

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)

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SURESH DUTTA, Individually and on Behalf : Civil Action No.  
of All Others Similarly Situated, :  
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:  
Plaintiff, : CLASS ACTION  
:  
vs. :  
:  
CONSTELLATION ENERGY GROUP, INC., :  
100 Constellation Way : COMPLAINT FOR VIOLATION OF THE  
Baltimore, Maryland 21202, : FEDERAL SECURITIES LAWS AND  
:  
and : DEMAND FOR JURY TRIAL  
:  
MAYO A. SHATTUCK III, :  
Constellation Energy Group, Inc. :  
100 Constellation Way :  
Baltimore, Maryland 21202, :  
:  
and :  
:  
JOHN R. COLLINS, :  
Constellation Energy Group, Inc. :  
100 Constellation Way :  
Baltimore, Maryland 21202, :  
:  
Defendants. :  
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x

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## **NATURE OF THE ACTION**

1. Plaintiff, Suresh Dutta (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of Securities and Exchange Commission (“SEC”) filings by Constellation Energy Group, Inc. (“Constellation” or the “Company”), as well as media reports about the Company. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

2. This is a securities class action on behalf of all persons or entities who acquired the publicly traded securities of Constellation Energy Group, Inc. (“Constellation” or the “Company”) between January 30, 2008 and September 16, 2008, inclusive (the “Class Period”) seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

## **JURISDICTION AND VENUE**

3. Jurisdiction is conferred by §27 of the Exchange Act. The claims asserted herein arise under §§10(b) and 20(a) of the Act and Rule 10b-5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1337, and §27 of the Exchange Act.

4. Venue is proper in this District pursuant to §27 of the 1934 Act and 28 U.S.C. §1391(b). Constellation maintains its corporate headquarters in this District and many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, 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 Suresh Dutta, as set forth in the accompanying certification, which is incorporated by reference herein, purchased the common stock of Constellation at artificially inflated prices during the Class Period and has been damaged thereby.

7. Defendant Constellation is an energy company that conducts its business through various subsidiaries, including a merchant energy business and Baltimore Gas & Electric Company (“BGE”). The Company’s merchant energy business is a provider of energy solutions for a variety of customers. BGE is a regulated electric transmission and distribution utility company and a regulated gas distribution utility company with a service territory that covers the City of Baltimore and all or part of 10 counties in central Maryland.

8. Defendant Mayo A. Shattuck III (“Shattuck”) has been a director of Constellation since May 1999, Chairman of the Company since July 2002 and President and Chief Executive Officer (“CEO”) since November 2001. Defendant Shattuck also served as Chairman of the Board of Directors of BGE from July 2002 to April 2007. Defendant Shattuck sold 50,000 shares of his Constellation stock for proceeds of \$4,681,500 while Constellation’s stock price was artificially inflated due to Defendants’ false statements.

9. Defendant John R. Collins (“Collins”) is Chief Financial Officer (“CFO”) and Executive Vice President of Constellation. Defendant Collins sold 15,000 shares of his Constellation stock for proceeds of \$1,353,800 while Constellation’s stock price was artificially inflated due to Defendants’ false statements.

10. The Defendants referenced above in ¶¶8 and 9 are referred to herein as the “Individual Defendants.”

11. During the Class Period, the Individual Defendants, as senior executive officers and/or directors of Constellation, were privy to confidential and proprietary information concerning Constellation, its operations, finances, financial condition and present and future business prospects. Because of their positions, the Individual Defendants had access to material

information available to them but not to the public. Each of the Individual Defendants knew that the adverse facts specified hereinafter had not been disclosed to and were being concealed from the public and that affirmative representations by the Company specified hereinafter were materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein, as each was either made by a particular Individual Defendant or were "group-published" information, the result of the collective actions of the Individual Defendants.

12. In addition to their direct participation in the wrongs complained of herein, the Individual Defendants, by reason of their status as senior executive officers and/or directors, were "controlling persons" within the meaning of §20(a) of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of Constellation's business.

13. The Individual Defendants, because of their positions with the Company, controlled and/or possessed the authority to control the contents of its reports, press releases and presentations to securities analysts and through them, to the investing public. The Individual Defendants were provided with copies of the Company's reports and press releases prior to or shortly after their issuance that, as more particularly alleged hereinafter, were misleading, and they had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the Individual Defendants had the opportunity to commit the fraudulent acts hereinafter alleged.

14. As senior executive officers and/or directors and as controlling persons of a publicly traded company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the New York Stock Exchange ("NYSE") and governed by the federal securities laws, the Individual Defendants had a duty to promptly disseminate accurate and truthful information with respect to Constellation'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 Constellation's 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.

15. The Individual Defendants are liable as participants in a fraudulent scheme and course of conduct that operated as a fraud or deceit on purchasers of Constellation's common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Constellation's business, operations, management and the intrinsic value of Constellation's common stock, (ii) allowed the Individual Defendants to sell 65,000 shares of their personally-held Constellation common stock for gross proceeds in excess of \$6 million, and (iii) caused plaintiff and members of the Class (defined below) to purchase Constellation's common stock at artificially inflated prices.

#### **CLASS ACTION ALLEGATIONS**

16. 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 persons or entities who acquired shares of Constellation common stock during the Class Period (the "Class"). 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.

17. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Constellation common stock was 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 Constellation 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.

18. 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.

19. 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.

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 1934 Act was violated by Defendants as alleged herein;
- (b) whether statements made by Defendants misrepresented material facts about the business, operations and management of Constellation; 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. The Class Period begins on January 30, 2008. On that date, Constellation issued a press release entitled "Constellation Energy Reports Strong Fourth Quarter and Full Year 2007 Results," which stated in relevant part:

Constellation Energy today reported full year 2007 adjusted earnings of \$4.60 per share, up 27 percent from \$3.61 of adjusted earnings per share (EPS) for the full year 2006. These results were in line with management's guidance range of \$4.45 to \$4.65 per share, which was revised upward in October 2007. Adjusted earnings exclude the impact of special items, discontinued operations, certain economic, non-qualifying hedges and synfuel earnings. On a GAAP basis, the company earned \$4.50 per share in 2007, compared to \$5.16 per share earned in 2006, which included an after-tax gain of \$1.04 per share from discontinued operations.

For the fourth quarter of 2007, adjusted earnings of \$1.48 per share were up 37 percent, compared to \$1.08 per share earned in the same period last year. Reported GAAP earnings of \$1.42 per share in the fourth quarter of 2007 compare to \$2.22 per share in the fourth quarter of 2006, which included an after-tax gain of 76 cents from discontinued operations.

Constellation Energy reaffirmed earnings guidance for 2008 at \$5.25 to \$5.75 per share and expects to be in the middle to upper end of the range. Looking forward to 2009, the company expects to grow earnings 15 to 20 percent over projected 2008 earnings, representing an increase over the previously announced greater than 10 percent projected growth over 2008.

"2007 marked yet another outstanding year for our company as we grew adjusted earnings by 27 percent," said Mayo A. Shattuck III, chairman, president and chief executive officer of Constellation Energy. "Our success in driving strong earnings continues to translate into significant total return for Constellation Energy shareholders. Considering both stock price appreciation and dividends, Constellation Energy delivered total shareholder return of 52 percent in 2007, following the 23 percent and 35 percent total shareholder returns realized over the last two years."

"Last year, we made significant progress on several important fronts, including our efforts to assume a leadership role in the potential renaissance of new nuclear generation in the United States," said Shattuck. "Along these lines, we formed our UniStar Nuclear Energy joint venture with EDF and continue to move forward with planned new development projects under the UniStar Nuclear Energy banner. We advanced the expansion of our Merchant capabilities by building the foundation to make significant, multi-year investments in generation to expand capacity and enhance reliability in Maryland, PJM and other markets we serve. Through several strategic acquisitions, we grew our wholesale load-serving business in the regulated Southeast market, added to our upstream gas reserves and expanded the geographic footprint of our retail gas operations in the Midwest market. We also have successfully implemented key components of several programs at Baltimore Gas and Electric (BGE) that provide customers with tools and incentives to better manage their energy usage.

*"In coming years, we see clear and substantial earnings growth drivers and believe we are well positioned to deploy capital to pursue strategic market opportunities,"* said Shattuck.

(Emphasis added.)

22. On that day, during the Company's Fourth Quarter 2007 Earnings Conference Call with analysts and investors, Defendant Collins stated, in relevant part:

In July, we refinanced our existing liquidity facilities into a \$3.85 billion, five-year revolving credit facility. *This provides a long-term sustainable liquidity cushion to support the growth of the business over the next five years.*

\* \* \*

*[F]or 2008 we are reiterating our guidance range of \$5.25 to \$5.75 per share, which represents 14% to 25% growth over a very successful 2007. We remain confident that we will be in the mid to upper end of the range for 2008. Our forecast for 2008 shows that we expect the Merchant segment to be up 21% to 34% and BGE to earn between \$0.65 and \$0.75 per share, down 5% from 2007.*

(Emphasis added.)

23. The Company's stock closed on January 31, 2008 at nearly \$93.73 per share. A week later, Defendant Shattuck took advantage of the artificial inflation of the Company's stock by selling \$4.68 million of his Constellation holdings for \$93.63 per share.

24. By mid-March 2008, the credit problems at major U.S. institutions became highly publicized. Bear Stearns & Co. Inc. made the surprise announcement that it would have to borrow money through JPMorgan Chase & Co., backed by the New York Federal Reserve. In a March 14, 2008 article entitled "After Bear Stearns, who may be next?" Forbes reported the following, in relevant part:

Bear Stearns has been the weakling among the five reigning Wall Street investment banks: Bear, Merrill Lynch, Morgan Stanley, Lehman Brothers and Goldman Sachs. Many market watchers will recall that last spring, Bear was the first of these institutions to reveal big problems with mortgage-linked debt when it had to pump cash into two hemorrhaging hedge funds.

Also, Bear is the smallest of the five big investment banks, the least diversified, and the biggest issuer of mortgage-backed securities.

But Lehman Brothers Holdings Inc. appears to be an investment bank that investors are very worried about right now -- mainly because it is the investment bank that is most similar to Bear in structure and exposure. Its stock dropped more than 14 percent on Friday.

25. Despite this information, Defendants concealed the Company's exposure to worsening problems at Lehman Brothers Holdings Inc. ("Lehman"). On April 30, 2008, Constellation issued a press release entitled "Constellation Energy Reports Solid First Quarter 2008 Results," which stated in relevant part:

Constellation Energy today reported adjusted earnings of \$0.95 per share for the first quarter of 2008, 8 percent lower than the \$1.03 adjusted earnings per share earned in the same period last year. Adjusted earnings exclude the impact of special items, discontinued operations, certain economic, non-qualifying hedges and synfuel earnings. On a Generally Accepted Accounting Principles (GAAP) basis, the company earned \$0.81 per share in the first quarter of 2008, compared to \$1.07 per share in the same period last year.

*Constellation Energy reaffirmed earnings guidance for 2008 at \$5.25 to \$5.75 per share, and for 2009, the company expects to grow earnings 15 to 20 percent over projected 2008 earnings.*

"We are pleased with our first quarter results, which were in line with our expectations and reflect solid operating performance," said Mayo A. Shattuck III, chairman, president and chief executive officer of Constellation Energy. "We achieved several operational successes during the first quarter of 2008, including strong results from our generation fleet, driven by the roll-off of below-market hedges. Our Nuclear Group delivered particularly strong operating results, as we successfully completed planned outages and limited nuclear fleet forced outages to less than 3 days."

(Emphasis added.)

26. On that day, during the Company's first quarter 2008 earnings conference call, Defendant Collins stated, in relevant part:

Turning to slide twenty one, *the balance sheet and associated credit metrics continue to be very strong.* Total debt outstanding decreased slightly to \$4.8 million in the quarter, reflecting debt maturities at BGE. Equity increased during the quarter primarily driven by price movements and contract exploration on our hedging activities, which is captured in a cumulated other comprehensive income. The result in changes on the capital structure leads a net debt to total capital metrics in line with year end 2007. Adjusted net debt to adjusted total capital saw slight deterioration in the quarter, due to an increase in the third party collateral held and a change in cumulated other comprehensive income described above. As you will recall all these metrics exclude the impact of the BGE securitization debt. We expect an improvement in the ratio of funds from operations to debt from 2007 levels largely due to the elimination of the drag created by the fuels expenses deferred under Senate Bill one rate phase in plan 2007, as we have mentioned in prior presentation we

primarily focus on the FFO to debt ratio which is currently the most important ratio for the rating agencies

When the rating agencies look at this metric they increase the amount of debt by imputing debt from power purchase agreement, pension obligations, training activities and other comparable activities. We also adjust funds from operations for imputed interest. As a result they ride a much different ratio, looking at 2008, we estimate the standard impose will calculate FFO to debt in . . . 24 to 28% range versus our forecast of 40% to 45%.

Turning to slide to 22, *this chart shows our excess liquidity which was \$3.1 billion at the end of March.* The top blue line represents our cash balances plus our bank lines, the total of which was approximately 5.7 billion at the end of March.

The green line of the bottom of the chart shows our bank line usage as we post letters of credit with counter parties. At the end of the first quarter, we had posted about \$2.6 billion and letters of credit.

(Emphasis added.)

27. On July 31, 2008, Constellation issued a press release entitled "Constellation Energy Reports Strong Second Quarter 2008 Results," which stated in relevant part:

Constellation Energy today reported adjusted earnings of \$1.82 per share for the second quarter of 2008, compared to \$0.64 adjusted earnings per share (EPS) earned in the same period last year. Adjusted earnings exclude the impact of special items, including approximately \$188 million pre-tax for the \$170 per residential electric customer credit associated with the Maryland settlement, certain economic, non-qualifying hedges and synfuel earnings. On a Generally Accepted Accounting Principles (GAAP) basis, the company earned \$0.95 per share in the second quarter of 2008, compared to \$0.64 per share in the same period last year.

*Constellation Energy reaffirmed earnings guidance for 2008 at \$5.25 to \$5.75 per share, and for 2009, the company expects to grow earnings 15 to 20 percent over projected 2008 earnings.*

"Second quarter results significantly exceeded expectations and reflect solid execution throughout the enterprise," said Mayo A. Shattuck III, chairman, president and chief executive officer of Constellation Energy. "Our Global Commodities Group delivered strong new business results as rising commodity prices benefited our strategies in power, natural gas and coal markets. Constellation Energy's nuclear fleet continued its excellent operating performance in the second quarter. We successfully completed nuclear refueling outages at our R.E. Ginna Nuclear Power Plant and Nine Mile Point Nuclear Station Unit 2, while maintaining an extremely low forced outage rate at our three other nuclear facilities. We are proud of our three refueling outages that resulted in the first, third and 11th shortest durations out of 42 units that refueled during the first half of the year."

(Emphasis added.)

28. On that day, during the Company's second quarter 2008 earnings conference call, Defendant Collins stated, in relevant part:

Overall, 2008 capital spending is approximately \$800 million higher than our 2007 capital expenditure program.

Through the end of the second quarter, \$1.2 billion has been spent of our \$2.4 billion capital program. In addition to capital expenditures, BGE has \$300 million of debt maturities this year, which we plan to re-finance.

*In June, we also added an additional \$1.1 billion of credit facilities to support the continued growth of the business and to maintain an adequate liquidity position.*

Now let's turn to slide 18 to discuss liquidity. At the end of June, our net available liquidity was \$2.9 billion compared to 3.1 billion at the end of March. We have normalized our net available liquidity presented on this page to exclude certain transitional liquidity items that were not intended to support normal operations.

During the second quarter, we added an additional \$1.1 billion in credit facilities to address the significant increase in energy commodity prices, which resulted in the issuance of an additional \$1.75 billion in letters of credit to support our risk management and hedging activities.

(Emphasis added.)

29. On that day, Constellation shares closed at \$83.16 per share.

30. In August 2008, analysts began to question Constellation's accounting. In an article entitled, "Constellation Energy stock down on analyst concern," the *Associated Press* reported on August 12, 2008:

*Shares of utility company Constellation Energy Group Inc. plunged Tuesday after analysts raised questions about some aspects of the company's accounting and the implications of a credit downgrade.*

Constellation Energy stock shares fell \$11.79, or 16.1 percent, to close at \$61.25. Earlier in the session, the stock fell to \$57.10, its lowest level in more than a year. The shares have traded as high as \$107.97 in the past 52 weeks.

Jefferies & Co. analyst Paul Fremont upgraded Constellation stock to "Hold" from "Underperform" on Tuesday, but said in a note to clients that he is looking forward to company executives answering questions about some of its accounting practices at an Aug. 28 meeting in Baltimore.

*In particular, Jefferies & Co. said it's puzzled by some of Constellation's characterizations of depreciation, cash flow and mark-to-market adjustments in recent financial material.*

(Emphasis added.)

31. The Jefferies & Co. report stated in part:

Among the accounting questions that continue to puzzle us is the company's characterization of depreciation. Page 26 of the company's Q108 presentation and page 24 of its Q208 presentation indicate a starting point for 6-month depreciation of \$288 million (\$146 million in the 1Q presentation and \$142 million in 2Q which is consistent with the June 2008 10Q income statement depreciation number of \$290.2 million). In the June 2008 Constellation 10Q, the income statement depreciation number is \$50 million higher than the \$240.5 million cash flow depreciation. Yet the adjustments outlined on pages 24 and 26 are all positive, adding to cash flow (roughly \$50 million each quarter). The company fails to explain the negative adjustment, which accounts for the \$50 million difference between the cash flow statement and the income statement.

These unexplained adjustments to depreciation carry through to the company's characterization of cash flow in slide 20 of the Q1 presentation and slide 19 of the Q2 presentation versus cash flow from operations in the company's 10Q. The cash flow numbers in the slides (\$262 million and \$474 million, respectively) are \$203 million higher than net cash provided by operating activities (\$533.4 million) on page 6 of the 10Q.

And to company's characterization of Merchant EBITDA. Merchant EBITDA numbers on slide 25 of Q1 and slide 23 of Q2 total \$874 million (\$275 million in Q1 and \$599 million in Q2) versus \$533.4 million in net cash provided by operating activities for the consolidated total company as reported in the 10Q. This represents an unexplained difference of \$340.6 million excluding the utility's EBITDA (which amounted to roughly \$128 million in the company's 10Q).

Finally we would like to better understand the mark-to-market adjustments (included by the company in adjusted EPS) reported in the second quarter 2008. 'Total mark-to-market results increased \$248.6 million during the quarter ended June 30, 2008, primarily due to an increase in origination gains of \$7.3 million and higher gains from unrealized changes in fair value of \$241.3 million. The increase in gains from unrealized changes in fair value was primarily due to approximately \$300 million in higher gains on open positions in our portfolio management and trading business during the quarter.' In addition to the \$248.6 million contribution during the quarter of mark-to-market gains, the company added roughly \$57 million of mark-to-market losses on non-qualifying hedges to its adjusted EPS calculation for the quarter. It would appear as if the company's adjusted EPS includes at least \$300 million of mark-to-market contribution. We would be interested in understanding the source of these mark-to-market gains.

32. On August 29, 2008, Constellation shares closed at \$66.71.

33. On September 15, 2008, Lehman filed for Chapter 11 bankruptcy protection. On that day, stunned investors and the market became aware of Constellation's undisclosed exposure to Lehman's bankruptcy, specifically the effect of Lehman's bankruptcy on the Company's ability to engage in energy-related trades.

34. On this news, Constellation shares plunged to \$47.99 per share on above-average volume.

35. The following day, Constellation share prices continued to plummet as the news of Constellation's ties with counterparty Lehman disseminated into the marketplace.

36. In a September 16, 2008 article entitled, "Constellation debt protection costs soar," *Reuters* reported, in relevant part:

The cost to insure the debt of Constellation Energy Group (CEG.N: Quote, Profile, Research, Stock Buzz) soared 60 percent on Tuesday to a record high after an analyst said in a report that banks may pull its credit lines.

Credit default swaps on Constellation's debt jumped to 478 basis points, or \$478,000 per year to insure \$10 million in debt for five years, from 304 basis points on Monday, according to Markit Intraday.

The company's swaps weakened on Monday on concerns about its exposure to Lehman Brothers.

37. On September 16, Constellation shares closed at \$30.76 per share on extremely high volume.

38. On September 17, 2008, Standard & Poor's placed Constellation investment-grade 'BBB' debt ratings on Credit Watch "developing," indicating that the Company's debt ratings may be revised lower. Also, Constellation announced that it had hired advisers to evaluate its "strategic alternatives," implying the sale, merger or acquisition of the Company.

39. On this news, Constellation's stock price collapsed from \$30.76 per share on September 16, 2008 to close at \$24.77 per share on September 17, 2006 – a price representing an approximate **75% decline** from the class period high and a devastating loss in shareholder equity.

40. However, while Constellation's stock was artificially inflated due to Defendants' false statements, *the Individual Defendants sold 65,000 shares of their Constellation stock for proceeds of over \$6 million.*

41. Defendants were aware of the following material undisclosed information which contradicted their public statements:

(a) Defendants were inflating Constellation's results through manipulations relating to the characterization of depreciation expense which inflated the Company's reported cash flows;

(b) The Company's claimed financial results were inflated by unrealistic and unjustifiable assumptions which were reflected in mark-to-market accounting;

(c) The Company's loss exposure due to dire credit problems of trading partners, particularly Lehman, was vastly greater than represented.

(d) The Company was not on track to report 2008 EPS of \$5.25+ per share.

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

42. By misrepresenting the Company's financial statements and concealing the exposure to Lehman's credit woes, the Defendants presented a misleading picture of Constellation's business and prospects. Thus, instead of truthfully disclosing during the Class Period that Constellation's business was not as healthy as represented, Defendants misrepresented Constellation's financial outlook and its actual business prospects going forward.

43. These claims of profitability caused and maintained the artificial inflation in Constellation's stock price throughout the Class Period and until the truth was revealed to the market.

44. Defendants' false and misleading statements had the intended effect and caused Constellation stock to trade at artificially inflated levels throughout the Class Period, reaching as high as \$98.10 per share on February 12, 2008.

45. As a direct result of public revelations regarding the truth about Constellation's overstatement of income and its actual business prospects going forward, Constellation's stock price plummeted 68%, falling from \$81.57 per share on July 30, 2008 to \$24.20 per share on September 17, 2008 - a drop of \$57.37 per share. This drop removed the inflation from Constellation's stock price, causing real economic loss to investors who had purchased the stock during the Class Period.

**APPLICABILITY OF PRESUMPTION OF RELIANCE  
FRAUD ON THE MARKET DOCTRINE**

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

(a) Constellation common 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, Constellation filed periodic public reports with the SEC and the NYSE;

(c) Constellation regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Constellation was followed by several securities analysts employed by major brokerage firms who wrote reports that 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 Constellation common stock promptly digested current information regarding Constellation from all publicly available sources and reflected such information in the prices of the stock. Under these circumstances, all purchasers of Constellation common stock during the Class Period suffered similar injury through their

purchase of Constellation 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 were 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 Constellation who knew that those statements were false when made.

### **COUNT I**

#### **For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against the Company and the Officer Defendants**

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

50. During the Class Period, the Company and the Officer Defendants disseminated or approved the false statements with deliberate disregard as to their accuracy, or which they knew 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.

51. These 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 Constellation shares during the Class Period.

52. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Constellation shares. Plaintiff and the Class would not have purchased Constellation shares 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.

**COUNT II**  
**For Violation of §20(a) of the 1934 Act**  
**Against the Company and the Officer Defendants**

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

54. The Company and the Officer Defendants acted as controlling persons of Constellation within the meaning of §20(a) of the 1934 Act. By reason of their positions with the Company, and their ownership of Constellation stock, the Company and the Officer Defendants had the power and authority to cause Constellation to engage in the wrongful conduct complained of herein. Constellation controlled the Company, the Officer Defendants and all of its employees. By reason of such conduct, Defendants are liable pursuant to §20(a) of the 1934 Act.

**PRAYER FOR RELIEF**

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

A. Determining that this action is a proper class action and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure;

