BASIS OF ALLEGATIONS

1. This is a class action on behalf of a class (the "Class") of all persons who purchased the common stock of Open Market, Inc. ("Open Market" or the "Company") on the open market between November 8, 1999 and April 18, 2000 inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 ("1934 Act"). Plaintiffs, individually and on behalf of the Class for their Consolidated Class Action Complaint (the "Complaint"), make the following allegations based upon an investigation made by plaintiffs' counsel, which investigation included, without limitation, a review and analysis of various public statements and filings, including filings made with the Securities and Exchange Commission ("SEC"), press reports, press releases, the reports of securities analysts concerning or relating to the Company, interviews with various Open Market former employees, interviews with Open Market customers and the expert opinion of a consultant who advised plaintiffs' counsel regarding the technical aspects of Open Market's products and the marketplace in which Open
Market operates. Plaintiffs believe that further substantial evidentiary support for the allegations set forth below will be shown to exist after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

2. Open Market went public in 1996 as one of the leading suppliers of commerce management software for business conducted on the World Wide Web. This software manages business transactions, performing or aiding in tasks such as: secure transaction processing, credit card authentication, shipment, customer service and order status information. For years, Open Market focused on providing this type of software and did not compete in the market for software which managed and delivered the content of websites on the Internet, i.e. the presentation of merchandise to consumers.

3. Towards the beginning of the Class Period, the Company faced significant competitive pressures and a changing marketplace for its software. In the few years since Open Market started its operations, business conducted through the Internet (e-business or e-commerce) had grown exponentially. Companies rushing to enter this new marketplace required software that could be easily and quickly implemented. Because sophisticated custom websites often take over six months to build, companies wanted off-the-shelf website software that could go "live" in a much shorter time but still be customized to their business needs. Companies also required that their websites be capable of growing with the number of customers using the website, or "scalability". Additionally, the software had to be easy to use, functional, fast at processing information, and inexpensive. Some in the software industry, including Open Market, believed that consolidation and integration of the various types of software required to build a website would aid in solving these requirements. Integration would allow website
developers to use functions associated with different products as if all of the functions were in a single product, reducing "bugs" and difficulties associated with connecting the different products' functionality. Purportedly, an integrated software product would be easier to design and update as one team of programmers could work together on it rather than having to coordinate the activities of unrelated parties. Proponents of this integration philosophy thought that investors would reward software companies which sought to meet all of their clients' needs. As noted by defendant Ron Matros, President and Chief Operating Officer, in Open Market's 1999 Annual Report to Shareholders:

Open Market began in 1999 as a provider of internet commerce software. But we recognized that the market was beginning to look for a more complete solution which combined robust commerce with the ability to dynamically deliver personalized information to customers, partners and employees. We saw that being first to market with a complete, integrated e-business suite that combined content management, commerce management and online marketing could greatly enhance our competitive position.

4. Attempting to capitalize on this business strategy and to transform itself from a commerce management software developer -- where Open Market was losing market share -- to a company that offered a complete e-business suite, in July 1999 Open Market acquired FutureTense. FutureTense developed content management software. Open Market announced the finalization of the merger on October 18, 1999, the same day it released its third quarter 1999 revenues.

5. By the beginning of the Class Period, on November 8, 1999, the Company had quickly moved to characterize the FutureTense acquisition as a success. Further, the Company represented that it was now offering "integrated applications for managing content, commerce
and on-line customer relationships." Indeed, beginning in November 1999, Open Market embarked on a publicity campaign designed to mislead the investing public into believing that it was a revamped Company with unique and affordable products that the market craved and that this new strategy was putting them ahead of their competitors.

6. At the start of the Class Period, using the news of their recent merger with FutureTense, defendants made the materially false representation that the Company was the number one e-business suite supplier. Defendants also made materially unrealistic promises that Open Market would deliver a new suite of products before the end of the year that would include less expensive versions of its software, with simpler tools for setting up electronic storefronts, and that this product line would reinforce the Company as a market leader.

7. Defendants also began to tout the Company's new product, "Golden Gate," and boasted that it was the "industry's first integrated suite for managing and delivering both on-line content and commerce." Throughout the Class Period the Company misrepresented the true nature and viability of Golden Gate, its level of success (or lack thereof), and Golden Gate's ability to compete with the products being offered by competitors.

8. Defendants, however, knew or recklessly disregarded that the Company was not competing successfully with rivals and could not do so in the future. Golden Gate was merely a repackaged and slightly altered version of previously offered products, not the newly-created integrated product suite the market was led to believe. In fact, because software developers routinely test their products through both extensive simulated and real life "beta" testing, defendants knew that Golden Gate was an utter failure before its release to the market. Defendants released Golden Gate anyway; defendants realized it would take months for investors
to learn that Golden Gate was not the integrated suite of e-business software that would enable Open Market to compete with more highly valued software providers, as the Company touted. Defendants planned to use this window of time to cash in on the booming Internet stock market, a market which had previously lifted their competitors to soaring heights and left Open Market's valuation mired in the proverbial basement. Defendants also unreasonably and recklessly hoped that their overburdened programming staff would be able to fix these bugs before the investing public realized the true nature of the Company's integration efforts, as it takes several months from the date of inception for sophisticated websites to go "live."

9. Defendant's misrepresentations were successful as the price of Open Market shares increased threefold from $22 on November 8, 1999 to a Class Period and Company high of $65.375 on March 9, 2000. However, only one month after this peak, it became apparent that the Company’s claims about its competitive position were materially false and misleading and that Golden Gate was not the product which defendants had touted throughout the Class Period. The next trading day, on April 19, Open Market’s share price dropped almost 32% on news of the Company’s disappointing first-quarter results, in very heavy trading (approximately 8.9 million shares). The stock was down 84.5% from a class period high of $65.375 less than a month earlier, on March 9, 2000. Analysts at A.G. Edwards downgraded Open Market stock on April 19, 2000 from "Accumulate" to "Maintain." As grounds for downgrading the Company’s stock, A.G. Edwards cited two factors: Open Market’s near-stagnation in the growth of its Commerce line and Open Market's poor win-rate in head-to-head competition with its competitors. The Company's reputation and stock price continue to suffer; shares closed at $0.88 as of April 11, 2001.
10. This dramatic decrease in the price of Open Market shares did not occur until after Company insiders, including defendants Jeff Bussgang, Shikhar Ghosh and Ron Matros, sold a total of approximately 472,000 shares of Open Market at artificially inflated prices, which enabled them to pocket sales proceeds of approximately $25 million. The amount and timing of these sales can be described as nothing but unusual and suspicious. Almost every insider sold a large portion of their personal holdings of Open Market common stock in an eleven day period, while at the same time defendants were issuing positive press releases and statements. Most of these insiders had not sold a significant portion of their Open Market stock in over a year, and several sold substantially all, or a large percentage, of the stock they owned. These sales were at prices significantly higher than the Class Period average, and greatly higher than the stock price at anytime before or after the Class Period. Plaintiffs and the Class were not so fortunate as they suffered tremendous damages as a result of this fraud.

JURISDICTION AND VENUE

11. Plaintiffs bring this action pursuant to the 1934 Act as amended (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

12. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the 1934 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

13. Venue is proper in this District pursuant to § 27 of the 1934 Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions giving rise to the violations of law complained of herein, including the preparation and dissemination to the investing public of false and misleading information, occurred in this District.
14. In connection with the acts and conduct 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 NASDAQ National Market System, a national securities exchange.

THE PARTIES

15. By Order of this Court, dated January 25, 2001, class members Palantir Capital, Inc., Arnold Abrams, Shah Engineering, Inc Pension Plan and Ila Shah Living Trust (collectively the "Lead Plaintiffs") were appointed Lead Plaintiffs in this action. The Lead Plaintiffs purchased shares of Open Market common stock on the open market during the Class Period and were damaged thereby, as set forth in their respective certifications which were submitted in connection with their respective lead plaintiff motions and are incorporated herein by reference.

16. Numerous additional plaintiffs purchased Open Market common stock on the open market during the Class Period and were damaged thereby. These plaintiffs have signed appropriate certifications under the Private Securities Litigation Reform Act of 1995, and, if needed, are willing and able to serve as Class Representatives. The certifications of these plaintiffs have previously been filed with the Court.

17. Defendant Open Market is a Delaware corporation with its principal executive offices located at One Wayside Road, Burlington, Massachusetts. Open Market develops, markets, licenses and supports software products that allow customers to engage in business-to-consumer and business-to-business Internet commerce.

18. The individual defendants (the "Individual Defendants"), at all times relevant to this action, served in the capacities listed below and received substantial compensation thereby:
<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jeff Bussgang</td>
<td>Vice President of Marketing (until his resignation on January 6, 2000).</td>
</tr>
<tr>
<td>Gary Eichhorn</td>
<td>Chief Executive Officer and director (until his resignation on February 5, 2000).</td>
</tr>
<tr>
<td>Shikhar Ghosh</td>
<td>Founder and Chairman of the Board of Directors.</td>
</tr>
<tr>
<td>Ron Matros</td>
<td>President and Chief Operating Officer (until becoming Chief Executive Officer on February 5, 2000, retaining the title of president).</td>
</tr>
</tbody>
</table>

19. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false or misleading information conveyed in the Company’s public filings, and statements in press releases and other publications, as alleged herein, is the collective action of this narrowly defined group of defendants. Each of the Individual Defendants by virtue of their Board membership and/or executive and managerial positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest level, and was privy to confidential proprietary information concerning the Company and its business and operations, and revenue recognition policies. The Individual Defendants were controlling persons of the Company at all relevant times, and were involved or participated in the drafting, producing, reviewing and/or disseminating the false and misleading statements alleged herein, and had the power and influence to cause, and did cause, Open Market to engage in the unlawful conduct complained of herein.
FACTUAL BACKGROUND TO THE CLASS PERIOD

20. Open Market was founded in 1994. The Company made an initial public offering in May 1996, valuing the Company at $1.2 billion.

21. Open Market develops, markets, licenses and supports software which enables its customers to engage in business-to-consumer and business-to-business Internet commerce. The Company’s products purportedly offer a full suite of software needs, which includes content management, commerce management, and marketing or customer relationship management. The Company’s products further purport to be capable of separating the management of business transactions from the management of content, thereby allowing companies to securely and centrally manage business transactions while using content located on multiple distributed Web servers. Thus, functions such as order taking, authorization, payment processing, security and customer service may be performed centrally by a secure "back office" transaction management system, allowing merchants and other content providers to focus on management of the "front office" content of their distributed web sites.

22. Open Market got in on the ground floor of Internet commerce and was poised for big success. However, by 1999 the Company was widely considered a failure. Defendant Bussgang, quoted in the March-April 2001 edition of Harvard Magazine, described this time period at Open Market as, "[A] horrible experience. It was our baby, and people were telling us it was ugly." The Company's stock price hovered between $10 and $20 for months prior to the Class Period, while competitors' stock prices soared. For example, on October 29, 1999, BroadVision closed the day at $73.625, Vignette closed at $158 and Open Market ended at $17.75.
23. Industry watchers attributed the Company’s pre-Class Period decline to a number of costly blunders. Business Week, in a story published on November 1, 1999 on the Company’s poor history, titled "Where Is It Now? Open Market's Fall," reported:

For starters, they chose the wrong market initially, investing $50 million in complex software plumbing best suited to large Web sites. The real hot spot was supplying easy-to-build electronic storefronts. Then they branched out into the lesser market of electronic catalogs instead. And they stumbled when it came to acquisitions. An ill-conceived merger with Folio Corp. saddled Open Market with a money-losing business that stalled its annual revenue growth at around 12%. That's a disaster in a business where growth rates of 100% are common.

The formidable advantages that Open Market started out with just melted away -- in spite of its promising technology and a ready-made market.

* * * * *

Now, Open Market is behind -- and, what's more, it's having real trouble winning over new customers.

24. In June 1999, Open Market was forced to divest itself of Folio Corp., which it had acquired in February 1997. Folio Corp. was mainly a CD-ROM publishing business. The Business Week article of November 1, 1999 reported that Folio's customers were not interested in Open Market's products and noted, "Worse, integrating Folio's operations proved hugely distracting. 'What we lost in focus, we didn't gain back in business,' admits Eichhorn."

25. Open Market's poor business decisions took a toll on the Company's earnings and stock price. Prior to the Class Period, the Company never posted a quarterly or annual gain. The Company did record total revenues of $18 million for the third quarter of 1999, immediately preceding the commencement of the Class Period, but it nevertheless experienced a net loss for
that quarter of ($1.1 million), or ($0.03) per share, and a net loss of ($6.3 million), or ($0.17) per share, for the nine months ending September 30, 1999. As of December 31, 1999, the Company had an accumulated deficit in excess of ($164 million).

26. By the start of the Class Period, the Company was still purportedly the number one seller of commerce management software, but its ranking was slipping. According to the Business Week article published November 1, 1999, the Company's market share had fallen to 22% in 1998, down from 31% the year before, and four of the Company's top managers had defected. Further, the Company was in trouble because of the growing emphasis on content management and integration, which reduced the prospects for long term viability or profitability so long as Open Market solely provided commerce management software.

27. However, e-business software industry watchers were optimistic about the industry as a whole. In large part, individual companies in the industry were valued by their ability to offer complete e-business packages. Integrated e-business software obviates the need of customers to seek complementary software products or services elsewhere.

28. On October 18, 1999, Open Market issued a press release which announced its third quarter 1999 revenues. In an effort to revive the Company's tarnished image and give investors reason for optimism, Open Market touted its merger with FutureTense as a means of providing integrated e-business software:

Earlier today, Open Market announced the finalization of its merger with FutureTense, a leader in Internet Content Management software. The integration of FutureTense IPS and Open Market's products yields the industry's first set of integrated applications for managing content, commerce and on-line customer relationships. Open Market's set of integrated e-business applications enable companies to rapidly deploy high revenue, personalized e-business Web sites which can be controlled by
non-technical business people. Open Market's open, application server architecture also reduces cost of ownership, making systems more scalable and adaptable than those built with proprietary products from competing vendors. FutureTense also achieved record revenues in the third quarter of 1999.

29. At the start of the Class Period, November 8, 1999, the Company had just completed its merger with FutureTense, a provider of content-management products. A new management team, including defendant Matros, was poised to take over. This new management team was under tremendous pressure to (a) distance the Company from its troubled past, (b) develop and market an easy-to-use product that could be customized to suit the particular needs of high-end users, (c) round off its offerings by growing as a one-source provider of both content and commerce management, and (d) halt the decline in the Company’s market position.

30. Beginning in November 1999, defendants reacted to this pressure with a drumbeat of positive statements, which defendants knew or recklessly disregarded were materially false and misleading when made, and with materially unrealistic promises that the Company would deliver a new suite of products before the end of the year that would include less expensive versions of its software, with simpler tools for setting up electronic storefronts, and that this product line would reinforce the Company as a market leader.

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

**Defendants Try to Distance**
**The Company From Its Troubled Past**

31. The Class Period commences on November 8, 1999. On that date, an interview with defendant Eichhorn was published by the Wall Street Transcript. During the interview,
Eichhorn purported to highlight the Company’s then-present operating condition and its prospects for the future. The following colloquy is illustrative:

TWST: Specifically with Open Market, when you look out over the next 12 to 24 months, what’s on the agenda, what specific accomplishments make that time frame a success?

Mr. Eichhorn: It’s a very important time for us and also for the rest of the industry. I believe that as investments that companies are making in their Y2K compliance begin to wind down and they are in fact, starting to wind down, (although you would argue that they are still going to be high through the end of the year, just to make sure that things work,) that the next major target for investment companies is going to be Internet commerce or E-business. So even though people are seeing some good growth in the market right now, I think there’s a spectacular opportunity over the next two years, as everyone really turns their attention to this area and they are not distracted by Y2K. I think some of the recent events in the market prove that Y2K is a distraction for companies. So we think that the next two years is a time to really seize a dominant position in providing e-business solutions to the large companies and the service providers. We believe we’ve got the right solutions and we’re gearing up to take advantage of what we think will be phenomenal growth opportunity over the next few years. [Emphasis added.]

32. During the interview, defendant Eichhorn also sought to distance the Company from its troubled past:

TWST: For the investment community, how could they better understand Open Market today as you speak with your current shareholders with potential investors with industry analysts? Are there misperceptions that you confront on a regular basis or perhaps you hear assumptions with which you differ?

Mr. Eichhorn: There are. Open Market’s been around a long time and one of the advantages of being around a long time is you’ve got a history and you’ve got infrastructure and you’ve got customers and you’ve got experience. One of the disadvantages of being around a long time is that people who may have known you or may have thought they knew you years ago may not have had an opportunity to take a
second look. And as happens not only with us, but with other companies, when you don’t take a second look, when a company changes or they modify their strategy or their financial results, you may just not be aware of it. I believe right now Open Market is a well-kept secret in the financial community. We had some problems, particularly last year, in executing our strategy and not meeting or exceeding our expectations in the financial community. But now, more importantly, we’ve been growing. Our last quarter we grew 76% in our commerce business. We had an almost break-even financial quarter on an EBITDA basis. Relative to other competitors in the business, we are a very competitive Internet growth company and yet if you look at our stock price right now it’s not reflected with the comparables of other companies that are in similar position. So whether those valuations are right or not, I don’t want to speculate, but certainly we are not being given the same kind of valuations that those companies are and I think at this point we deserve to. [Emphases added.]

33. In an article in Computer Reseller News, also published on November 8, 1999, defendant Eichhorn continued to aggressively proclaim Open Market was a changed company. For example, defendant Eichhorn stated, "We are now a healthier, leaner and more focused company."

34. Defendant Eichorn’s statements referenced above in ¶¶ 31-33 were each materially false or misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and were known to or recklessly disregarded by defendants, the disclosure of which was necessary to make the statements made not false and/or misleading, including:

a. The Company did not have the "right solutions" for large companies and service providers and the Company was not effectively "gearing up" to take advantage of growth opportunities. Rather, the Company was plagued by problems, particularly its efforts to integrate FutureTense, which is detailed infra;
b. The Company had not successfully changed or modified its strategy as the company was not a "very competitive Internet growth company" but rather, was already far behind its competitors such as Art Technology, BroadVision, and Vignette, among others, at the time these statements were made. Open Market was growing at half the rate of their competitors and losing to these companies in head-to-head competition for customers (a significant indicator in the industry). Open Market was being sidelined due to its delay in developing flexible, easy to use and customize e-business software, primarily because of problems integrating its new acquisition FutureTense. As described in further detail herein, former employees described the Company's integration problems as including: (1) technical difficulties stemming from the incompatibility of FutureTense's IPS and Open Market's Transact, (2) inadequate staffing issues, and (3) cultural incompatibility issues. Thus, it was materially false and misleading to compare Open Market to competitors without disclosing the fact that the competitors were so far ahead of Open Market in all respects; and

c. The Company was not "healthier, leaner and more focused." The Company's recent merger, and subsequent integration efforts, were troubled -- according to a former employee in human resources -- because Open Market and FutureTense had two very different cultures.

35. Analysts such as H.C. Wainwright & Co, along with the investing public, were misled by the Company’s assurances of renewal and its purported ability to integrate and round off its product offering subsequent to the merger with FutureTense. For example, on November 19, 1999, H.C. Wainwright raised its target price for Open Market shares and noted "we are excited by the prospect brought about by the acquisition of FutureTense."
The Company Falsely Claims That Golden Gate Makes It a Market Leader

36. On December 7, 1999, the Company issued two press releases reporting on the events of its "Analyst’s Day," which was "attended by leading investors and financial and industry analysts..." The releases reported that on this day the Company announced the availability of "Golden Gate", touting it as the "industry's first integrated suite for managing and delivering both on-line content and commerce." Both press releases were carried over PR Newswire and remain on the Company's web site.

37. One of the Company's press releases on December 7, 1999, reported:

Open Market, Inc. (NASDAQ: OMKT), the market share leader in Internet commerce software, today announced the immediate availability of its first integrated e-business application suite (code-named Project Golden-Gate) at a gathering of key financial analysts, investors, and leading software industry analysts.

38. The press release further reported that Open Market CEO Eichhorn claimed:

It's been only seven weeks since our merger with FutureTense, and everyone is very pleased at the progress we have made in launching our first integrated product suite. We're seeing considerable validation from the market, and expect the interest to build as we enhance the suite over the next few months." [Emphasis added.]

39. Additionally that press release described Golden Gate as follows:

Project Golden Gate is the industry's first integrated suite for managing and delivering both on-line content and commerce. The new suite, which includes Open Market's IPS content management product and Transact, the industry's leading order management system, leverages an enhanced IPS/Transact Integration Module which is available at no cost to Open Market customers. Combined, the suite offers business faster time to market for their e-business sites, while offering end-users a more personalized, seamless on-line experience. [Emphasis added.]
40. In another December 7, 1999 release, defendant Bussgang, Open Market's Vice President of Marketing, stated:

   Project Golden Gate was designed to speed our customers' time to market for e-business. It is now easier than ever for most companies to get their sites up and running with Open Market's single-vendor, global, open solution that delivers both content and commerce and provides for a simple, elegant customer experience. [Emphasis added.]

41. That press release further stated:

   Open Market is leading the e-commerce marketplace by providing the content and commerce elements of e-business in an integrated product suite. Companies can continue to separate the content and commerce servers for security purposes, allowing, for instance, catalog maintenance on one server while securing more sensitive commerce data behind a series of firewalls on a separate server. Open Market's integrated e-business suite eliminates the time, expense, and hassles of creating custom integration parts between the content and commerce systems. [Emphasis added.]

42. Also on December 7, 1999, Open Market issued a press release announcing that:

   BuyIndies.com is using Open Market's new integrated e-business application suite to create the first interactive and automated e-commerce community for independent film. The new suite, which includes Open Market's IPS content management and delivery product and Transact, the industry's leading order management system, offers businesses faster time to market for their e-commerce sites, while offering endusers a more personalized seamless, online experience.

   **

   Buyers will be able to browse by category or do extensive searches to find titles, and have the security of safe credit card payment and customer service of BuyIndies.com. BuyIndies.com handles the secure online ordering and processing of credit cards, and then forwards orders to sellers for shipment.
43. In that same press release, defendant Bussgang noted: "Linking content and commerce together is a critical part of the next generation of commerce sites. Open Market is the only company providing that connected functionality today in an integrated suite."

44. The statements referenced above in ¶¶ 36-43 were each materially false or misleading when issued as they misrepresented and/or omitted the following adverse facts which then existed and were known to or recklessly disregarded by defendants, the disclosure of which was necessary to make the statements made not false and/or misleading, including:

a. The Company did not have a functional or market-ready "integrated product suite" at that time which made it "easier than ever for most companies to get their sites up and running." Since Open Market's merger with FutureTense, the Company had been unable to successfully integrate FutureTense's IPS and Open Market's Transact. Various former employees at Open Market described the integration problems as follows during this time period:

   (1) The integration process was difficult, according to a former Project Manager and software developer at Open Market, because Future Tense's product was written in JAVA and Transact was written in C++. JAVA and C++ are two different computer languages which do not translate easily;

   (2) According to a former Senior Staff Consultant at Open Market, the Company had inadequate support staff for the integration to be accomplished in the time frame expected. Thus, as a result of Open Market's inadequate staffing and failed attempt to integrate the commerce and content lines, the Company lacked the resources -- and ultimately failed -- to eliminate the substantial "bugs" then-existing in the Transact product;
(3) Another former employee, a Director of Customer Care, noted that the "integration of FutureTense and Transact was a whole lot more difficult than the Company thought it was going to be." According to this former employee, the biggest problem was a memory leak. This highly technical problem could not be solved and the Company was forced to "work around" it by setting up a "cron", which automatically rebooted the computer during off-hours; and

(4) A former cash/credit collections manager, commenting on the Company's inadequately integrated software, used the Chevron (Silicon Valley Oil) purchase of Transact and the FutureTense IPS together as an example. According to this former employee, because of problems getting the two software products to work together on Chevron's website, Chevron required a substantially longer time to install Transact than a customer who purchased Transact alone.

b. "Golden Gate" was not "a new business suite" which integrated commerce and content in a "seamless way." In fact, according to a former sales executive at Open Market, the Company only "repackaged" older existing products, and then called them "integrated";

c. Golden Gate had not been adequately tested and de-bugged as per industry standards. This technically difficult project required substantial testing. In an effort to take advantage of the booming stock market for Internet software producers, Open Market rushed its "integrated" suite to market without adequate Quality Assurance ("Q A") or beta testing, or correcting the problems discovered by the Q A department. Q A is both a department in a software company and the function performed therein, which involves the utilization of computer programs which simulate real world applications and test the software for problems or "bugs".

-19-
Beta testing, a standard practice in the computer software industry, is the process of
disseminating a product to various individuals who use the product and report problems back to
the Company. The Company's beta testing was substandard, and, in addition, it ignored the
results it obtained from the testing performed. Proper testing would have revealed many of the
numerous bugs found in the software and, assuming adequate staffing, had proper testing been
conducted, these bugs would have been fixed prior to release. One former consultant noted that
the Company shipped "product that shouldn't have gone out the door in terms of quality," and
this resulted in making Transact "buggy" and very difficult to install. Another former employee,
from the Human Resources department, noted that the people from QA were always frustrated in
this regard. A former consultant in the QA department at FutureTense, who left the Company
before the merger, criticized the procedures utilized by the QA department as being absolutely
against industry standard, noting that the Company did not use external tools to test new products
and that the Company manipulated results.

d. The Company was not "leading the e-commerce marketplace" but rather
was attempting to catch up with its competitors, whose competitive pressure Open Market was
downplaying. Only four months later, one day after the end of the Class Period, on April 19,
2000, ABN AMRO reported that the Company's revenue growth would pale in comparison with
Vignette's and Broadvision's. A.G. Edwards, also on April 19, 2000, reported that Open
Market's overall win-rate and mindshare in "this highly competitive space" is not currently
adequate;

e. The "considerable validation of the market" was itself based on the
Company's materially false and misleading statements about the likely success of the Golden

-20-
Gate suite. Thus, defendants knew that any market validation of its product was merely a chimera and that their boasts were supported by nothing but circular logic;

f. The Company was not a "very competitive Internet growth company."

Rather, the Company's inability to integrate the FutureTense content products with Open Market's commerce management software was restricting the Company's ability to offer a viable competitive product;

g. Golden Gate was very expensive. It was cheaper for companies and website designers to develop and maintain their own custom e-business software packages than to purchase, support and implement Golden Gate. Furthermore, because the Company was facing stiff head-to-head competition from rivals who, among other things, were able to supply a cheaper product, defendants knew or recklessly disregarded that the market was unwilling to pay extra for the purported benefits of Golden Gate. Indeed, on April 19, 2000, A.G. Edwards reported that Open Market saw significant competition in every deal but that its competitors did not; and

h. BuyIndies.com never did develop a website using an Open Market integrated e-business application suite, nor did BuyIndies.com process credit cards or handle online ordering at their site. Rather, the commerce management software was hosted somewhere else, as is described more fully in ¶ 54 infra.

45. The pronouncements referenced above in ¶¶ 36-43 had their intended effect. Among those in attendance at "Analyst's Day" were: SunTrust Equitable Securities, HC Wainwright, NB Montgomery, Paine Webber, SG Cowan, Goldman Sachs, AG Edwards, AMR Research, IDC Research, Jupiter Communications, and Giga Information Group. These analysts
repeated the materially false and misleading representations made by defendants, including those made by defendants Eichorn and Bussgang, during the Company’s "Analyst’s Day" including: (i) the fact that Open Market was integrating its FutureTense merger successfully; (ii) that Golden Gate was a product of this successful integration and would provide significant upside for the Company in the future; and (iii) repeating projections of strong earnings growth for the Company. For example:

a. On December 8, 1999, H.C. Wainwright & Co. gave the Company a BUY rating, raised its price target to $57 and stated:

"Analyst's Day" leaves us with a renewed sense of confidence. We attended Open Market’s Analysts' Day yesterday and heard commentary from the company’s management team, customers and partners regarding product offerings, technology differentiation and market conditions. Management clearly indicated its confidence in the direction that Open Market has taken with the divestiture of its Folio division and the acquisition of FutureTense to more comprehensively address the Internet commerce market.

* * * * *

Technical integration of FutureTense products is complete. Only seven weeks after the merger, the company announced the completion of its "Golden Gate" project, which finalized the integration of Open Market's core commerce engine with FutureTense's content management suite, resulting in a comprehensive product to address the rapidly growing market for electronic commerce solutions.

With a fully integrated solution now on the market and already deployed at half a dozen customer sites, we believe that the consolidation of core product competencies from both organizations into a single platform provides a significant competitive advantage, which should be reflected favorably in results. [Emphasis added.]
b. On December 8, 1999, A.G. Edwards likewise stated:

Open Market held its second annual analyst meeting today. The overall tone was upbeat and business momentum for the current quarter and into 2000 looks strong. Open Market is now shipping a fully integrated product suite that includes Transact and FutureTense's IPS. If executed upon properly, Open Market will have the potential to leverage the integrated product suite into a platform for other value-added product offerings going forward.

* * * * *

A popular topic during today's meeting was the status of Open Market/FutureTense salesforce integration. Overall, it appears that the combined salesforce is well aligned and well trained for the upcoming barrage of e-commerce software demand (post Y2K).

c. On December 8, 1999, Paine Webber raised its price target for Open Market from $35 to $80, subsequent to attending Open Market's Analyst's Day, echoing the Company's representation of itself as a "New Open Market." Paine Webber likewise noted:

In addition, we believe the two companies have been fully integrated into one. We think the sales forces are selling both products without any substantial training disruptions due to a familiarity with content management by OMKT sales people and ecommerce transaction software by FutureTense, which usually plague other enterprise software mergers. [W]e are watching the dynamic between sales of "Golden Gate" versus Transact or IPS separately . . . .

46. The statements referenced above in ¶ 45, which are directly attributable to defendants, were each materially false or misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and were known to or recklessly disregarded by defendants and the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34 and 44 above and for the additional reasons that:
a. The Open Market and FutureTense salesforces were not "integrated" as the two sales teams had no familiarity with the other's product. According to a former Senior Staff Consultant at Open Market who started in February 2000, the Company was not training the FutureTense sales representatives on Transact and, consequently, these representatives could not sell Transact. Furthermore, on October 2000, only eleven months after these statements were made, the Company was forced to reorganize its entire salesforce in recognition of these problems. Additionally, on February 12, 2001, the Company admitted that its revenue shortfalls in 2000 resulted from problems with its sales force that had been occurring for some time (see ¶ 98 infra); and

b. Management clearly was not confident "in the direction that Open Market had taken with the divestiture of its Folio division and the acquisition of FutureTense," because less than two months later, these same individuals began a wave of unusual and suspicious insider sales of large portions of their personal holdings of shares in the Company -- without disclosing any material bad news to the investing public during the intervening period.

47. On December 10, 1999, defendant Eichhorn was interviewed by Bernice Kanner on the Bloomberg Forum, in part, as follows:

Kanner: How are you different than other companies supplying the B-to-B industry?

Eichhorn: Well a lot of companies have historically built software for various pieces of what it takes to build a website. . . . We're the first company to develop software across all three of those areas; developing the content, or what you see, the marketing campaigns and the orders, and so we have an approach of integrating all those pieces. That makes it much faster for companies to be able to build a site that makes money. We say that our mission is to help companies build great websites that make money.
Kanner: So most websites are backed with three sets, three different infrastructure platforms?

Eichhorn: At least, yeah. Sometimes more and very difficult for companies to keep them all straight and integrate them all together and make sure they work together in a seamless way.

Kanner: You say Open Market is the only company supplying all three assets of work at the site. Are there other companies that are catching up on this?

Eichhorn: Well most of the companies that you see today are actually focusing on the first part that I mentioned which is how the website looks. The publishing of the information on to the website. Very few in fact, I don't believe there's a peer to what we do on that back-end which is the order management. It's very complicated. We've been doing that for over five years so we really don't see anybody catching up in that back-end and now having the front and the back puts us in a very powerful position. (Emphases added.)

48. Defendant Eichorn's statements referenced above in ¶ 47 were each materially false or misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and were known to and/or recklessly disregarded by defendants and the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, and 46 above and for the following additional reasons:

a. As recounted by Open Market former employees and as detailed above, bugs caused by the integration process meant that the Company was not able to "make it much faster for companies to be able to build a site that makes money;"

b. According to a former sales operations manager, the Company was struggling to sell Transact prior to the Class Period because of its high expense ($250,000) and because the "back-end" or commerce management software lacked "sex appeal." Neither of these things changed in the Class Period. Furthermore, according to Interim President and CEO
Harland Lavigne, Open Market knew that it was already losing market share in the "back-end" market. Thus, the Company did see competitors catching up with it. In fact, to justify its transition to content management, the Company admitted that its commerce software market share was "eroding" in a conference call on February 12, 2001. "Erosion" is not something that happens overnight, but rather, is a reference to a gradual decline over time; and

c. As a result, competitors were "catching up" and the Company's position in the commerce management software market was not "very powerful."

49. On January 6, 2000 the Company announced that defendant Bussgang was resigning as Vice President of Marketing to take a job as President and Chief Operating Officer of Digitas, Inc., an Internet startup. On January 12, 2000, in a Form 8-K filed with the SEC, the Company announced that, effective February 5, 2000, defendant Matros would become the Company's CEO, also retaining the title of President, and that defendant Eichhorn would retire from the Company.

50. An analyst's report on Open Market, issued by Soundview on January 7, 2000, includes the following false and misleading statements which can be directly attributable to the Company's Senior Management:

While the company did not give any new guidance or detailed look into the Q4 pipeline, we did receive more assurances that the linearity in the revenue model for the quarter is better than historical metrics, and the growth in the pipeline is tremendous.

51. The statement referenced above in ¶50, was materially false or misleading when issued as it misrepresented and/or omitted the following adverse facts which then existed and were known to and/or recklessly disregarded by defendants and the disclosure of which was
necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, 46 and 48 above.

52. On January 18, 2000, Open Market issued two press releases touting the fact that BuyIndies.com went "live" with their website using "Open Market's integrated e-business applications to link content and commerce", announcing:

BuyIndies.com chose Open Market's integrated e-business suite code-named Project Golden Gate. The new suite includes Open Market's IPS content management and delivery product; Transact, the industry's leading order management system; and a set of APIs that enable seamless integration of content and commerce transactions for enhanced e-business efficiency and simplified end-user experience. [Emphases added.]

53. In a second press release issued that day, the Company noted:

Buyers (consumers and education organizations) can browse by category or do extensive searches to find titles, and have the security of safe credit card payment and customer service of BuyIndies.com. BuyIndies.com handles the secure online ordering and processing of credit cards, and then forwards orders to sellers for shipment.

54. The statements referenced above in ¶¶ 52-53 were each materially false or misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and were known to and/or reckless disregarded by defendants, the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, 46 and 48 above and for the following additional reasons:

a. BuyIndies.com never owned Transact or any other software capable of performing commerce management. Transact was too expensive for BuyIndies.com to purchase. Instead, BuyIndies.com outsourced the processing of credit cards, and other functions performed
by Transact, to a company called Icoms. Icoms only provides hosting for Transact and no other Open Market product. At the present time, BuyIndies.com no longer uses Icoms, but uses another independent commerce management site called Card Service International, which does not use Open Market's commerce software. Because BuyIndies.com outsourced the hosting of their commerce management software, their website was not the result of any integrated suite of products from Open Market nor was it even an integrated website for that matter. Thus, BuyIndies.com never used Golden Gate or any other Open Market integrated e-business suite which linked content and commerce in one "seamless" website capable of handling online ordering and processing of credit cards.

The Company Continues to Tout the Prospects of Golden Gate and Reports Fourth-Quarter Losses Yet Boasts of "Record Results"

55. On February 2, 2000, the Company reported a 1999 fourth-quarter net loss of approximately $(8.2 million), or $(0.19) per share, compared with a 1998 fourth-quarter net loss of approximately $(8.5 million), or $(0.22) per share, and a 1999 year-end net loss of $(19.8) million, or $(0.46) per share, compared to a 1998 year-end net loss of $(36.97 million), or $(0.98) per share. The Company characterized total 1999 fourth-quarter revenues of $25.3 million, and 1999 year-end revenues of $83 million as "record results." In announcing the results, outgoing CEO Eichhorn stated:

This has been a great quarter and a great year. . . . All signs indicate that we've made some excellent business decisions over the past year. Our merger with FutureTense and the decision to focus the business on the enterprise e-business space have put us in a tremendous competitive position . . . [Emphasis added.]

The Company release further stated:
Open Market ends 1999 on a high note, and is well positioned to sell its complete suite of enterprise e-business applications. The company is in a unique position as one of the only vendors with an integrated content, commerce and on-line marketing solution, for the enterprises that are looking for more sophisticated solutions for their e-business needs. [Emphasis added.]

56. In the same release, defendant Matros stated:

Last quarter started a new era for Open Market as an enterprise e-business software company selling full content and commerce management solutions, and judging by the results of the quarter, there has been an overwhelmingly positive reception for our new strategy. [Emphasis added].

57. The statements referenced above in ¶¶ 55-56 were each materially false or misleading when issued as they misrepresented and/or omitted the following adverse facts which then existed and were known to and/or recklessly ignored by defendants, the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, 46, 48 and 54 above and for the following additional reasons:

a. The Company's merger with Future Tense did not put the Company in a tremendous competitive position. As reported by former employees, at this time the Company was experiencing significant integration issues including problems with adequate staffing, technical dilemmas manifesting as bugs in the Company's software, sales staff training problems causing salespeople to have difficulty selling particular products, and Company culture problems. Additionally, the Company was losing head-to-head competitions with its industry rivals and was seeing significant competition in every deal -- as analysts would soon report at the end of the Class Period, only two months after defendants' false and misleading statements; and
b. Whether or not the Company's position was "unique," this position was not aiding the Company to compete or supply solutions to more "sophisticated" e-business consumers thereby rendering this statement a misleading half-truth, at best, and at worst, an outright falsehood. Likewise, the Company was not then seeing an "overwhelming reception to its new strategy." Rather, the combination of a poorly integrated product resulting in significant bugs and delays in getting websites to go live, plus the high cost of the Company's products, was then resulting in poor sales. This became evident to investors at the end of the quarter, but was then known to, or recklessly disregarded by, defendants.

58. On February 2, 2000, following the release of the Company's fourth quarter 1999 financial results, Open Market held a conference call for analysts, money and portfolio managers, large Open Market shareholders, brokers and stock traders to discuss the Company's fourth quarter earnings and to update them on the Company's operations. Additionally, this conference call was broadcast live on the Internet. In this call, the Company falsely represented that:

a. the Company was successful in some significant head-to-head competitions;

b. Open Market would be able to leverage the success of its integrated platform by building additional accessories that worked with it. To this end, the Company announced the launch of Project Gator, an e-marketing product to be available sometime in the first or second quarter of 2000, which would generate significant additional revenue for the Company; and

-30-
that all salespeople had been cross-trained and were selling both FutureTense and OpenMarket's products.

59. The Company's press release and conference call had the desired effect as on February 3, 2000, various analysts repeated the materially false representations which emphasized the purported success of Golden Gate, the Company's purportedly successful merger and integration with FutureTense and the fact that the Company had distanced itself from its troubled past. These reports include the following:

a. H.C. Wainwright & Co., Inc. reported: "The release of Golden Gate, the company's integrated content/commerce engine, solidifies Open Market's dominant position in the marketplace. With 13 customers up and running with the integrated suite, initial feedback is far better than expected." Additionally, H.C. Wainwright raised its target price for Open Market shares, citing a potentially significant upside and noted that: "Management has indicated that the company will leverage the new Open Market Commerce/Content platform as the foundation for a number of upcoming product releases. . . . The nearest-term area that the company targeted, code-named 'Gator', is eMarketing."

b. Paine Webber reiterated its buy rating and raised its target price for the stock to $100 from $80. Paine Webber reported:

According to management, all salespeople have been cross trained and are selling both Transact and FutureTense's IPS products.

Open Market's management noted some significant competitive wins in the quarter for its content and commerce offering, Golden Gate. Anecdotal evidence suggests that clients value Golden Gate's open architecture and full offering (content and commerce). The combined product offering is fully integrated and 13 sales have been completed. [Emphases added.]
60. The statements referenced above in ¶¶ 58-59, which are directly attributable to all defendants other than defendant Bussgang, who had resigned on January 5, 2000, were each materially false or misleading when issued as they misrepresented and/or omitted the following adverse facts which then existed and were known to and/or recklessly disregarded by defendants, the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, 46, 48, 54 and 57 above and for the following additional reasons:

   a. Open Market was then experiencing significant competitive pressures in every deal and was falling further behind its rivals. Only two months later, Open Market was ranked far behind its competitors by numerous analysts. Indeed, on April 19, 2000, ABN AMRO reported that the Company’s revenue growth would pale in comparison with Vignette’s and Broadvision’s. A.G.Edwards, also on April 19, 2000, reported that Open Market’s overall win-rate and mindshare in "this highly competitive space" is not currently adequate. This decline did not happen overnight as it was taking place throughout the Class Period;

   b. The Company could not "leverage" its integrated e-business suite by using it as the foundation for upcoming products -- specifically "Gator"-- as the integration process had been a failure. As described in further detail supra, former employees described the Company's integration problems as including technical difficulties stemming from the incompatibility of FutureTense's IPS and Open Market's Transact and inadequate staffing issues to fix those problems. This resulted in significant bugs which delayed the ability of purchasers to go live with their websites and resulted in poor performance. Consequently, the Company was not
gaining the market acceptance or market power necessary in order to be able "leverage" one product into sales of another. Thus, defendants knew, or recklessly disregarded, that there was no basis for the Company's projection that combining project Gator with Golden Gate would result in significant additional revenue for Open Market; and

c. Open Market and FutureTense's salesforces were not "integrated." The two sales teams had no familiarity with the other's product. According to a former Senior Staff Consultant at Open Market who started in February 2000, the Company was not training the FutureTense sales representatives on Transact and, consequently, these representatives could not sell Transact. Furthermore, on October 2000, only nine months after these statements were made, the Company was forced to reorganize its entire salesforce in recognition of these problems. Additionally, on February 12, 2001, the Company admitted that its revenue shortfalls in 2000 resulted from problems with its sales force that had been occurring for some time (see ¶ 98 infra).

61. Immediately on the heels of these false statements between February 7 and February 17, 2000, the Individual Defendants and other insiders sold an aggregate 467,000 shares of Open Market for net proceeds of approximately $25 million. These sales were highly unusual and suspicious for reasons detailed below.

62. The Company issued another release on February 10, 2000, in which it "highlighted" what it characterized as the company's "most successful quarter ever." The release noted that:

During Q3, Open Market finalized its merger with FutureTense and was able to launch into the market the combined company's first joint product, Golden Gate which integrates Transact, Open
Market's commerce management application, with IPS, the company's content management product. With this new technology in place, Open Market offers customers a complete enterprise e-business suite, combining content, commerce and marketing management to provide end users with a seamless browsing and buying experience.

63. The press release also quoted defendant Matros, the Company's new CEO, who boasted:

Enterprises are looking for more sophisticated e-business solutions that are easily integrated with their existing computer technology, but that also get them up and running quickly so they're able to start recouping from their investment. . . . As the only vendor to offer an e-business suite that integrates content and commerce on an open, scalable platform, Open Market demonstrates a key competitive advantage by meeting the needs of its customers as well as other companies looking for an end-to-end solution. [Emphases added.]

64. The release continued:

With each quarter, Open Market continues to strengthen its leadership in key market areas including business-to-business, IPS and CSP, as well as the rapidly expanding dot-com space.... This growth reflects the increasing trend of customers that require a complete, integrated, scalable, open, end-to-end solution that is not available from any other vendor.

* * * *

Golden Gate - - This IPS/Transact integration SDK consists of a Java-wrapped set of APIs that enable seamless integration between the IPS and Transact for enhanced e-business efficiency and a simplified end-user experience. With Golden Gate, users experience the industry's first integrated suite for managing and delivering both online content and commerce. The suite includes IPS, Open Market's content management and delivery system, Transact, the industry's leading order management system, and a SecureLink SDK that integrates IPS and Transact. [Emphasis added.]
65. The statements referenced above in ¶¶ 61-64 were each materially false or misleading when issued as they misrepresented and/or omitted the following adverse facts which then existed and were known to and/or recklessly disregarded by defendants and the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, 46, 48, 54, 57 and 60 above and for the following additional reasons:

a. The Company was not able to get "companies up and running quickly." A former Open Market consultant noted that the Transact half of the Open Market suite was very difficult to install. A former cash/credit collections manager agreed. For example, this former employee stated that Chevron (Silicon Valley Oil) purchased Transact and the FutureTense IPS together and because of problems getting the two software products to work together on Chevron's website, Chevron required a substantially longer time to install Transact than a customer who purchased Transact alone; and

b. The Company demonstrated no "key competitive advantage," was not continuing to "strengthen its leadership in key market areas" and there was no "increasing trend of customers that require a complete, integrated, scaleable, open end-to-end solution that is not available from any other vender." Rather, Open Market's inability to develop easy-to-use and customize e-business applications was causing the Company to lose sales to competitors (a key determination of success in this industry). Defendants knew then that the Company's competitors were winning head-to-head battles for customers and that these formidable competitors -- which Open Market continued to downplay -- would continue to do so. Indeed, only one day after the end of the Class Period, on April 19, 2000, ABN AMRO reported that the Company's revenue growth would pale in comparison with Vignette's and Broadvision's.
A.G.Edwards, also on April 19, 2000, reported that Open Market’s overall win-rate and mindshare in "this highly competitive space" is not currently adequate.

66. On February 28, 2000, Open Market issued a press release noting that the Company had "expanded its partner program in support of its increasing market presence and successful integrated suite of content, commerce and marketing e-business solutions." Paul Esdale, vice president of marketing at Open Market is quoted: "Solid relationships with our partners enhance our solution set and facilitate the deployment of our e-business technology worldwide. In addition, we feel we offer very attractive opportunities for increasing partner success."

67. On March 3, 2000, after discussions with the Company's management, Hoak Breedlove reported:

We are upgrading Open Market to STRONG BUY based on three factors. In conversations with management, we determined that the current quarter is tracking well and that the pipeline is strengthening. Across the board, expectations are being met or exceeded. Management said it would have several B2B announcements in the near future.... [Open Market] has the potential to be just as successful in B2B as in B2C. This is a chance to get in before others realize that OMKT is not just a B2C player. The valuation disparity between Open Market and its competition, Vignette and BroadVision, is still wider than we believe it should be. We believe OMKT will continue to show solid progress driven by the acquisition of FutureTense. As a result, we are raising our revenue estimates and price target to $70 [from $55] and introducing 2001 estimates. The quarter is tracking well, and FutureTense is doing better than we had projected. Our new revenue estimate for Q1 is $26.6 million, raised from $23.7 million. The new EPS number is ($0.05) per share. [Emphasis added.]
68. The statements referenced above in ¶ 67, which are directly attributable to the defendants other than defendants Bussgang and Eichorn, who had previously resigned, were materially false or misleading when issued as they misrepresented and/or omitted the following adverse facts which then existed and were known to and/or recklessly disregarded by defendants and the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, 46, 48, 54, 57, 60 and 65 above and for the following additional reasons:

a. In a conference call on February 12, 2001, the Company admitted that it did not have a "solid relationships with [its] partners," but rather "lacked a truly effective partner program" during the year 2000, (see ¶ 98 infra); and

b. The pipeline was not tracking well or strengthening. Rather, as the Company would be forced to admit in only six weeks, the quarter was tracking terribly and revenues were far below analyst expectations and Company representations.

69. In the March 2000 edition of Massachusetts Investor's Digest, defendant Matros was interviewed by Michael Stern, in pertinent part, as follows:

Stern: Open Market's stock price has gone from $4.00 in October of 1998 to $60.00 today. Why has Wall Street's opinion on the company changed?

Matros: I think the biggest change is the addition of FutureTense to the product line helped a lot, primarily because it rounded out the strategy of the company. Now, we have a much more complete suite of commerce products. We can take customers from the whole beginning of the process of producing a catalog, to display capabilities online, to the transaction component. Wall Street is acknowledging that that's a real strong play for us.

* * * * *

-37-
Stern: Do [consulting companies] recommend Open Market exclusively?

Matros: ... When they used to look at Open Market they said, "This is the transaction engine that we want." Now we're being used because we have the content management engine that they want. They see we bring a complete product suite to the table. What does that mean to them as integrators? A faster deployment time, and that's really critical to them. If we can get them up and running faster with our technology, they're more likely to come to us. And, all of a sudden now, we're seeing a huge influx of these partners coming back to us and saying, "Train us on your whole suite of products, because now you have a real compelling argument for us."

[Emphases added.]

70. Defendant Matros' statements referenced above in ¶ 69 were each materially false or misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and which were known and/or recklessly disregarded by defendants and the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, 46, 48, 54, 57, 60, 65 and 68 above and for the following additional reasons:

   a. The Company's products were not "rounded out" because the Company's integration problems and the failure of Golden Gate meant that the Company's different products could only work together in a limited capacity;

   b. Wall Street's acknowledgment regarding the Company's stock price was based on defendants' previous misrepresentations and not on any acknowledgment of Open Market's abilities to take customers through an entire web transaction;

   c. The Company's purported ability to get businesses "up and running faster" was not resulting in any "huge influx" of partners interested in being trained on Open Market's suite of products. Rather, defendants knew, or recklessly disregarded, that the Company's
revenues and business prospects were not growing as they had been, or as planned, and that Open
Market did not have "the content management engine that [consultants] want." In a conference
call held on February 12, 2001, the Company admitted that its revenue problems in 2000 were
directly linked to the "lack of a truly effective partner program." See ¶ 98 infra.

**Defendants Continue to Make Materially False And Misleading
Statements Right Up to The End of the Class Period.**

71. On March 30, 2000, the Company filed its Form 10-K for the year ended
December 31, 1999, signed by defendants Ghosh and Matros. The Company reported:

We offer an integrated packaged suite of e-business software
products and services that enable our customers to manage and
deliver online content, engage in personalized online marketing
and merchandising campaigns and conduct commerce via a secure,
reliable and flexible transaction processing and order management
system. Our solution enables organizations to: rapidly deploy our
software; actively deliver personalized information to customers
through the Internet to Web browsers and to wireless and other
devices; and minimize the cost of implementation, integration and
on-going ownership of e-business software applications.

* * * *

We believe that our packaged applications enable our customers to
deploy a broad level of functionality more rapidly than they
otherwise could by building their own solutions in-house "from the
ground up" or by installing and integrating products from multiple
vendors.

* * * *

We believe our team of sales professionals have the experience
required for complex solution selling.

* * * *

We have established relationships with several large domestic and
international systems integrators and consulting firms. We believe
these firms have substantial influence over software purchasing
decisions. In addition, these companies aid in the successful
implementation and support of our software products. We believe
that building on our established relationships and creating new
relationships with these partners will enable us to sell additional products to our existing customer base and gain new customers more rapidly. (Emphases added)

72. The statements referenced above in ¶ 71 were each materially false or misleading when issued as they misrepresented and/or omitted the following adverse facts which then existed and were known to and/or recklessly disregarded by defendants, the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, 46, 48, 54, 57, 60, 65, 68 and 70 above and for the following additional reasons:

a. The Company's "solution" did not enable customers to "rapidly deploy" their software. Difficulties in getting the "purportedly" integrated products to work together on the customers' websites resulted in substantial delays, as detailed supra by a former employee.

b. The Company's sales professionals did not have the "experience required for complex solution selling" and, in fact, the sales force was in terrible need of restructuring, suffering from extreme turnover and facing difficulties in training the sales forces of the two former companies on the products of their counterparts. In fact, in October of the same year the Company would be forced to take a significant restructuring charge of $6.9 million in connection with, as analysts described it (supra), "totally reorganizing and refocusing its sales and marketing personnel.", and

c. In a conference call on February 12, 2001, the Company admitted that it did not have "established relationships" with its partners, but rather "lacked a truly effective partner program" during the year 2000, (see ¶ 98 infra).

73. On April 5, 2000, Open Market issued a press release touting its partnership program. Defendant Matros is quoted:
Open Market's strong partnerships are a key element of our strategy to offer best-of-breed e-business solutions to companies of all sizes. By partnering with key technology providers... and systems integrators... we are able to extend our reach to the exciting technologies and marketplaces of the Internet economy, while still being able to focus on what we do best; providing an integrated, open suite of e-business solutions that companies can rely on to support even the most complex business.

74. On April 14, 2000, the Company filed its Annual Report to Shareholders for 1999 with the SEC. In this report was a letter to shareholders, customers, partners, and employees from the Company's President and CEO, Ronald Matros. Matros noted:

Open Market began 1999 as a provider of Internet commerce software. But we recognized that the market was beginning to look for a more complete solution which combined robust commerce with the ability to dynamically deliver personalized information to customers, partners and employees. We saw that being first to market with a complete, integrated e-business suite that combined content management, commerce management and online marketing could greatly enhance our competitive position.

On July 14th, we entered into an agreement to acquire FutureTense, Inc., an up and coming supplier of software for Internet content management and delivery. On October 15th, we closed our acquisition of FutureTense. Now, successfully merged, we have begun to enhance our e-business suite and build Open Market into a leading provider of enterprise e-business software.

75. Only days before the truth began to emerge, the Company's continued misrepresentations about the status of its business had analysts fooled. Relying on these misrepresentations, H.C. Wainwright & Co. Inc. reiterated its BUY rating, price target of $46 and reported:

Earnings Outlook: Positive as FutureTense and Open Market integrate

* * * * *
We anticipate continued strong revenue growth throughout 2000, with improved operating margins bringing Open Market to profitability in Q300. Open Market has rapidly integrated the acquisition of FutureTense, with the first set of integrated products being released in the last quarter. Now with the fully the trained sales force up and running on the newly integrated product line, we anticipate strong sales from both the direct sales and strategic consulting partners based on their large pipeline. [Emphasis added.]

76. The statements referenced above in ¶¶ 73-75, including those in the HC Wainwright & Co. report which are directly attributable to defendants, other than defendants Bussgang and Eichorn who had previously resigned, were each materially false or misleading when issued as they misrepresented and/or omitted the following adverse facts which then existed and were known to or recklessly disregarded by defendants, the disclosure of which was necessary to make the statements made not false and/or misleading, for the reasons stated in ¶¶ 34, 44, 46, 48, 54, 57, 60, 65, 68, 70 and 72 above and the following additional reasons:

a. The Company's acquisition, FutureTense, was not then "successfully merged" as the Company reported to shareholders in its Annual Report. In fact, on February 12, 2001, the Company issued a press release in which chairman, CEO and president Harland LaVigne admitted that: "The year 2000 was one of massive transition for Open Market, as we gradually integrated FutureTense . . . ."

b. Open Market did not have strong partnerships, as its revenue problems in 2000 were directly linked to the "lack of a truly effective partner program," which the Company admitted in a conference call on February 12, 2001, (see ¶ 98 infra);

c. The Company had not "successfully merged" FutureTense and Open Market, or rapidly integrated the two companies' businesses or software, as analysts would soon
discover. On April 19, 2000, only days after defendants' deceptive statements about the integration process, ABN AMRO reported that they would not upgrade Open Market's stock unless they saw "evidence of a smooth merger integration and transition to the new management team." See ¶ 81 infra. Less than two months after the false and misleading statements set forth above at ¶ 74, on June 6, 2000, Paine Webber reported that Open Market's stock was trading at a "steep discount to its peer group of 35.0x, due primarily to concerns about the integration of FutureTense." See ¶ 84 infra; and

d. The Company did not "anticipate strong sales from both the direct sales and strategic partners", as both were suffering from deficiencies and because no "large pipeline" existed.

THE TRUTH BEGINS TO EMERGE

77. On April 18, 2000, after the close of trading and at the end of the Class Period alleged herein, the Company announced a net loss of $(4.8 million), or $(0.11) loss per share, for the first quarter ended March 31, 2000 on revenues of $24.8 million, well below the consensus estimate of a loss of only $(0.07) per share. The Company's commerce segment of its e-business revenue was near-stagnant, operating at a growth rate of only nine percent.

78. The next trading day, on April 19, Open Market's share price dropped almost 32% on news of the Company's disappointing first-quarter results, in very heavy trading (approximately 8.9 million shares). The stock was down 84.5% from a class period high of $65.375 less than a month earlier, on March 9, 2000.

79. Analysts at A.G. Edwards downgraded Open Market stock on April 19, 2000 from "Accumulate" to "Maintain." As grounds for downgrading the Company's stock, A.G.
Edwards cited two factors: Open Market’s near-stagnation in the growth of its Commerce line and Open Market's poor win-rate in head-to-head competition with its competitors.

The Commerce line disappointment leads us to believe the Company may be taking its eye off the ball with respect to all product lines.

* * * * *

We believe that Open Market continues to see Broadvision and Vignette in every deal . . . . Furthermore, our system integrator interviews lead us to believe that Vignette and Broadvision see Open Market in only a small portion of their respective deals. Our diligence also indicates that Art Technology Group (ATG) is working its way into quite a few engagements.

* * * * *

The Commerce Management line was a disappointment. The company reported $13.8 million on the Commerce line, up 9% year over year and down 23% sequentially. We were very surprised by the Commerce line contribution. [Emphases added.]

80. Those two factors, now unveiled and highlighted by the analysts downgrading Open Market, directly demonstrate that defendants were knowingly and/or recklessly misleading the public as to the true state of the Company’s business and position in the market throughout the Class Period. Indeed, repeatedly, as is clearly related in this Complaint and as is particularly evident in the Company’s statements on Analyst’s Day held on December 7, 1999, the Company was presenting a contrary positive picture to the investing public. Specifically, the Company represented that it was growing as a supplier of a complete business suite, which translates into growth in both content and commerce management, and that it was the leader in that respect in the e-business industry. In fact, at the time the Company made those statements, only its content revenue was growing, and hardly so.
81. On April 19, 2000, analysts at ABN AMRO noted that Open Market’s poor earnings was the result of an "isolated company specific issue" and that Open Market was severely behind its competitors:

Though the Company’s revenue growth was impressive [77%], we believe it could pale in comparison when some of its competitors report earnings in the next few days and next week.

* * * * *

Specifically, Vignette . . . will likely report revenue growth in excess of 300% after the close on Wednesday . . . Art Technology Group . . . will report on Thursday, and we expect first quarter revenue . . . at 250% year-over-year growth . . . We expect BroadVision to post better than 140% . . .

* * * * *

[Regarding] the recent FutureTense acquisition . . . we would like to see evidence of a smooth merger integration and transition to the new management team before we upgrade our investment rating. [Emphasis added.]

82. On April 19, 2000, Wit SoundView and Hoak Breedlove, both downgraded the Company stock from "Strong Buy" to "Buy."

83. As the truth regarding Open Market was only slowly coming to light, not all analysts were ready to believe or admit they had been duped by defendants. On April 19, 2000, H.C. Wainwright, still believing the Company's misrepresentations which they had praised only five days earlier, raised its 2000 revenue projection by over $20 million "based on the expected contribution from the FutureTense acquisition", and noted:

Management has fully integrated the FutureTense merger with Open Market’s existing product lines and has successfully launched the second-generation eBusiness suite. [Emphasis added.]
Less than three months later, as noted infra, the analysts at H.C. Wainwright would realize their mistake.

**Subsequent Events**

84. On June 6, 2000, PaineWebber initiated coverage of Open Market and noted:

The stock is currently trading at 4.5x our forward revenue estimate of 139.1 million, a steep discount to its peer group average of 35.0x, due primarily to concerns about the integration of FutureTense and execution of the company's turnaround efforts. [Emphasis added.]

85. On July 14, 2000, Hoak Breedlove downgraded Open Market from BUY to HOLD and reported: "Management's credibility has been damaged with investors, and it will remain a bane on the stock price until the company can disprove investors' concerns."

86. Also on July 14, 2000, H.C. Wainwright downgraded the Company's stock from BUY to ACCUMULATE and reported that Open Market was facing stiff competition from Ariba, Art Technology, BroadVision, and Commerce One. H.C. Wainwright characterized these Open Market competitors as the "leaders" of the business-to-business marketplace and Open Market as one of the "laggards".

87. On July 26, 2000, Open Market announced that defendant Ron Matros, President and CEO of Open Market, resigned.

88. On July 26, 2000, Paine Webber noted under the heading "INVESTMENT CONCERNS," "INTEGRATION OF ACQUISITIONS: Most recently October 1999, acquired FutureTense." [Emphasis in original.]

89. On July 27, 2000, ABN AMRO reported:

Open Market did not have the strong quarter seen by many of its competitors in the Internet infrastructure software industry, with
total revenues up only 29% y/y to $26.5M (VIGN and ARTG both reported revenue increases of over 400% yesterday) and EPS down ($0.16.) Many of the issues that hurt OMKT during the quarter were company specific, including a reorganization of the North American field sales force that caused a lack in productivity . . . " [Emphasis added.]

90. On October 2, 2000, Open Market issued a press release noting that Greg Pope, Vice President of World Wide Sales, was leaving the Company.

91. On October 10, 2000, the Company reported that it would lay off 182 workers and take a restructuring charge of $6.9 million.

92. On October 10, 2000, ABN AMRO, reiterating its HOLD rating, reported:

 We believe that the issues facing OMKT are company specific, and will have no impact on other competitors in the enterprise software. We continue to believe that these players, in particular BroadVision, will report solid quarters.

* * * * *

Although the recent FutureTense acquisition gives the company Internet content-management capabilities and rounds out its offering, we would like to see evidence of a smooth merger integration and transition to the new management team before we upgrade our investment rating. [Emphasis added.]

93. On October 19, 2000, A.G. Edwards, in suspending its 2001 estimates, noted:

"The company is in the process of totally reorganizing and refocusing its sales and marketing personnel."

94. On October 20, 2000, Paine Webber noted that Open Market was "still in [the] throes of [a] turnaround effort" and expressed under the heading, "INVESTMENT CONCERNS." "INTEGRATION OF ACQUISITIONS: Most recently October 1999, acquired FutureTense." [Emphasis in original.]
95. On October 23, 2000, A.G. Edwards reduced its rating on Open Market to Reduce/Speculative and noted, among other things, Open Market's "more powerful" and "better equipped competitors . . . in the content space."

96. On November 28, 2000, ABN AMRO Inc. dropped coverage of Open Market.

97. On February 12, 2001, the Company issued a press release in which present chairman, CEO and president Harland LaVigne noted that: "The year 2000 was one of massive transition for Open Market, as we gradually integrated FutureTense and completed all of the content-centric product development initiatives that were in process at the beginning of 2000."
[Emphasis added.]

98. On February 12, 2001, following the release of its fourth quarter and year-end 2000 financial results, Open Market held a conference call for analysts, money and portfolio managers, large Open-Market shareholders, brokers and stock traders to discuss the Company's earnings and to update them on the Company's operations. During this conference call, Interim President and CEO Harland Lavigne stated:

Our transition away from our historical but eroding Transact and Shopsite business [i.e. commerce management software] to this new content management space during 2001 was very painful, we are now well positioned to aggressively compete in this much broader market factor.

* * * * *

A significant contributing factor to our revenue performance in 2000, was due to the turn over in our sales force coupled with the lack of a truly effective partner program. We've recognized this and we have been devoting substantial efforts to address both factors for some time now. [Emphasis added.]
UNDISCLOSED ADVERSE INFORMATION

99. The market for Open Market common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Open Market common stock traded at artificially inflated prices during the Class Period. The artificial inflation continued until April 18, 2000, when defendants admitted that losses would be materially greater than they had led analysts to believe. Plaintiffs and other members of the Class purchased or otherwise acquired Open Market common stock relying upon the integrity of the market price of Open Market common stock and market information relating to Open Market, and have been damaged thereby.

100. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Open Market common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants’ statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, including, inter alia:

   a. the true nature of the Company's purported success with project Golden Gate;

   b. the Company's success in integrating FutureTense's IPS with Open Market's Transact, its substandard product testing and the Company's dearth of programming staff necessary for the technically difficult job which such an integration entailed;

   c. that BuyIndies.com was not implementing a seamless website which utilized Open Market's Golden Gate;
d. that the Company was then having difficulty integrating its acquisition, FutureTense. Specifically, the Company was then having significant difficulties training and retaining its sales staff and maintaining an adequate partner program to remain competitive; and
e. that the Company's commerce server market share was eroding, that revenue from this area was not expected to continue growing at its historical rate and that the Company did see significant competition in this area, thus prompting Open Market's move to the content management software area of e-commerce.

101. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiffs and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Open Market's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Open Market and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiffs and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

ADDITIONAL SCIENTER ALLEGATIONS

102. As alleged herein, defendants acted with scienter in that they knew or recklessly disregarded that the public documents and statements, issued or disseminated by or in the name of the Company were materially false and misleading; knew or recklessly disregarded that such
statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Open Market and its business practices, their control over and/or receipt of materially false and misleading statements regarding Open Market and/or their associations with the Company which made them privy to confidential proprietary information concerning Open Market were active and culpable participants in the fraudulent scheme alleged herein. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants. Furthermore, former employees, including the director of worldwide recruiting and a person from the human resources department (who attended senior level staff meetings on product development), described defendant Eichhorn as a "hands-on" manager who "micro-managed" multiple aspects of the business, including customer and investor relations.

103. In addition to the allegations of recklessness and/or actual knowledge contained herein, the Individual Defendants engaged in such a scheme to inflate the price of Open Market common stock in order to enable certain of the Individual Defendants and Open Market insiders to engage in profitable sales of their personally-held Open Market common stock.
defendant Bussgang exercised 5,000 options, but did not sell those shares. At no time from August 24, 1998 until February 7, 2000 did Bussgang sell any shares of Open Market. However, within a ten day period, Bussgang exercised 29,149 options and sold 40,000 shares of Open Market. Bussgang's sales left him with approximately only 5,200 shares of Open Market stock. Additionally, Bussgang's sales all occurred at prices for Open Market stock within $15 of the Company's all-time high of $65.38, on March 9, 2000. Bussgang's sales were also at prices significantly higher than the Class Period average of $39.984 and the stock's price after defendants' fraudulent scheme became known to the market. Defendant Bussgang has not sold or acquired any shares since his February 17, 2000 sale. Thus, despite the fact that Defendant Bussgang left the Company on January 5, 2000, there was no requirement that he sell all of his personal holdings of Open Market Common Stock.

108. Defendant Ghosh's trading during the class period was as follows:

<table>
<thead>
<tr>
<th>DATE</th>
<th>NUMBER OF SHARES</th>
<th>PRICE PER SHARE</th>
<th>PROCEEDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/11/00</td>
<td>75,000</td>
<td>$54</td>
<td>$4,050,000</td>
</tr>
<tr>
<td>2/10/00</td>
<td>75,000</td>
<td>$52.63</td>
<td>$3,947,250</td>
</tr>
<tr>
<td>2/8/00</td>
<td>25,000</td>
<td>$51.96</td>
<td>$1,299,000</td>
</tr>
<tr>
<td>2/7/00</td>
<td>25,000</td>
<td>$50.95</td>
<td>$1,273,750</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>200,000</strong></td>
<td><strong>$50.95 - $54</strong></td>
<td><strong>10,570,000</strong></td>
</tr>
</tbody>
</table>

109. Defendant Ghosh's trades are highly suspicious for several reasons, particularly because they were unusual in both amount and time. Before the sales detailed above, defendant Ghosh last sold shares of his personal holdings of Open Market stock more than one year prior, on November 30, 1998. During the Class Period, Ghosh sold 200,000 Open Market shares in
four sales separated by only a few days. Additionally, Ghosh's sales all occurred at prices for Open Market stock within $15 of the Company's all-time high of $65.38, on March 9, 2000. Ghosh's sales were also at prices significantly higher than the Class Period average of $39.984 and the stock's price after defendants' fraudulent scheme became known to the market. Defendant Ghosh has not sold any Open Market shares since his February 11, 2000 sale.

110. Defendant Matros's trading during the class period was as follows:

<table>
<thead>
<tr>
<th>DEFENDANT MATROS, CHIEF OPERATING OFFICER AND PRESIDENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>2/7/00</td>
</tr>
</tbody>
</table>

111. Defendant Matros's trade is highly suspicious for several reasons, particularly because it was unusual in both amount and time. Before the sales detailed above, defendant Matros had never sold any of his Open Market stock. During the Class Period, Matros sold 35,000 Open Market shares on February 7, 2000, within the same eleven day span that all of the insiders made significant sales. Additionally, this sale occurred at a price for Open Market stock within $14 of the Company's all-time high of $65.38, on March 9, 2000. This sale was also at a price significantly higher than the Class Period average of $39.984 and the stock's price after defendants' fraudulent scheme became known to the market. Defendant Matros' sale left him without ownership of any Open Market shares.
112. Insider Gregory Pope's trading during the class period was as follows:

GREGORY POPE, VICE PRESIDENT OF WORLD WIDE SALES

<table>
<thead>
<tr>
<th>DATE</th>
<th>NUMBER OF SHARES</th>
<th>PRICE</th>
<th>PROCEEDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/17/00</td>
<td>25,000</td>
<td>$55.75 to $54.50</td>
<td>$1,371,250</td>
</tr>
<tr>
<td>2/16/00</td>
<td>23,500</td>
<td>$53.41</td>
<td>$1,255,135</td>
</tr>
<tr>
<td>2/11/00</td>
<td>6,500</td>
<td>$54.25</td>
<td>$352,625</td>
</tr>
<tr>
<td>2/7/00</td>
<td>5,000</td>
<td>$52.00</td>
<td>$260,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>60,000</td>
<td>$52-$55.75</td>
<td>$3,239,010</td>
</tr>
</tbody>
</table>

113. Insider Pope's trades are highly suspicious for several reasons, particularly because they were unusual in both amount and time. Pope's initial filing on July 22, 1998, declared that he owned 14,180 shares of Open Market stock. Between July 22, 1998 and the sales detailed above, Pope only sold Open Market stock once and that was a relatively small sale of 915 shares. During the Class Period, Pope sold 60,000 shares in eleven days and his ownership of Open Market shares dropped dramatically to 31,918. Additionally, Pope's sales all occurred at prices for Open Market stock within $13.50 of the Company's all-time high of $65.38, on March 9, 2000. Pope's sales were also at prices significantly higher than the Class Period average of $39.984 and the stock's price after defendants' fraudulent scheme became known to the market. Realizing that the drop in Open Market's stock price reflected the Company's true state and that the price would only drop more as the market discovered the truth, Pope continued to sell off his Open Market shares after the Class Period. As of Pope's last sale or acquisition, June 5, 2000, he only owned 16,918 shares of the Company.
114. Insider Gurlez Arshad's trading during the class period was as follows:

**GURLEZ ARSHAD, DIRECTOR**

<table>
<thead>
<tr>
<th>DATE</th>
<th>NUMBER OF SHARES</th>
<th>PRICE</th>
<th>PROCEEDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/16/00</td>
<td>110,000</td>
<td>$52.21 - $52.53</td>
<td>$5,762,300</td>
</tr>
</tbody>
</table>

115. Insider Arshad's trades are highly suspicious for several reasons, particularly because they were unusual in both amount and time. Arshad's initial filing was on May 22, 1996. Between that date and the sales detailed above, Arshad only sold Open Market stock on one other day. During the Class Period, Arshad sold over 100,000 shares during the same period that the insiders listed herein traded. Additionally, Arshad's sales all occurred at prices for Open Market stock within $13.50 of the Company's all-time high of $65.38, on March 9, 2000. Arshad's sales were also at prices significantly higher than the Class Period average of $39.984 and the stock's price after defendants' fraudulent scheme became known to the market. Since the sales detailed above, Arshad has neither acquired nor sold shares of Open Market stock.

116. Insider Russell's trading during the class period was as follows:

**ANNMARIE RUSSELL, VICE PRESIDENT**

<table>
<thead>
<tr>
<th>DATE</th>
<th>NUMBER OF SHARES</th>
<th>PRICE</th>
<th>PROCEEDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/17/00</td>
<td>7,000</td>
<td>$55</td>
<td>$385,000</td>
</tr>
<tr>
<td>11/15/99</td>
<td>5,000</td>
<td>$25</td>
<td>$65,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>12,000</strong></td>
<td><strong>$25-$55</strong></td>
<td><strong>$450,000</strong></td>
</tr>
</tbody>
</table>

117. Insider Russell's trades are highly suspicious for several reasons, particularly because they were unusual in both amount and time. The sales detailed above left Russell with
ownership of only three (3) shares of Open Market stock. Russell's initial filing was on August 4, 1999. Between that date and the sales detailed above, Russell did not sell any Open Market stock. During the Class Period, Russell sold over 12,000 shares -- 7,000 of which were traded during the same period that the insiders listed herein traded. Additionally, the majority of Russell's sales all occurred at prices for Open Market stock within $10.50 of the Company's all-time high of $65.38, on March 9, 2000. Most of Russell's sales were also at prices significantly higher than the Class Period average of $39.984 and the stock's price after defendants' fraudulent scheme became known to the market. Since the sales detailed above, Russell has neither acquired nor sold shares of Open Market stock.

118. Insider Woon's trading during the class period was as follows:

<table>
<thead>
<tr>
<th>DATE</th>
<th>NUMBER OF SHARES</th>
<th>PRICE</th>
<th>PROCEEDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/17/00</td>
<td>5,000</td>
<td>$55</td>
<td>$275,000</td>
</tr>
<tr>
<td>2/10/00</td>
<td>10,000</td>
<td>$52.96</td>
<td>$529,600</td>
</tr>
<tr>
<td>TOTAL</td>
<td>15,000</td>
<td>$55-$52.96</td>
<td>$804,600</td>
</tr>
</tbody>
</table>

119. Insider Woon's trades are highly suspicious for several reasons, particularly because they were unusual in both amount and time. Woon exercised 25,751 options in the early portion of the Class Period, December 29, 1999, but maintained those shares until the same time the other insiders sold. Woon then unloaded 15,000 of these shares as detailed above, leaving him with ownership of only 10,751 shares of Open Market stock. Making Woon's actions more suspicious is that Open Market's closing price on the day he exercised his options was $41; both of his sales were in the mid-fifty dollar range. Additionally, Woon's sales all occurred at prices for Open Market stock within $12.50 of the Company's all-time high of $65.38, on March 9,
2000. Woon’s sales were also at prices significantly higher than the Class Period average of $39.984 and the stock’s price after defendants’ fraudulent scheme became known to the market. Since the sales detailed above, Woon has neither acquired nor sold shares of Open Market stock.

120. In connection with Open Market’s acquisition of FutureTense, the Company intended to and did utilize the "pooling" method of accounting. As a result, the merger agreement prohibited "the executive officers and directors and persons who may be affiliates of Open Market" from taking any action that would jeopardize the accounting treatment of the merger as a pooling of interests. Because pooling of interests accounting prohibits sales of stock by affiliates of the Company, which are defined to include the executive officers and directors, these individuals were unable to sell any more than de minimus amounts of their personal holdings for a proscribed period of time which plaintiffs calculate as beginning on October 18, 1999, the date of the merger, and ending on February 2, 2000, the date on which financial results covering at least a thirty day period of post-merger operations were published. However, this "lock-up" period does not in any way diminish or otherwise negate the strong inference of scienter presented by the above-described insider sales. Despite the fact that these individuals had every opportunity to sell shares prior to and after the class period, they did not sell at all in most instances, or if they did sell, they did not sell nearly as many shares as they did immediately following the expiration of the lock-up. In addition, the expiration of a lock-up period is not a requirement that shares be sold, and given the materially adverse information known to and/or recklessly disregarded by defendants and the other selling insiders, these individuals were under a duty not to sell until after this information was publicly disclosed.
121. Q A and Beta testing are critical functions to the survival of any software company seeking to develop and market new software products, and defendants, being experienced senior officers of Open Market, were intimately knowledgeable with the standard practices and procedures of the software industry in this regard. In addition, the integration of FutureTense's IPS and Open Market's Transact was a critical component to the survival of Open Market. As alleged herein, in an effort to take advantage of the booming stock market for Internet software producers, Open Market rushed its "integrated" suite to market without adequate Quality Assurance or beta testing, or correcting the problems or "bugs" discovered by the Q A department. Given the critical nature and importance of such testing and of the information generated by the Q A department, defendants knew and/or recklessly disregarded that failing to perform a minimal level of product testing commensurate with industry standards would result in a product which was not adequately integrated and capable of performing in the manner represented by defendants.

122. In order to artificially inflate the price of Open Market shares before selling their personal holdings, the Individual Defendants misled and deceived analysts and then adopted the conclusions that analysts made after analyzing defendants' misrepresentations. Among other things, the Company's website, under the title "Investor Relations," published analysts' reports and/or provided a cyber-link to those reports thereby adopting those statements as their own.

123. Recognizing the impropriety of defendants' actions and fearing discovery of their involvement in the fraudulent scheme, defendants no longer provide these analysts' reports on the Company's website and also have had the Company erase much of the other information which was previously provided under the title Investor Relations. The Company had published its
"Earnings Estimates", "Audio Archives" and "Presentations" for investors' perusal, but now links to these sites merely inform the viewer that this information is no longer available. Furthermore, recognizing that the comments made by Interim President and CEO Harland Lavigne in the Company's February 12, 2001 conference call were an admission of significant problems contrary to the defendants' earlier representations, this conference call is no longer available on BestCalls.com, where it had originally been published. BestCalls.com's stated practice is to make available such conference calls for as long as a company desires.

**CLASS ACTION ALLEGATIONS**

124. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of a class consisting of all persons who purchased or otherwise acquired the common stock of Open Market between November 8, 1999 and April 18, 2000, inclusive (the "Class Period").

125. Excluded from the Class are the defendants herein, members of each Individual Defendant's immediate family, any entity in which any defendant has a controlling interest, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party.

126. This action is properly maintained as a class action for the following reasons:

   a. Open Market has millions of shares of common stock outstanding, and because the Company’s common stock was actively traded, members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members can only be determined by appropriate discovery, plaintiffs believe that Class members number at least in the thousands and that they are geographically dispersed.
b. Common questions of law and fact exist as to all members of the Class, which predominate over any questions affecting only individual members of the Class, in that defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

(i) whether the federal securities laws were violated by defendants’ acts as alleged herein;

(ii) whether the Company’s publicly disseminated releases and statements during the Class Period omitted and/or misrepresented material facts and whether defendants breached any duty to convey material facts or to correct material facts previously disseminated;

(iii) whether defendants participated in and pursued the fraudulent scheme or course of business complained of;

(iv) whether the defendants acted willfully, with knowledge or recklessly, in omitting and/or misrepresenting material facts;

(v) whether the market prices of Open Market common stock during the Class Period were artificially inflated due to the material nondisclosures and/or misrepresentations complained of herein; and

(vi) whether the members of the Class have sustained damages and, if so, what is the appropriate measure of damages.

127. Plaintiffs’ claims are typical of the claims of the members of the Class, because plaintiffs and all of the Class members sustained damages arising out of defendants’ wrongful conduct complained of herein.
128. Plaintiffs will fairly and adequately protect the interests of the Class members and have retained counsel who are experienced and competent in class and securities litigation. Plaintiffs have no interests that are contrary to or in conflict with the members of the Class plaintiffs seek to represent.

129. 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 members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

STATUTORY SAFE HARBOR

130. The federal 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 because they are not forward-looking statements. To the extent that the statements pleaded herein were forward-looking statements, they were not identified as "forward-looking statements" when made and, thus, the safe-harbor statute is inapplicable. Furthermore, to the extent that the statements pleaded herein were forward-looking and identified as such, they were not accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from the statements made therein. Finally, defendants are liable for the forward-looking statements pleaded because, at the time each of those forward-looking statements was made, the speaker knew the forward-looking statement was false and the
forward-looking statement was authorized and/or approved by an executive officer of Open Market who knew that those statements were false when made.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:**

**FRAUD-ON-THE-MARKET DOCTRINE**

131. At all relevant times, plaintiffs will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

- a. Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- b. The omissions and misrepresentations were material;
- c. The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company’s common stock; and
- d. Plaintiffs and the other members of the Class purchased Open Market common stock between the time defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

132. At all relevant times, the market for Open Market common stock was an efficient market for the following reasons, among others:

- a. Open Market common stock met the requirements for listing, and was listed and actively traded, on the NASDAQ National Market ("NASDAQ"), a highly efficient market;
- b. As a regulated issuer, Open Market filed periodic public reports with the SEC and the NASDAQ;
c. Open Market stock was followed by securities analysts employed by major brokerage firms, such as ABN AMRO, A.G. Edwards & Sons, Inc., Paine Webber, Wit Sound View Technology Group, and Goldman Sachs & Co., who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace; and
d. Open Market regularly issued press releases which were carried by national newswires. Each of these releases was publicly available and entered the public marketplace.

133. As a result, the market for Open Market securities promptly digested current information with respect to Open Market from all publicly-available sources and reflected such information in Open Market's stock price. Under these circumstances, all purchasers of Open Market common stock during the Class Period suffered similar injury through their purchase of stock at artificially inflated prices and a presumption of reliance applies.

COUNT I

For Violations Of Section 10(b) Of The 1934 Act And Rule 10b-5 Promulgated Thereunder Against All Defendants

134. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

135. This Count is brought by plaintiffs on behalf of themselves and all members of the Class pursuant to section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC against all defendants.
136. During the Class Period, defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiffs and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Open Market common stock; and (iii) cause plaintiffs and other members of the Class to purchase Open Market stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

137. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company’s common stock in an effort to maintain artificially high market prices for Open Market common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. Defendants are sued as primary participants in the wrongful and illegal conduct charged herein. The Individual Defendants are also sued herein as controlling persons of Open Market, as alleged below.

138. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company’s operations, financial condition and
performance so that the market prices of the Company’s publicly traded securities would be based on truthful, complete and accurate information.

139. Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, business practices, performance, operations and future prospects of Open Market as specified herein. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Open Market’s value and performance and substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Open Market and its business, operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Open Market securities during the Class Period.

140. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) each of the Individual Defendants was a high-level executive and/or director at the Company during the Class Period; (ii) each of the Individual Defendants, by virtue of his responsibilities and activities as a senior executive officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company’s internal budgets, plans, projections and/or reports; (iii) the Individual Defendants enjoyed significant personal contact and familiarity with each other and were advised
of and had access to other members of the Company’s management team, internal reports, and other data and information about the Company’s financial condition and performance at all relevant times; and (iv) the Individual Defendants were aware of the Company’s dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

141. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were readily available to them. Such defendants’ material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Open Market’s operating condition, business practices and future business prospects from the investing public and supporting the artificially inflated price of its stock. As demonstrated by their overstatements and misstatements of the Company’s financial condition and performance throughout the Class Period, the Individual Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

142. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Open Market’s common stock was artificially inflated during the Class Period. In ignorance of the fact that the market price of Open Market’s shares was artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known
to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiffs and the other members of the Class acquired Open Market common stock during the Class Period at artificially inflated high prices and were damaged thereby.

143. At the time of said misrepresentations and omissions, plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiffs and the other members of the Class and the marketplace known of the true performance, business practices, future prospects and intrinsic value of Open Market, which were not disclosed by defendants, plaintiffs and other members of the Class would not have purchased or otherwise acquired their Open Market securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

144. The undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, rules of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed to the investing public. This information 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.

145. By virtue of the foregoing, Defendants each violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.
146. As a direct and proximate result of defendants' wrongful conduct, plaintiffs and the other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

COUNT II

For Violations Of Section 20(a) Of The 1934 Act Against Individual Defendants

147. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein.

148. This Count is brought by plaintiffs on behalf of themselves and all Class members against each of the Individual Defendants pursuant to section 20(a) of the Exchange Act.

149. The Individual Defendants were and acted as controlling persons of Open Market within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's actual performance, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiffs contend are false and misleading. Each of the Individual Defendants was provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.
150. In addition, each of the Individual Defendants had direct involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

151. As set forth above, Open Market and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their controlling positions, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

152. By virtue of their positions as controlling persons of Open Market or each other, the Individual Defendants are liable pursuant to section 20(a) of the Exchange Act. As a direct and proximate result of the wrongful conduct of the Individual Defendants, plaintiffs and all other members of the Class suffered damages in connection with their purchases of Open Market common stock during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on their own behalf and on behalf of the Class, pray for judgment as follows:

a. Declaring this action to be a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and declaring plaintiffs to be proper Class representatives and their counsel as Class counsel on behalf of the Class defined herein;
b. Awarding damages against each defendant jointly and severally and in favor of plaintiffs and the members of the Class in an amount which may be proven at trial, together with interest thereon;

c. Awarding plaintiffs and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

d. Awarding such other and further relief as this Court may deem just and proper including any extraordinary equitable and/or injunctive relief as permitted by law or equity to attach, impound or otherwise restrict the defendants' assets to assure plaintiffs have an effective remedy.

e. Such other relief as this Court deems appropriate.

JURY DEMAND

Plaintiffs demands a trial by jury on all issues so triable.

DATED: April 13, 2001

MOULTON & GANS, LLP

By: Nancy Freeman, BBO #184540
133 Federal Street
Boston, Massachusetts 02110
(617) 369-7979

Plaintiffs' Liaison Counsel
LAW OFFICES OF BERNARD M. GROSS, P.C.
Bernard M. Gross
Deborah R. Gross
1500 Walnut Street
Philadelphia, PA 19102
(215) 561-3600

KANTROWITZ, GOLDMANER & GRAIFMAN, P.C.
Gary Graifman
747 Chestnut Ridge Road
Chestnut Ridge, NY 10977-6216
(914) 356-2570

LAW OFFICES OF BRUCE G. MURPHY
Bruce G. Murphy
265 Llwyds Lane
Vero Beach, FL 32963
(828) 733-0464

RABIN & PECKEL LLP
I. Stephen Rabin
Brian Murray
275 Madison Avenue, 34th Floor
New York, NY 10016
(212) 682-1818

SHAPIRO HABER & URMY LLP
Thomas G. Shapiro, BBO #454680
Theordore M. Hess-Mahan, BBO #557109
75 State Street
Boston, MA 02109
(617) 439-3939

SPECTOR, ROSEMAN & KODROFF, P.C.
Robert M. Roseman
Joshua H. Grabar
1818 Market Street
Philadelphia, PA 191903
(215) 496-0300
STULL, STULL & BRODY
Howard Longman
Aaron Brody
6 East 45th Street
New York, NY 10017
(212) 687-7230

WEISS & YOURMAN
Joseph H. Weiss
551 Fifth Avenue, Suite 1600
New York, NY 10176
(212) 682-3025

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
Fred Taylor Isquith
Gregory M. Nespole
270 Madison Avenue
New York, NY 10016
(212) 545-4600

LAW OFFICES OF ALFRED G.
YATES, JR.
Alfred G. Yates
519 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

WEINSTEIN KITCHENOFF
SCARLATO & GOLDMAN LTD.
Robert S. Kitchenoff
Paul J. Scarlato
1608 Walnut Street, Suite 1400
Philadelphia, PA 19103

THE LAW OFFICES OF CHARLES J.
PIVEN, P.A.
Charles J. Piven
The World Trade Center - Baltimore
401 East Pratt Street, Suite 2525
Baltimore, MD 21202
(410) 332-0030

Plaintiffs' Counsel