquire VirtGame Corp. in a stock swap valued at approximately \$20

million. VirtGame is a provider of open architecture gaming software primarily focused on the delivery of central server-based slot games and centrally managed sports betting.

* * *

President and Chief Executive Officer of Virtgame Mark Newburg stated: “When I joined VirtGame in August 2004, it was my mission to align our company’s technologies with an established global distribution system. ***We expect this transaction to achieve that goal while providing our shareholders a unique opportunity to increase the value of their holdings through ownership in PGIC.*** We expect Progressive Gaming International will continue to advance our technology to the next generation and successfully commercialize central server-based and downloadable games and centrally managed sports betting.”

* * *

The Company does not intend to operate the sports wagering business in Nevada, but expects to monetize the intellectual property through licensing transactions with third parties, which will be disclosed separately.

Chief Financial Officer Michael A. Sicuro stated: “We are creating a new path for the future for our customers and shareholders. We expect this transaction to significantly enhance our systems portfolio by providing multiple forms of gaming revenue for our customers world-wide from a single integrated casino management system. When we integrate these new modules with our existing solutions for slot, table and multi-game progressives, we believe we will have a unique and powerful product offering for gaming operators world-wide. This is a classic buy vs. build decision, with the intent to get a product to market faster and more cost effectively through acquiring developed technology and intellectual property. ***We expect the deal to be neutral in 2005, \$.05 - \$.10 accretive in 2006, with the real potential for growth in revenues and free cash flow occurring in 2007 and beyond. We may realize the benefits sooner, depending on the velocity of the adoption of this leading edge technology.***”

The Company expects to finalize the definitive agreement within the next 7-10 days. The transaction will require regulatory approval, and approval by the VirtGame shareholders. ***The deal is expected to close in the second quarter of fiscal 2005.***

19. On February 22, 2005, *Bloomberg* issued an article regarding the VirtGame acquisition:

Progressive Gaming International Corp., the designer of casino-management software that’s changing its name from Mikohn Gaming Corp., will acquire

VirtGame Corp. for about \$20 million in stock to add a developer of slot-game software.

Progressive Gaming said in a statement it will exchange 2 million shares for all the publicly traded securities, warrants and preferred stock of San Diego-based VirtGame. The transaction values VirtGame at about 31 cents a share, based on VirtGame's 63.6 million fully diluted shares outstanding, or an 11 percent discount to Friday's closing stock price of 35 cents.

20. On May 4, 2005, the Company announced its first quarter fiscal 2005 results:

Progressive Gaming International Corporation, a leading provider of diversified technology and content products and services used in the gaming industry worldwide, announced today that it reported net earnings of \$1.0 million, or \$.04 per share, for the three months ended March 31, 2005, as compared to a net loss of \$2.4 million, or \$.11 per share, in the same period a year ago.

* * *

McMeekin continued: "We are now consistently delivering bottom line results. This provides us with confidence in our future as evidenced by the increase in our corporate development activities, which we expect to continue as we balance growth between revenues generated from this channel and contracts obtained organically."

Financial Outlook

Chief Financial Officer Michael A. Sicuro stated: "*We expect our revenues, EBITDA and earnings per share in the second quarter of fiscal 2005 to be \$19.0 - \$21.0 million, \$5.2 - \$5.7 million and \$.05 - \$.07, respectively, excluding the nonrecurring gain on the disposition of the sign business. The revenue estimate for the second quarter of 2005 reflects the sale of the interior sign division. Comparable revenues and EBITDA for the second quarter of 2004 excluding the interior signage business, was \$17.5 million and \$2.7 million, respectively. Free cash flow for the second quarter of fiscal 2005 is expected to be between \$5.0 - \$6.0 million, including corporate development activities and debt service. We expect systems revenues to increase sequentially in the second quarter of 2005, with an acceleration of this growth anticipated in the second half of the current fiscal year, consistent with historical patterns.*"

... We are now estimating earnings per share to be \$.25 - \$.32 for 2005 (excluding the effect of the exercise of any outstanding warrants and excluding the nonrecurring gain on the disposition of the sign business). There is no change to our estimates for EBITDA or free cash flow for 2005 of \$20 - \$25 million and \$5 - \$10 million, respectively. We expect revenues for fiscal 2005 to be \$85 - \$92 million, reflecting a change from previous estimates solely as a result of the divestiture of the interior sign division. These estimates do not reflect the accretion

to free cash flow and earnings per share for the retirement of the remaining debt. We expect to commence the retirement of this debt during the third quarter of fiscal 2005, when such debt is callable at a more attractive price than current market valuations.”

21. On May 10, 2005, the Company filed its 10-Q for the quarter ended March 31, 2005, revealing the impact to the Company of a *negative* vote by VirtGame shareholders, which defendants knew would result should the defendants reveal the impact of SFAS 153 prior to the vote. The 10-Q stated in part:

Whether or not the VirtGame acquisition is completed, we will incur substantial costs.

We will incur substantial costs related to the transaction with VirtGame whether or not the transaction is completed. These costs include fees for financial advisors, attorneys and accountants, filing fees and financial printing costs. In addition, if either party terminates the merger agreement, it may be obligated to pay a termination fee and expenses to the other party under certain circumstances. We have also provided VirtGame with a secured credit facility of \$2.5 million to bridge their operations until the acquisition is completed.

Failure to complete the VirtGame acquisition could negatively affect our stock prices and future business and operations.

If the acquisition transaction with VirtGame is not completed for any reason, the price of our publicly traded securities may decline to the extent that the current market price of our publicly traded securities reflects a positive market assumption that the transaction will be completed. In addition, if the merger agreement is terminated, we may be unable to find a third party willing to engage in a similar transaction on terms as favorable as those set forth in the merger agreement, or at all. This could limit our ability to pursue our strategic goals in an atmosphere of increased uncertainty.

22. On August 1, 2005, the Company announced its second quarter fiscal 2005 results:

Progressive Gaming International Corporation, a leading provider of diversified technology and content products and services used in the gaming industry worldwide, announced today that it reported net income of \$1.9 million, or \$.07 per share, for the three months ended June 30, 2005, as compared to a net loss of \$.9 million, or a loss of \$.04 per share in the same period in 2004.

* * *

President and Chief Executive Officer Russel McMeekin stated: “For the first time in the Company’s history, we delivered net income for four consecutive quarters. In addition, we have either met or exceeded bottom line expectations for six consecutive quarters. Our management team continues to execute on numerous strategic initiatives that focus on higher margin technology and content solutions while eliminating lower margin businesses, in parallel with growing our pipeline and backlog of contracts for our integrated casino management solutions and our newest table game, Texas Hold ‘Em Bonus Poker(TM). Our installed base for this new table game is accelerating virtually every month and continues to have strong performance.”

McMeekin continued: “We have a solid platform for growth as evidenced by the 9 percent increase in our core revenues during the first half of this fiscal year. This is the real foundation that will provide our team with the operating capital to invest strategically in the future of our business. At this year’s upcoming Global Gaming Expo in September, we expect to provide the largest and most exciting showcase of new products in the Company’s history, featuring central server based slot games and thin client wagering applications from our pending acquisition of VirtGame, and our new high speed bet recognition technology for our table management system acquired through our partnership with Magellan. In addition, we expect to highlight the next generation table management system currently being developed with our new partners. These new products are key drivers of our future revenue streams, which we expect to augment with additional sources of revenues through corporate development activities.”

Financial Outlook

Chief Financial Officer Michael A. Sicuro stated: “*We expect our revenues, EBITDA and earnings per share in the third quarter of fiscal 2005 to be \$20.0 - \$21.0 million, \$5.5- \$6.2 million and \$.08 - \$.10, respectively. Comparable EBITDA and earnings per share for the third quarter of 2004 excluding the interior sign business, was \$4.9 million and \$.03 per share, respectively. We expect our cash balance at the end of the third quarter of fiscal 2005 to remain consistent with the June 30, 2005 balance as we deploy our operating cash flow to further enhance our intellectual property portfolio through additional investments including our minority investment in Magellan, to complete the acquisition of VirtGame, and other potential corporate development opportunities.*”

Sicuro continued: “Our operating results are beginning to reflect the graceful exit of lower margin businesses providing our team the ability to focus solely on developing and distributing higher margin products. Our pipeline of contracts for table games and integrated casino management systems continues to be solid. We are now estimating earnings per share to be \$.27 - \$.32 for fiscal 2005. There is no change to our estimates for EBITDA or free cash flow for 2005 of \$20 - \$25 million and \$5 - \$10 million, respectively. We continue to expect revenues for fiscal 2005 to be \$85 - \$92 million, reflecting the sale of the interior

sign division. These estimates do not reflect the accretion to free cash flow and earnings per share for the retirement of our high yield debt. We expect to commence the process of retiring this debt later in the current fiscal year.”

23. On October 10, 2005, following the completion of the Company’s stock-for-stock acquisition, the Company issued a release entitled “Progressive Gaming International Completes Acquisition of VirtGame,” which stated in part:

Progressive Gaming International Corporation, a leading provider of diversified technology and content products and services used in the gaming industry worldwide announced today that it has completed its acquisition of VirtGame Corp. The Company will issue a maximum of 1,758,498 shares of its publicly traded securities in connection with the transaction, including shares issued in exchange for outstanding shares of VirtGame publicly traded securities and preferred stock, as well as shares that are issuable upon the exercise of VirtGame options and warrants, which were assumed by the Company.

24. Just days later, VirtGame shareholders, as well as Mikohn’s shareholders, would learn they had been deceived. On October 20, 2005, the Company filed an 8-K with the SEC explaining that because the Company failed to properly account for two non-monetary transactions in accordance with SFAS 153, the Company expected to report no earnings at all, but rather a loss of \$.09 per share for the third quarter of 2005. In truth, the Company had failed to comply with SFAS 153 and could not recognize revenue in the third quarter 2005 from these two transactions.

25. On October 20, 2005, *Bloomberg* issued an article entitled “Mikohn Gaming Shares Tumble on Unexpected Third-Quarter Losses,” which stated in part:

Mikohn Gaming Corp.’s shares tumbled as much as 31 percent after the designer of casino-management software reported an unexpected third-quarter loss.

Mikohn, which operates under the name Progressive Gaming International Corp., said in a U.S. Securities and Exchange Commission Filing it will not recognize \$6 million from “two complex software licensing transactions” as revenue in the period.

Shares of the Las Vegas-based company were down \$3.87 to \$9.16 at 12:23 p.m. in New York in Nasdaq Composite trading after reaching a low of \$9.05.

The reduction in sales resulted in an operating loss for the quarter of about 9 cents a share, compared with a previous forecast for per-share profit of 9 cents, the company said. Revenue will be \$17.8 million.

All five analysts that cover the company have “buy” recommendations. Today’s decline more than wiped out the stock’s advance for the year, leaving it down 11 percent.

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

(a) that defendants failed to disclose that the application of SFAS 153 would have a material adverse impact on the Company’s third quarter 2005 financial results;

(b) that defendants issued false financial projections for the third quarter 2005 that failed to properly account for non-monetary transactions in accordance with GAAP;

(c) that defendants knew their claim that “[t]he [Virtgame] deal is expected to close in the second quarter of fiscal 2005” would never be fulfilled if the truth concerning the Company’s *true* prospects was revealed to Virtgame shareholders; and

(d) that, as described in ¶¶28-32, the Company’s estimated performance metrics were materially false and misleading.

27. As a result of this disclosure, Mikohn stock dropped on October 20, 2005 to as low as \$8.87 before closing at \$9.28 per share, a 28% decline from the October 19, 2005 close of \$13.03 per share.

MIKOHN’S FALSE FINANCIAL REPORTING DURING THE CLASS PERIOD

28. In order to inflate the price of Mikohn stock, defendants caused the Company to falsely report projections for its third quarter 2005 and beyond through improper revenue recognition caused by neglecting the impact of SFAS 153. This was made possible through defendants’

inadequate internal controls, as the very individuals who would benefit the most by manipulating the Company's financials were allowed to override the Company's internal controls.

29. The Class Period projections were included in Form 8-Ks filed with the SEC. The results were also included in press releases disseminated to the public.

30. Mikohn has now admitted that its attempts to inappropriately record transactions to be included in its third quarter 2005 results have been thwarted and has removed millions in improperly recorded revenues, such that its projections were not a fair presentation of Mikohn's results and were presented in violation of GAAP and SEC rules.

31. Due to defendants' accounting improprieties incorporated in defendants' projections, the Company presented its financial projections and statements in a manner which violated GAAP, including the following fundamental accounting principles:

(a) The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements was violated (APB No. 28, ¶10);

(b) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

(c) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);

(d) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for

accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

(e) The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);

(f) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

(g) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

(h) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

32. Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

LOSS CAUSATION/ECONOMIC LOSS

33. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated Mikohn's stock price and

operated as a fraud or deceit on Class Period purchasers of Mikohn 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 misrepresenting the Company's financial statements, earnings and prospects. Later, however, when defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, Mikohn stock fell precipitously as the prior artificial inflation came out of Mikohn's stock price. As a result of their purchases of Mikohn stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

34. During the Class Period, the defendants presented a misleading picture of Mikohn's business and prospects. Thus, instead of truthfully disclosing during the Class Period that Mikohn's business was not as healthy as represented, defendants caused Mikohn to falsely report its results and forecasted earnings. During the Class Period, defendants emphasized that Mikohn and its VirtGame acquisition were the future of slot games and repeatedly estimated that the Company's third quarter 2005 earnings per share would be \$.09.

35. These false claims of estimated earnings that met expectations and strong future results caused and maintained the artificial inflation in Mikohn's stock price throughout the Class Period, thereby allowing the Company to exchange \$20 million worth of artificially inflated stock for an entire company, whose shareholders agreed to the exchange prior to the truth being revealed to the market.

36. Defendants' false and misleading statements had the intended effect and caused Mikohn stock to trade at artificially inflated levels throughout the Class Period, trading as high as \$15.75 per share.

37. On October 20, 2005, defendants were forced to publicly disclose that Mikohn's projections were false due to accounting rules which defendants failed to recognize.

38. As a direct result of defendants' admissions and the public revelations regarding the truth about Mikohn's previous representations and its actual business prospects going forward, Mikohn's stock price plummeted 28%, falling from \$13.03 on October 19, 2005 to \$9.28 per share on October 20, 2005, a drop of \$3.75 per share. This drop removed the inflation from Mikohn'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 Mikohn'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 at least \$3.75 per share.

39. The 28% decline in Mikohn'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 Mikohn'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 Mikohn's stock price fell 28% 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 Mikohn's stock price and the subsequent significant decline in the value of Mikohn's stock when defendants' prior misrepresentations and other fraudulent conduct was revealed.

COUNT I

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

40. Plaintiff incorporates ¶¶1-39 by reference.

41. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or recklessly disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

42. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

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

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

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Mikohn publicly traded securities during the Class Period.

43. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Mikohn publicly traded securities. Plaintiff and the Class would not have purchased Mikohn publicly traded securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

44. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of Mikohn publicly traded securities during the Class Period.

COUNT II

For Violation of §20(a) of the 1934 Act Against All Defendants

45. Plaintiff incorporates ¶¶1-44 by reference.

46. McMeekin and Sicuro acted as controlling persons of Mikohn within the meaning of §20 of the 1934 Act. By virtue of their positions and their power to control public statements about Mikohn, McMeekin and Sicuro had the power and ability to control the actions of Mikohn. McMeekin and Sicuro controlled the other employees of Mikohn. Mikohn controlled the Individual Defendants and the other officers of Mikohn. By reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased Mikohn publicly traded securities during the Class Period (the “Class”). Excluded from the Class are defendants, directors and officers of Mikohn and their families and affiliates.

48. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Mikohn had more than 37 million shares of stock outstanding, owned by thousands of persons.

49. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether the 1934 Act was violated by defendants;
- (b) Whether defendants omitted and/or misrepresented material facts;

(c) Whether defendants' statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) Whether defendants knew or recklessly disregarded that their statements were false and misleading;

(e) Whether the prices of Mikohn publicly traded securities were artificially inflated; and

(f) The extent of damage sustained by Class members and the appropriate measure of damages.

50. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

51. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

52. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to Rule 23;
- B. Awarding plaintiff and the members of the Class damages, including interest;
- C. Awarding plaintiff's costs, including attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: December 30, 2005

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