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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____, Individually and on behalf of all others similarly situated, Plaintiff, v. PHATHOM PHARMACEUTICALS, INC., TERRIE CURRAN, TODD BRANNING, ANOTHONY GUZZO, and MOLLY HENDERSON, Defendants.	**Case No:** **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** JURY TRIAL DEMANDED

Plaintiff _____ ("Plaintiff"), individually and on behalf of all other persons similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, among other things, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants' public documents, and announcements made by Defendants, public filings, wire and press releases published by and regarding Phathom Pharmaceuticals, Inc. ("Phathom" or the "Company"), and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded Phathom securities between April 1, 2021 and August 1, 2022, inclusive (the "Class Period"). Plaintiff seeks to recover compensable damages caused by Defendants' violations of the federal securities laws under the Securities Exchange Act of 1934 (the "Exchange Act").

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

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

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased Phathom securities during the Class Period and was economically damaged thereby.

7. Phathom purports to be a late clinical-stage biopharmaceutical company focused on developing and commercializing novel treatments for gastrointestinal diseases.

8. The Company is incorporated in Delaware and its head office is located at 100 Campus Drive, Suite 102, Florham Park, New Jersey 07932. Phathom's common stock trades on the NASDAQ Exchange ("NASDAQ") under the ticker symbol "PHAT".

9. Defendant Terrie Curran ("Curran") has served as the Company's Chief Executive Officer and a Director since December 2019.

10. Defendant Todd Branning ("Branning") served as the Company's Chief Financial Officer from July 2020 until June 2021.

11. Defendant Anthony Guzzo ("Guzzo") served as the Company's interim principal financial officer from June 2021 until April 2022. Defendant Guzzo also held other roles with the Company during the Class Period such as Vice President, Chief Accounting Officer, corporate controller, and as the principal accounting officer.

12. Defendant Molly Henderson ("Henderson") has served as the Company's Chief Financial Officer since April 2022.

13. Defendants Curran, Branning, Guzzo, and Henderson are collectively referred to herein as the "Individual Defendants."

14. Each of the Individual Defendants:

(a) directly participated in the management of the Company;

(b) was directly involved in the day-to-day operations of the Company at the highest levels;

(c) was privy to confidential proprietary information concerning the Company and its business and operations;

(d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

(e) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;

(f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or

(g) approved or ratified these statements in violation of the federal securities laws.

15. The Company is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

16. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

17. The Company and the Individual Defendants are collectively referred to herein as "Defendants."

SUBSTANTIVE ALLEGATIONS

Background Information

18. On February 24, 2021, the United States Food and Drug Administration ("FDA") issued a Guidance Document entitled "Control of Nitrosamine Impurities in Human Drugs" which the FDA summarized as:

> ***This guidance recommends steps manufacturers of APIs and drug products should take to detect and prevent unacceptable levels of nitrosamine impurities in pharmaceutical products.*** The guidance also describes conditions that may introduce nitrosamine impurities. The recent unexpected finding of nitrosamine impurities, which are probable human carcinogens, in drugs such as angiotensin II receptor blockers (ARBs), ranitidine, nizatidine, and metformin, has ***made clear the need for a risk assessment strategy for potential nitrosamines in any pharmaceutical product at risk for their presence***.
>
> (Emphasis added.)

Materially False and Misleading Statements Issued During the Class Period

19. On March 30, 2021, after market hours, the Company filed with the SEC its annual report for the year ended December 31, 2020 (the "2020 Annual Report") signed by Defendants Curran and Branning. Attached to the 2020 Annual Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") signed by Defendants Curran and Branning attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

20. The 2020 Annual Report touted vonoprazan while neglecting to raise *any* mention, much less concern or risk, of nitrosamines and stated the following, in pertinent part, touting vonoprazam's use and commercialization internationally and also the Company's plans for in the U.S.:

> Our initial product candidate, vonoprazan, is an oral small molecule potassium-competitive acid blocker, or P-CAB. P-CABs are a novel class of medicines that block acid secretion in the stomach. Vonoprazan has shown rapid, potent, and durable anti-secretory effects and has demonstrated clinical benefits over the current standard of care as a single agent in the treatment of gastroesophageal reflux disease, or GERD, and in combination with antibiotics for the treatment of *Helicobacter pylori*, or *H. pylori*, infection. Takeda Pharmaceutical Company Limited, or Takeda, developed vonoprazan and has received marketing approval in fourteen countries in Asia and Latin America. Vonoprazan generated approximately $650 million in net sales in its fifth full year on the market since its approval in Japan in late 2014. In May 2019, we in-licensed the U.S., European, and Canadian rights to vonoprazan from Takeda.

> We believe we can leverage Takeda's extensive clinical data, including results from 19 Phase 3 clinical trials, to advance vonoprazan through pivotal trials in the United States and Europe. We initiated two pivotal Phase 3 clinical trials in the fourth quarter of 2019 for vonoprazan: one for the treatment of erosive GERD (PHALCON-EE), also known as erosive esophagitis, or EE, and a second for the treatment of *H. pylori* infection (PHALCON-HP). In March 2020, due to global efforts to combat the coronavirus, COVID-19 pandemic, we announced a temporary pause in randomization of new patients in our Phase 3 trials. In June 2020, we announced that we had recommenced randomization of new patients in both of our Phase 3 trials. Despite the pause, we completed patient enrollment in PHALCON-EE in November 2020 and in PHALCON-HP in January 2021, and we expect to report top-line data from PHALCON-EE in the second half 2021 and from PHALCON-HP in the second quarter of 2021. We believe that the successful completion of our Phase 3 clinical trials, together with the existing clinical data, will support regulatory submissions in 2021 and 2022 for marketing approval for the treatment of *H. pylori* infection and erosive esophagitis, respectively. In August 2019, we received qualified infectious disease product, or QIDP, and Fast Track designations from the U.S. Food and Drug Administration, or FDA, for vonoprazan tablets in combination with amoxicillin tablets and clarithromycin tablets and with amoxicillin tablets alone, for the treatment of *H. pylori* infection. In November 2020, we requested additional QIDP and Fast Track designations to include amoxicillin capsules in addition to amoxicillin tablets. The FDA granted these additional Fast Track designations and advised us that the request for additional QIDP designations for these products remains under review. QIDP designation provides potential eligibility for priority review and extension of any regulatory exclusivity awarded, if approved. Vonoprazan has the potential to be the first gastric anti-secretory agent from a novel class approved in the United States, Europe, or Canada in over 30 years.

21. On March 1, 2022, the Company filed with the SEC its annual report for the year ended December 31, 2021 (the "2021 Annual Report") signed by Defendants Curran and Guzzo. Attached to the 2021 Annual Report were

certifications pursuant to SOX signed by Defendants Curran and Guzzo attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

22. The 2020 Annual Report touted vonoprazan while neglecting to raise *any* mention, much less concern or risk, of nitrosamines and stated the following, in pertinent part, touting vonoprazam's use and commercialization internationally and also the Company's plans for in the U.S.:

> Our initial product candidate, vonoprazan, is an oral small molecule P-CAB. P-CABs are a novel class of medicines that block acid secretion in the stomach. Vonoprazan has shown rapid, potent, and durable anti-secretory effects and has demonstrated clinical benefits over the current standard of care as a single agent in the treatment of gastroesophageal reflux disease, or GERD, and in combination with antibiotics for the treatment of *H. pylori* infection. Takeda developed vonoprazan and has received marketing approval in numerous countries in Asia and Latin America as well as Russia. Vonoprazan generated approximately $850 million in net sales in its seventh full year on the market since its approval in Japan in late 2014. In May 2019, we in-licensed the U.S., European, and Canadian rights to vonoprazan from Takeda.
>
> In 2021 we reported topline data from two pivotal Phase 3 clinical trials for vonoprazan: one for the treatment of *H. pylori* infection (PHALCON-HP), and a second for the treatment of erosive GERD (PHALCON-EE), also known as erosive esophagitis, or EE. In April 2021, we reported positive topline data from PHALCON-HP, and in October 2021, we reported positive topline data from PHALCON-EE. In September 2021, we submitted two new drug applications (NDAs) for treatment regimens containing vonoprazan for the treatment of H. pylori, and in November 2021, the U.S. Food and Drug Administration, or FDA, accepted both NDAs for filing, granted each of them Priority Review, and assigned us a Prescription Drug User Fee Act (PDUFA) action date in May 2022. Based on the results of the PHALCON-EE trial, we expect to submit an NDA for vonoprazan for the treatment of

> erosive esophagitis in March 2022. In August 2019, we received Qualified Infectious Disease Product, or QIDP, and Fast Track designations from the FDA, for vonoprazan tablets in combination with amoxicillin tablets and clarithromycin tablets and with amoxicillin tablets alone for the treatment of *H. pylori* infection. In January 2021 and May 2021, respectively, we received additional Fast Track and QIDP designations to include amoxicillin capsules in addition to amoxicillin tablets. QIDP designation provides a potential extension of any regulatory exclusivity awarded, if approved. We have also initiated development of vonoprazan for the treatment of NERD. In February 2022, we commenced enrollment of patients in a Phase 3 trial studying vonoprazan, dosed on a once-daily basis, for the treatment of NERD with topline data expected in 2023. Also in February 2022, we reported positive topline data from a Phase 2 trial studying vonoprazan for on-demand treatment of NERD.

23. On May 10, 2022, the Company filed with the SEC its periodic report for the quarter ended March 31, 2022 (the "1Q22 Report") signed by Defendants Curran and Henderson. Attached to the 1Q22 Report were certifications pursuant to SOX signed by Defendants Curran and Henderson attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

24. The 1Q22 Report touted vonoprazan while neglecting to raise *any* mention, much less concern or risk, of nitrosamines and stated the following, in pertinent part, touting vonoprazam's use and commercialization internationally and also the Company's plans for in the U.S.:

> Our initial product candidate, vonoprazan, is an oral small molecule potassium-competitive acid blocker, or P-CAB. P-CABs are a novel class of medicines that block acid secretion in the stomach. Vonoprazan has shown rapid, potent, and durable anti-secretory effects and has

demonstrated clinical benefits over the current standard of care as a single agent in the treatment of gastroesophageal reflux disease, or GERD, and in combination with antibiotics for the treatment of *H. pylori*, infection. Takeda Pharmaceutical Company Limited, or Takeda, developed vonoprazan and has received marketing approval in numerous countries in Asia and Latin America as well as Russia. Vonoprazan generated approximately $850 million in net sales in its seventh full year on the market since its approval in Japan in late 2014. In May 2019, we in-licensed the U.S., European, and Canadian rights to vonoprazan from Takeda.

In 2021 we reported topline data from two pivotal Phase 3 clinical trials for vonoprazan: one for the treatment of *H. pylori* infection (PHALCON-HP), and a second for the treatment of erosive GERD (PHALCON-EE), also known as erosive esophagitis, or EE. In April 2021, we reported positive topline data from PHALCON-HP, and in October 2021, we reported positive topline data from PHALCON-EE. In September 2021, we submitted new drug applications (NDAs) for two treatment regimens containing vonoprazan for the treatment of *H. pylori*, vonoprazan triple therapy (vonoprazan, amoxicillin, clarithromycin) and vonoprazan dual therapy (vonoprazan, amoxicillin), and in November 2021, the U.S. Food and Drug Administration, or FDA, accepted both NDAs for filing, granted each of them Priority Review, and assigned us a Prescription Drug User Fee Act (PDUFA) action date in May 2022. In addition, both of our *H. pylori* NDAs received qualified infectious disease product (QIDP) designations which provides a potential extension of any regulatory exclusivity awarded following approval. On May 3, 2022, we received FDA approval for vonoprazan triple therapy, under the brand name VOQUEZNA™ TRIPLE PAK™ and vonoprazan dual therapy, under the brand name VOQUEZNA™ DUAL PAK™, in each case for the treatment of *H. pylori* infection in adults and expect to launch both products in the third quarter of 2022. Further, in March 2022, we submitted an NDA for the use of vonoprazan as a treatment for adults for the healing of all grades of EE and relief of heartburn, and maintenance of healing of all grades of EE and relief of heartburn.

… ***We commenced our operations in 2018 and have devoted substantially all of our resources to date to organizing and staffing our company, business planning, raising capital, in-licensing our***

> ***initial product candidate, vonoprazan, meeting with regulatory authorities, conducting our clinical trials of vonoprazan, preparing applications for regulatory approval for vonoprazan and preparing for the commercial launch.***

(Emphasis added.)

25. The statements contained in ¶¶ 19-24 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the Company's vonoprazan-based products such as VOQUEZNA DUAL PAK and VOQUEZNA TRIPLE PAK contained a nitrosamine impurity; (2) as a result, the Company would have to engage with the FDA on the nitrosamine issue, including to obtain approval of and implement an additional test method, specification, as well as a proposed acceptable intake limit and additional controls to address this impurity prior to releasing its first vonoprazan-based products to the market; (3) as a result of the foregoing, the Company would delay the VOQUEZNA DUAL PAK and VOQUEZNA TRIPLE PAK product launches; and (4) as a result, Defendants' statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.

THE TRUTH EMERGES

26. On August 2, 2022, before market hours, Phathom issued a press release entitled "Phathom Pharmaceuticals Reports Second Quarter 2022 Financial Results and Provides Business Updates" which announced the Company's issues with nitrosamines and its subsequent delays, stating, in pertinent part, the following:

> • ***Initial testing for nitrosamines revealed trace levels in vonoprazan commercial drug product; working with FDA to make VOQUEZNA DUAL and TRIPLE PAK available to patients as soon as possible***; *H. pylori* full commercial launch planned to coincide with expected [Erosive Esophagitis (EE)] launch in Q1 2023
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> … said Terrie Curran, President and Chief Executive Officer of Phathom. "As the pharmaceutical industry and global regulatory agencies continue to develop standards to help detect and control levels of nitrosamines, an impurity commonly found in water, meats, and vegetables, ***we detected trace levels of a nitrosamine in vonoprazan drug product*** in our post-approval testing as we prepared for commercial launch. We will be discussing with the FDA a new test method and controls, and confirming our assessment that our drug product is within acceptable intake levels. Our goal is to make our product available to *H. pylori* patients as soon as possible, however, we are now planning for a combined full commercial launch of both *H. pylori* and EE in the first quarter of 2023. …"
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> • Consistent with current FDA recommendations for all chemically synthesized drug compounds such as vonoprazan, the Company initiated testing to determine whether nitrosamines were present in vonoprazan drug product. ***These tests revealed trace levels of a nitrosamine impurity*** that is not described within the FDA guidance document entitled "Control of Nitrosamine Impurities in Human Drugs – Guidance for Industry." The Company is working with

> the FDA and plans to obtain approval of and implement an additional test method, specification, including a proposed acceptable intake limit, and additional controls to address this impurity prior to releasing our first vonoprazan-based products to the market. ***These additional activities will result in a delay of the planned VOQUEZNA DUAL PAK and VOQUEZNA TRIPLE PAK product launches.*** The Company currently expects the full commercial launch of these products, as well as, if approved VOQUEZNA tablets for EE, in the first quarter of 2023.
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> (Emphasis added.)

27. Also on August 2, 2022, before market hours, the Company filed with the SEC a periodic report on Form 10-Q which discussed the newly disclosed issues with nitrosamines and its subsequent delays, stating, in pertinent part, the following:

> In August 2022, we announced that, consistent with current FDA recommendations for all chemically synthesized drug compounds such as vonoprazan, we had previously initiated post-approval testing to determine whether nitrosamine impurities were present in vonoprazan drug product. ***These tests showed trace levels of a nitrosamine impurity that is not described within the FDA guidance document entitled "Control of Nitrosamine Impurities in Human Drugs – Guidance for Industry."*** We are working with the FDA and plan to obtain approval of and implement an additional test method, specification, including a proposed acceptable intake limit, and additional controls to address this impurity prior to releasing our first vonoprazan-based products to the market. ***These additional activities will result in a delay of the planned VOQUEZNA™ TRIPLE PAK™ and VOQUEZNA™ DUAL PAK™ full commercial launches.*** We currently expect full commercial launch of these products, as well as, if approved, VOQUEZNA™ tablets for EE, in the first quarter of 2023.
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> * * *
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> ***The success of our business, including our ability to finance our company and generate any revenue in the future, will primarily depend on the successful completion of clinical development,***

> ***regulatory approval and commercialization of vonoprazan, including successfully addressing, to the FDA's and the medical community's satisfaction, the formation of nitrosamine impurities in commercial batches of vonoprazan drug product, which may be significantly delayed beyond our current expectations and may never occur***. Although we have obtained marketing approval of vonoprazan in one indication, we have not yet succeeded in launching and successfully commercializing vonoprazan. Any inability to obtain required, additional regulatory approvals for, or, if approved, successfully commercializing vonoprazan, would materially and adversely affect our business, financial condition, prospects and operating results.
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> (Emphasis added.)

28. On this news, the Company's share price fell $2.61 per share, or 28%, to close at $9.07 per share on August 2, 2022, on unusually heavy trading volume, damaging investors.

29. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than defendants who acquired Phathom securities publicly traded on the NASDAQ during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, members of the Individual Defendants' immediate families and their legal representatives,

heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

31. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Phathom securities were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class.

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

33. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

34. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the Exchange Act was violated by Defendants' acts as alleged herein;

- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of the Company;
- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- whether the Defendants caused the Company to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of Phathom securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

35. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it

impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

36. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Phathom securities met the requirements for listing, and were listed and actively traded on the NASDAQ, an efficient market;
- As a public issuer, the Company filed public reports;
- the Company communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
- the Company's securities were liquid and traded with moderate to heavy volume during the Class Period; and
- the Company was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

37. Based on the foregoing, the market for the Company securities promptly digested current information regarding the Company from all publicly

available sources and reflected such information in the prices of the common units, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

38. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

COUNT I
For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder Against All Defendants

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

40. This Count is asserted against Defendants is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

41. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order

to make the statements made, in light of the circumstances under which they were made, not misleading.

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

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of the Company's securities during the Class Period.

43. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of the Company, their control

over, and/or receipt and/or modification of the Company's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company, participated in the fraudulent scheme alleged herein.

44. Individual Defendants, who are or were senior executives and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Phathom personnel to members of the investing public, including Plaintiff and the Class.

45. As a result of the foregoing, the market price of Phathom securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of Phathom securities during the Class Period in purchasing Phathom securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

46. Had Plaintiff and the other members of the Class been aware that the market price of Phathom securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which

Defendants did not disclose, they would not have purchased Company securities at the artificially inflated prices that they did, or at all.

47. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

48. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of Phathom securities during the Class Period.

COUNT II
Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

49. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

50. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions, they knew the adverse non-public information about the Company's misstatement of revenue and profit and false financial statements.

51. As officers of a public business, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to the Company's financial condition and results of operations, and to correct promptly any public

statements issued by the Company which had become materially false or misleading.

52. Because of their positions of control and authority as senior executives and/or directors, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period concerning the Company's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Company securities.

53. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by the Company.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of

the Federal Rules of Civil Procedure and designating plaintiff's counsel as Lead Counsel;

(b) awarding damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;

(c) awarding plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated:

THE ROSEN LAW FIRM, P.A.

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