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14 Counsel for Plaintiff

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 _____)
18 ROBERT W. BOYD, III, on behalf)
of himself and all others)
19 similarly situated,)

20 Plaintiff,)

21 vs.)

22 NEW CENTURY FINANCIAL)
23 CORPORATION, ROBERT K. COLE,)
24 PATTI M. DODGE, and BRAD A.)
MORRICE,)

25 Defendants.)
26 _____)

Case No.:

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Robert W. Boyd, III ("Plaintiff"), by his attorneys, on
2 behalf of himself and all others similarly situated, alleges the
3 following based upon the investigation of plaintiff's counsel,
4 except as to allegations specifically pertaining to plaintiff,
5 which are based on personal knowledge. The investigation of
6 counsel included, among other things, a review of New Century
7 Financial Corporation ("NEW" or the "Company") public filings with
8 the United States Securities and Exchange Commission ("SEC"),
9 press releases issued by the Company, public conference calls,
10 media and news reports about the Company, and other publicly
11 available data, including, but not limited to, publicly available
12 trading data relating to the price and trading volume of NEW
13 common stock.

14 I. INTRODUCTION

15 1. This action is a securities fraud action brought under
16 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934
17 (the "Exchange Act") and Rule 10b-5 promulgated thereunder by the
18 SEC by plaintiff on behalf of a class of all persons and entities
19 who purchased the securities of NEW between May 4, 2006 and
20 February 7, 2007, inclusive (the "Class Period") to recover
21 damages caused to the Class by defendants' violations of the
22 securities laws.

23 2. NEW claims to be a real estate investment trust, or
24 REIT, that operates one of the nation's largest mortgage finance
25 companies. NEW originates and purchases primarily first mortgage
26 loans nationwide and has focused on the "subprime" market, *i.e.*
27 NEW has loaned to individuals whose borrowing needs are generally
28 not fulfilled by traditional financial institutions because they

1 do not satisfy the credit, documentation or other underwriting
2 standards prescribed by conventional mortgage lenders and loan
3 buyers. NEW has historically sold its loans through both whole
4 loan sales and securitizations structured as sales.

5 3. At the beginning of the Class Period, NEW held itself
6 out to investors as a company that had and would continue to
7 achieve strong performance, and was growing its business while
8 keeping costs low. On May 4, 2006, the Company stated that its
9 objectives for 2006 included achieving "consistently strong
10 operating performance . . . broadening the mortgage products and
11 services available through each of our delivery channels, and
12 lowering costs while increasing productivity."

13 4. However, unknown to investors, during the Class Period,
14 defendants knew or recklessly disregarded that NEW was
15 repurchasing substantially more loans than originally had been
16 expected because of borrower defaults. Moreover, in violation of
17 generally accepted accounting principles("GAAP"), defendants
18 failed to properly account for the loans by failing to take
19 adequate reserves for loans that it would be forced to repurchase.
20 Also undisclosed was that the Company's internal controls were
21 woefully inadequate, especially in light of the Company's growth.

22 5. On February 7, 2007, after the close of trading, NEW
23 shocked investors by disclosing that it would restate its
24 financial statements for the quarters ended March 31, June 30 and
25 September 30, 2006 "to correct errors the company discovered in
26 its application of generally accepted accounting principles
27 regarding the company's allowance for loan repurchase losses."
28

1 Further, the Company stated that, once restated, its net earnings
2 for each of the first three quarters of 2006 will be reduced.

3 6. The Company also disclosed that its previously filed
4 condensed consolidated financial statements for the quarters ended
5 March 31, June 30 and September 30, 2006 and all earnings-related
6 press releases for those periods "should no longer be relied upon"
7 and that the Company "expects that the errors leading to these
8 restatements constitute material weaknesses in its internal
9 control over financial reporting for the year ended December 31,
10 2006."

11 7. The Company explained that during the Class Period, its
12 "accounting policies incorrectly applied Statement of Financial
13 Accounting Standards No. 140 - Accounting for Transfers and
14 Servicing of Financial Assets and Extinguishment of Liabilities.
15 Specifically, the company did not include the expected discount
16 upon disposition of loans when estimating its allowance for loan
17 repurchase losses." NEW stated:

18 The company establishes an allowance for
19 repurchase losses on loans sold, which is a
20 reserve for expenses and losses that may be
21 incurred by the company due to the potential
22 repurchase of loans resulting from early-
23 payment defaults by the underlying borrowers
24 or based on alleged violations of
25 representations and warranties in connection
26 with the sale of these loans. When the company
27 repurchases loans, it adds the repurchased
28 loans to its balance sheet as mortgage loans

1 held for sale at their estimated fair values,
2 and reduces the repurchase reserve by the
3 amount the repurchase prices exceed the fair
4 values

5 In addition, *the company's methodology for*
6 *estimating the volume of repurchase claims to*
7 *be included in the repurchase reserve*
8 *calculation did not properly consider*, in each
9 of the first three quarters of 2006, *the*
10 *growing volume of repurchase claims*
11 *outstanding that resulted from the increasing*
12 *pace of repurchase requests that occurred in*
13 *2006*, compounded by the increasing length of
14 time between the whole loan sales and the
15 receipt and processing of the repurchase
16 request. (Emphasis added).

17 8. On February 8, 2007, in reaction to NEW's surprising
18 disclosure, its shares declined from \$30.16 per share at the close
19 of trading on February 7, 2007, to close at \$19.24 per share, a
20 decline \$10.92 per share or approximately 36%, on unusually heavy
21 volume.

22 II. JURISDICTION AND VENUE

23 9. The claims asserted arise under Sections 10(b) and 20(a)
24 of the Exchange Act and Rule 10b-5 promulgated thereunder.
25 Jurisdiction is conferred by Section 27 of the Exchange Act.
26 Venue is proper pursuant to Section 27 of Exchange Act as
27 defendant NEW and/or the Individual Defendants conduct business in
28 and the wrongful conduct took place in this District.

1 **III. THE PARTIES**

2 10. Plaintiff purchased NEW common stock as detailed in the
3 Certification of Named Plaintiff attached hereto and was damaged
4 thereby.

5 11. Defendant NEW is a Maryland corporation with its
6 principal executive offices located 18400 Von Karman, Suite 1000,
7 Irvine, California. NEW's common stock trades on the New York
8 Stock Exchange ("NYSE") under the symbol "NEW". NEW's Series A
9 Preferred stock trades on the NYSE under the symbol "NEW-A" and
10 NEW's Series B Preferred stock trades on the NYSE under the symbol
11 "NEW-B".

12 12. Defendant Robert K. Cole ("Cole") was Chief Executive
13 Officer of NEW from the beginning of the Class Period until July
14 6, 2006, when Defendant Brad A. Morrice became Chief Executive
15 Officer. Cole was Chairman of the Board from the beginning of the
16 Class Period, until he resigned on December 19, 2006. He remains
17 a member of NEW's board. During the Class Period, he signed the
18 Company's quarterly reports for the periods ended March 31, June
19 30 and September 30, 2006 and signed certifications pursuant to
20 the Sarbanes-Oxley Act of 2002. During the Class Period, Cole
21 sold 150,000 shares of NEW stock for proceeds of approximately
22 \$6.7 million.

23 13. Defendant Patti M. Dodge ("Dodge") was NEW's Chief
24 Financial Officer and Executive Vice President until she
25 "transitioned" to the position of the Company's Executive Vice
26 President, Investor Relations effective as of November 15, 2006.
27 During the Class Period, she signed the Company's quarterly
28 reports for the periods ended March 31, June 30 and September 30,

1 2006 and signed certifications pursuant to the Sarbanes-Oxley Act
2 of 2002. During the Class Period, Dodge sold 13,889 shares of NEW
3 stock for proceeds of approximately \$638,894.

4 14. Defendant Brad A. Morrice ("Morrice") was Vice Chairman,
5 President and Chief Operating Officer of NEW and became Chief
6 Executive Officer of NEW on July 6, 2006. During the Class Period,
7 he signed the Company's quarterly reports for the periods ended
8 March 31, June 30 and September 30, 2006 and signed certifications
9 pursuant to the Sarbanes-Oxley Act of 2002.

10 15. The individuals named as defendants in ¶¶12-14 are
11 referred to herein as the "Individual Defendants." The Individual
12 Defendants, because of their positions with the Company, possessed
13 the power and authority to control the contents of NEW's quarterly
14 reports, press releases and presentations to securities analysts,
15 money and portfolio managers and institutional investors, *i.e.*,
16 the market. Each defendant was provided with copies of the
17 Company's reports and press releases alleged herein to be
18 misleading prior to or shortly after their issuance and had the
19 ability and opportunity to prevent their issuance or cause them to
20 be corrected. Because of their positions and access to material
21 non-public information available to them but not to the public,
22 each of these defendants knew that the adverse facts specified
23 herein had not been disclosed to and were being concealed from the
24 public and that the positive representations which were being made
25 were then materially false and misleading.

26 ///

27 ///

28 **IV. CLASS ACTION ALLEGATIONS**

1 16. Plaintiff brings this action as a class action pursuant
2 to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf
3 of a class of all persons and entities who purchased the publicly
4 traded securities of NEW between May 4, 2006 and February 7, 2007,
5 inclusive (the "Class").

6 17. The members of the Class are so numerous that joinder of
7 all members is impracticable. While the exact number of Class
8 members is unknown to plaintiff at the present time and can only
9 be ascertained through appropriate discovery, plaintiff believes
10 that there are hundreds of members of the Class located throughout
11 the United States. As of March 1, 2006, NEW had over 55 million
12 shares of common stock outstanding, which were actively traded on
13 the NYSE, an efficient market.

14 18. Plaintiff's claims are typical of the claims of the
15 members of the Class. Plaintiff and all members of the Class have
16 sustained damages because of defendants' unlawful activities
17 alleged herein. Plaintiff has retained counsel competent and
18 experienced in class and securities litigation and intends to
19 pursue this action vigorously. The interests of the Class will be
20 fairly and adequately protected by plaintiff. Plaintiff has no
21 interests which are contrary to or in conflict with those of the
22 Class that plaintiff seeks to represent.

23 19. A class action is superior to all other available
24 methods for the fair and efficient adjudication of this
25 controversy. Plaintiff knows of no difficulty to be encountered
26 in the management of this action that would preclude its
27 maintenance as a class action.

28

1 net earnings of \$103.7 million, or \$1.79 per
2 share, for the first quarter of 2006, compared
3 with \$84.8 million, or \$1.48 per share, for
4 the same period in 2005. The year-over-year
5 increase in net earnings was primarily
6 attributable to the growth in mortgage loan
7 production volume and greater contributions to
8 net earnings from the company's REIT portfolio
9

10 * * *

11 The allowance for losses on loans held for
12 investment was \$186.0 million and \$23.8
13 million for the REIT and TRS portfolios,
14 respectively, representing 1.32 percent and
15 1.14 percent of the unpaid principal balance
16 of the respective portfolios. This compares
17 with 1.23 percent and 1.22 percent of the
18 unpaid principal balance of the respective
19 portfolios at December 31, 2005. Delinquency
20 rates as of March 31, 2006 and actual losses
21 to date in the company's REIT and TRS
22 portfolios continue to be significantly lower
23 than historical experience. The company's 60-
24 plus day delinquency rates as of March 31,
25 2006 were 4.46 percent at the REIT and 4.78
26 percent at the TRS. While actual losses to
27 date have been significantly lower than the
28 company's expectations, the company continues

1 to build its allowances for loan losses based
2 on various factors, which include seasoning of
3 the portfolios, as well as overall economic
4 and market conditions.

5 22. On May 10, 2006, NEW filed its quarterly report with the
6 SEC on Form 10-Q for the period ended March 31, 2006. The
7 quarterly report repeated the results that were disclosed in the
8 May 4, 2006 press release and represented that it was prepared in
9 accordance with GAAP. The Form 10-Q was signed by defendants
10 Cole, Dodge and Morrice.

11 23. Moreover, in connection with the March 31, 2006 Form 10-
12 Q, defendants Cole, Dodge and Morrice each signed a "Certification
13 Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002" in
14 which they certified the following:

15
16 1. I have reviewed this quarterly report on
17 Form 10-Q of New Century Financial
18 Corporation;

19
20 2. Based on my knowledge, this report does not
21 contain any untrue statement of a material
22 fact or omit to state a material fact
23 necessary to make the statements made, in
24 light of the circumstances under which such
25 statements were made, not misleading with
26 respect to the period covered by this report;

1 3. Based on my knowledge, the financial
2 statements, and other financial information
3 included in this report, fairly present in all
4 material respects the financial condition,
5 results of operations and cash flows of the
6 registrant as of, and for, the periods
7 presented in this report;

8
9 4. The registrant's other certifying officers
10 and I are responsible for establishing and
11 maintaining disclosure controls and procedures
12 (as defined in Exchange Act Rules 13a-15(e)
13 and 15d-15(e)) and internal control over
14 financial reporting (as defined in Exchange
15 Act Rules
16 13a-15(f) and 15d-15(f)) for the registrant
17 and have:

18
19 a) Designed such disclosure controls and
20 procedures, or caused such disclosure controls
21 and procedures to be designed under our
22 supervision, to ensure that material
23 information relating to the registrant,
24 including its consolidated subsidiaries, is
25 made known to us by others within those
26 entities, particularly during the period in
27 which this report is being prepared;

28

1 b) Designed such internal control over
2 financial reporting, or caused such internal
3 control over financial reporting to be
4 designed under our supervision, to provide
5 reasonable assurance regarding the reliability
6 of financial reporting and the preparation of
7 financial statements for external purposes in
8 accordance with generally accepted accounting
9 principles;

10
11 c) Evaluated the effectiveness of the
12 registrant's disclosure controls and
13 procedures and presented in this report our
14 conclusions about the effectiveness of the
15 disclosure controls and procedures, as of the
16 end of the period covered by this report based
17 on such evaluation; and

18
19 d) Disclosed in this report any change in the
20 registrant's internal control over financial
21 reporting that occurred during the
22 registrant's most recent fiscal quarter (the
23 registrant's fourth fiscal quarter in the case
24 of an annual report) that has materially
25 affected, or is reasonably likely to
26 materially affect, the registrant's internal
27 control over financial reporting; and
28

1 5. The registrant's other certifying officers
2 and I have disclosed, based on our most recent
3 evaluation of internal control over financial
4 reporting, to the registrant's auditors and
5 the audit committee of the registrant's board
6 of directors (or persons performing the
7 equivalent functions):

8
9 a) All significant deficiencies and material
10 weaknesses in the design or operation of
11 internal control over financial reporting
12 which are reasonably likely to adversely
13 affect the registrant's ability to record,
14 process, summarize and report financial
15 information; and

16
17 b) Any fraud, whether or not material, that
18 involves management or other employees who
19 have a significant role in the registrant's
20 internal control over financial reporting.

21 24. On August 3, 2006, NEW announced its results for the
22 second quarter ended June 30, 2006:

23 IRVINE, Calif., August 3 /PRNewswire-
24 FirstCall/ -- New Century Financial
25 Corporation (NYSE: NEW), a real estate
26 investment trust (REIT) and parent company of
27 one of the nation's premier mortgage finance
28

1 companies, today reported results for the
2 three and six months ended June 30, 2006.

3 * * *

4 "Our second quarter results are evidence of
5 the strength and stability of our franchise,"
6 said Brad A. Morrice, President and Chief
7 Executive Officer. "We achieved the second
8 highest quarterly loan production volume in
9 our history, while substantially improving our
10 operating margin over the first quarter in a
11 challenging environment. As a result, our
12 second quarter net earnings were \$105.5
13 million, or \$1.81 per share, an 11 percent
14 increase in net earnings compared with the
15 second quarter of 2005. These results are
16 particularly impressive considering that we
17 only sold or securitized 82 percent of the
18 loans we originated in the second quarter,
19 increasing loans held for sale by \$3.0
20 billion. These loans are covered by forward
21 sales commitments with premiums in excess of
22 102, so we expect to realize the related
23 earnings in the third quarter."

24 * * *

25 Mortgage Loan Portfolios . . .

26 The allowance for losses on loans held for
27 investment was \$209.9 million, representing
28 1.31 percent of the unpaid principal balance

1 of the portfolio. This compares with 0.79
2 percent of the unpaid principal balance of the
3 portfolio at June 30, 2005 and 1.30 percent of
4 the portfolio at March 31, 2006. Delinquency
5 rates as of June 30, 2006 in the company's
6 portfolio continue to be significantly lower
7 than historical experience. The company's 60-
8 plus day delinquency rate as of June 30, 2006
9 was 4.61 percent compared with 4.50 percent in
10 the previous quarter. The company's 2005 and
11 2006 vintages are experiencing more normalized
12 delinquency trends than the 2003 and 2004
13 vintages, which have performed exceptionally
14 well when compared with historical experience.
15 "We are comfortable with our current loan loss
16 reserve levels, which take into consideration
17 not only normal portfolio seasoning but also
18 our higher cumulative loss expectations for
19 the newer vintages," said Patti M. Dodge,
20 Executive Vice President and Chief Financial
21 Officer.

22 25. On August 9, 2006, NEW filed its quarterly report with
23 the SEC on Form 10-Q for the quarter ended June 30, 2006. The
24 quarterly report repeated the results that were disclosed in the
25 August 3, 2006 press release and represented that it was prepared
26 in accordance with GAAP. The Form 10-Q was signed by defendants
27 Cole, Dodge and Morrice.
28

1 * * *

2 At September 30, 2006, the allowance for
3 losses on mortgage loans held for investment
4 and real estate owned was \$239.4 million
5 compared with \$236.5 million at June 30, 2006.
6 These amounts represent 1.68 percent and 1.47
7 percent of the unpaid principal balance of the
8 mortgage loan portfolio, respectively. The
9 company's 60-day-plus delinquency rate as of
10 September 30, 2006 was 5.95 percent compared
11 with 4.61 percent in the second quarter of
12 2006. The higher delinquency rate in the third
13 quarter was the result of normal portfolio
14 seasoning and higher delinquencies in the 2005
15 and 2006 vintages compared with the 2003 and
16 2004 vintages. The company planned for these
17 higher delinquency rates and believes it is
18 adequately reserved for the expected higher
19 level of loan losses after giving
20 consideration to the performance of its newer
21 vintages.

22 28. On November 9, 2006, NEW filed its quarterly report with
23 the SEC on Form 10-Q for the quarter ended September 30, 2006. The
24 quarterly report repeated the results that were disclosed in the
25 November 2, 2006 press release and represented that it was
26 prepared in accordance with GAAP. The Form 10-Q was signed by
27 defendants Cole, Dodge and Morrice.

28

1 33. NEW has admitted that it will restate the Company's
2 audited financial statements for the fiscal quarters ended March
3 31, June 30 and September 30, 2006. At all relevant times during
4 the Class Period, defendants falsely represented that NEW's
5 financial statements were prepared in accordance with GAAP. GAAP
6 are those principles recognized by the accounting profession as
7 the conventions, rules, and procedures necessary to define
8 accepted accounting practice at a particular time. Regulation S-X
9 [17 C.F.R. §210.4-01(a)(1)] states that financial statements filed
10 with the SEC that are not prepared in conformity with GAAP are
11 presumed to be misleading and inaccurate, despite footnote or
12 other disclosure. Regulation S-X requires that interim financial
13 statements must also comply with GAAP, with the exception that
14 interim financial statements need not include disclosure which
15 would be duplicative of disclosures accompanying annual financial
16 statements. 17 C.F.R. §210.10-01(a).

17 34. The representations by defendants that NEW's financial
18 statements were prepared in accordance with GAAP were materially
19 false and misleading because the defendants engaged in a
20 fraudulent accounting practice which misstated the Company's net
21 earnings during the Class Period.

22 35. As noted in detail herein, defendants engaged in
23 fraudulent accounting practices which materially inflated the
24 Company's net earnings during Class Period. At the time NEW
25 reported its financial results for the periods ended March 31,
26 June 30 and September 30, 2006 defendants knew recklessly
27 disregarded that NEW's accounting was improper, in direct
28

1 contravention of GAAP, and could have served no purpose other than
2 to manipulate NEW's reported net earnings.

3 36. The fact that NEW will restate its financial statements
4 is an admission that the financial statements as originally issued
5 were false and that the misstatement of net earnings was material.
6 Furthermore, by acknowledging a need to restate its financial
7 statements, defendants admit that the facts and circumstances
8 giving rise to the errors contained in the originally issued
9 financial statements were known or should have been known to them
10 at the time the statements were publicly disseminated.

11 37. Due to these accounting improprieties, the Company
12 presented its financial results and statements in a manner which
13 violated GAAP, including the following fundamental accounting
14 principles:

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

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

25 c. The principle that financial reporting should
26 provide information about the economic resources of
27 an enterprise, the claims to those resources, and
28 effects of transactions, events and circumstances

1 that change resources and claims to those resources
2 was violated (FASB Statement of Concepts No. 1,
3 ¶40);

4 d. The principle that financial reporting should
5 provide information about how management of an
6 enterprise has discharged its stewardship
7 responsibility to owners (stockholders) for the use
8 of enterprise resources entrusted to it was
9 violated. To the extent that management offers
10 securities of the enterprise to the public, it
11 voluntarily accepts wider responsibilities for
12 accountability to prospective investors and to the
13 public in general (FASB Statement of Concepts No.
14 1, ¶50);

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

26 f. The principle that financial reporting should be
27 reliable in that it represents what it purports to
28 represent was violated. That information should be

1 reliable as well as relevant is a notion that is
2 central to accounting (FASB Statement of Concepts
3 No. 2, ¶58-59);

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

9 h. The principle that conservatism be used as a
10 prudent reaction to uncertainty to try to ensure
11 that uncertainties and risks inherent in business
12 situations are adequately considered was violated.
13 (FASB Statement of Concepts No. ¶¶2, 95, 97).

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

22 **VIII. ADDITIONAL SCIENTER ALLEGATIONS**

23 39. As alleged herein, defendants acted with scienter in
24 that defendants knew that the public documents and statements
25 issued or disseminated in the name of the Company were materially
26 false and misleading; knew that such statements or documents would
27 be issued or disseminated to the investing public; and knowingly
28 and substantially participated or acquiesced in the issuance or

1 dissemination of such statements or documents as primary
2 violations of the federal securities laws. As set forth elsewhere
3 herein in detail, defendants, by virtue of their receipt of
4 information reflecting the true facts regarding NEW, their control
5 over, and/or receipt and/or modification of NEW's allegedly
6 materially misleading misstatements and/or their associations with
7 the Company which made them privy to confidential proprietary
8 information concerning NEW, participated in the fraudulent scheme
9 alleged herein.

10 40. Defendants knew or deliberately recklessly disregarded
11 the falsity and misleading nature of the information which they
12 caused to be disseminated to the investing public. The ongoing
13 fraudulent scheme described in this complaint could not have been
14 perpetrated over a substantial period of time, as has occurred,
15 without the knowledge and complicity of the personnel at the
16 highest level of the Company, including the Individual Defendants.

17 41. Defendants had the motive and opportunity to perpetrate
18 the fraudulent scheme and course of business described herein
19 because the Individual Defendants were the most senior officers of
20 NEW, issued statements and press releases on behalf of NEW and had
21 the opportunity to commit the fraud alleged herein.

22 42. Furthermore, during the third quarter of 2006, the
23 Company issued 2.3 million shares of its 9.75 percent Series B
24 Cumulative Redeemable Preferred Stock at \$25 per share and also
25 completed a \$50 million private placement of trust preferred
26 securities, raising \$107 million in gross proceeds during the
27 quarter.

28 **IX. LOSS CAUSATION/ECONOMIC LOSS**

1 43. During the Class Period, as detailed herein, defendants
2 engaged in a scheme to deceive the market and a course of conduct
3 that artificially inflated NEW's stock price and operated as a
4 fraud or deceit on Class Period purchasers of NEW's common stock
5 by misrepresenting the Company's operating condition and future
6 business prospects. Defendants achieved this by making positive
7 statements about NEW's business and financial results while they
8 knew that the Company's net earnings were misstated, as detailed
9 herein. Later, however, when defendants' prior misrepresentations
10 were disclosed and became apparent to the market, the price of NEW
11 common stock fell precipitously as the prior artificial inflation
12 came out of NEW's stock price. As a result of their purchases of
13 NEW securities during the Class Period, plaintiff and other
14 members of the Class suffered economic loss, *i.e.*, damages under
15 the federal securities laws.

16 44. As a direct result of defendants' admissions and the
17 public revelations regarding the truth about the condition of
18 NEW's business and the negative adverse factors that had been
19 impacting NEW's business during the Class Period, the price of
20 NEW's stock declined from a closing price of \$30.16 per share on
21 February 7, 2007 to close at \$19.29 per share on February 8, 2007,
22 a decline of \$10.92 per share or approximately 36%. This drop
23 removed the inflation from NEW's stock price, causing real
24 economic loss to investors who purchased the stock during the
25 Class Period.

26 45. The decline in NEW's stock price at the end of the Class
27 Period was a direct result of the nature and extent of defendants'
28 fraud finally being revealed to investors and the market. The

1 timing and magnitude of NEW's stock price declines negate any
2 inference that the loss suffered by plaintiff and other Class
3 members was caused by changed market conditions, macroeconomic or
4 industry factors, or Company-specific facts unrelated to the
5 defendants' fraudulent conduct.

6 **X. FRAUD-ON-THE-MARKET DOCTRINE**

7 46. At all relevant times, the market for NEW's securities
8 was an efficient market for the following reasons, among others:

9 (a) The Company's common stock met the requirements for
10 public listing and was listed and actively traded on the NYSE, a
11 highly efficient market;

12 (b) As a regulated issuer, the Company filed periodic
13 public reports with the SEC;

14 (c) The Company was covered regularly by securities
15 analysts; and

16 (d) The Company regularly issued press releases which
17 were carried by national news wires. Each of these releases was
18 publicly available and entered the public marketplace.

19 47. As a result, the market for the Company's common stock
20 promptly digested current information with respect to NEW from all
21 publicly available sources and reflected such information in the
22 price of the Company's securities. Under these circumstances, all
23 purchasers of the Company's common stock during the Class Period
24 suffered similar injury through their purchase of the common stock
25 of NEW at artificially inflated prices and a presumption of
26 reliance applies.

27 ///

28 **XI. NO SAFE HARBOR**

1 48. The statutory safe harbor provided for forward-looking
2 statements under certain circumstances does not apply to any of
3 the allegedly false statements pleaded in this complaint. Many of
4 the specific statements pleaded herein were not identified as
5 "forward-looking statements" when made. To the extent there were
6 any forward-looking statements, there were no meaningful
7 cautionary statements identifying important factors that could
8 cause actual results to differ materially from those in the
9 purportedly forward-looking statements. Alternatively, to the
10 extent that the statutory safe harbor does apply to any forward-
11 looking statements pleaded herein, Defendants are liable for those
12 false forward-looking statements because at the time each of those
13 forward-looking statements was made, the particular speaker knew
14 that the particular forward looking statement was false, and/or
15 the forward-looking statement was authorized and/or approved by an
16 executive officer of NEW who knew that those statements were false
17 when made.

18 **FIRST CLAIM FOR RELIEF**

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

21 49. Plaintiff incorporates ¶¶ 1-48 by reference.

22 50. During the Class Period, defendants disseminated or
23 approved the false statements specified above, which they knew or
24 deliberately recklessly disregarded were materially false and
25 misleading in that they contained material misrepresentations and
26 failed to disclose material facts necessary in order to make the
27 statements made, in light of the circumstances under which they
28 were made, not misleading.

1 51. Defendants violated Section 10(b) of the Exchange Act
2 and Rule 10b-5 in that they:

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

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

8 (c) Engaged in acts, practices, and a course of business
9 that operated as a fraud or deceit upon plaintiff and others
10 similarly situated in connection with their purchases of NEW
11 common stock during the Class Period.

12 52. Plaintiff and the Class have suffered damages in that,
13 in reliance on the integrity of the market, they paid artificially
14 inflated prices for NEW's common stock. Plaintiff and the Class
15 would not have purchased NEW common stock at the prices they paid,
16 or at all, if they had been aware that the market prices had been
17 artificially and falsely inflated by defendants' misleading
18 statements.

19 53. As a direct and proximate result of these defendants'
20 wrongful conduct, plaintiff and the other members of the Class
21 suffered damages in connection with their purchases of NEW common
22 stock during the Class Period.

23 **SECOND CLAIM FOR RELIEF**

24 **For Violation of Section 20(a) of the Exchange Act**

25 **Against the Individual Defendants**

26 54. Plaintiff incorporates ¶¶1-48 by reference.

27 55. The Individual Defendants acted as controlling persons
28 of NEW within the meaning of Section 20(a) of the Exchange Act as

1 alleged herein. By virtue of their high-level positions,
2 participation in and/or awareness of the Company's operations
3 and/or intimate knowledge of the statements filed by the Company
4 with the SEC and disseminated to the investing public, the
5 Individual Defendants had the power to influence and control and
6 did influence and control, directly or indirectly, the decision-
7 making of the Company, including the content and dissemination of
8 the various statements which plaintiff contends are false and
9 misleading. The Individual Defendants were provided with or had
10 unlimited access to copies of the Company's reports, press
11 releases, public filings and other statements alleged by plaintiff
12 to be misleading prior to and/or shortly after these statements
13 were issued and had the ability to prevent the issuance of the
14 statements or cause the statements to be corrected.

15 56. In particular, the Individual Defendants had direct and
16 supervisory involvement in the day-to-day operations of the
17 Company and, therefore, are presumed to have had the power to
18 control or influence the particular transactions giving rise to
19 the securities violations as alleged herein, and exercised the
20 same.

21 57. As set forth above, NEW and the Individual Defendants
22 each violated Section 10(b) and Rule 10b-5 by their acts and
23 omissions as alleged in this Complaint. By virtue of their
24 positions each as a controlling person, the Individual Defendants
25 are liable pursuant to Section 20(a) of the Exchange Act. As a
26 direct and proximate result of NEW's and the Individual
27 Defendants' wrongful conduct, plaintiff and other members of the
28

1 Class suffered damages in connection with their purchases of the
2 Company's common stock during the Class Period.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff prays for judgment as follows: declaring
5 this action to be a proper class action; awarding damages,
6 including interest; awarding reasonable costs, including
7 attorneys' fees; and such equitable/injunctive relief as the Court
8 may deem proper.

9 **JURY DEMAND**

10 Plaintiff demands a trial by jury.

11 DATED: February 12, 2007

KAPLAN FOX & KILSHEIMER LLP

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14 By: _____

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