

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

_____, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

ALICO, INC., JOHN E. KIERNAN,
PERRY DEL VECCHIO, and RICHARD
RALLO,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States (“U.S.”) Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Alico, Inc. (“Alico” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial, additional evidentiary

support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants that purchased or otherwise acquired Alico securities between February 4, 2021 and December 13, 2022, both dates inclusive (the “Class Period”), seeking to recover damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Alico, together with its subsidiaries, operates as an agribusiness and land management company in the U.S. The Company operates in two segments: (i) Alico Citrus; and (ii) Land Management and Other Operations. The Alico Citrus segment cultivates citrus trees to produce citrus for delivery to the processed and fresh citrus markets. The Land Management and Other Operations segment owns and manages land in Collier, Glades, and Hendry Counties, and also leases land for recreational and grazing purposes, conservation, and mining activities.

3. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company’s business, operations, and

compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Alico had deficient disclosure controls and procedures and internal control over financial reporting; (ii) as a result, the Company had improperly calculated Alico's deferred tax liabilities over a multi-year period; (iii) accordingly, the Company would likely be required to restate one or more of its previously issued financial statements; (iv) the foregoing would impede the timely completion of the audit of the Company's financial results in advance of its year-end earnings call; and (v) as a result, the Company's public statements were materially false and misleading at all relevant times.

4. On December 6, 2022, Alico issued a press release announcing that the Company was postponing its year-end earnings call. Specifically, the press release stated that "additional time is required for completion of the audit of its financial results for the period ended September 30, 2022 by its independent registered public accounting firm."

5. On this news, Alico's stock price fell \$3.06 per share, or 10.42%, to close at \$26.29 per share on December 6, 2022.

6. Then, on December 7, 2022, Alico issued a press release providing a further update on the delays that the Company faced in reporting fiscal year 2022 results and making the required associated filings with the SEC. In the press release, the Company disclosed that "[t]he key item that is requiring such additional time

involves evaluation of the proper amount of the Company's Deferred Tax Liability, particularly certain portions of that Deferred Tax Liability arising in prior fiscal years, including those going back to fiscal year 2019 or possibly several years before fiscal year 2019."

7. Finally, on December 13, 2022, Alico filed with the SEC its Annual Report on Form 10-K for the year ended September 30, 2022 (the "2022 10-K"). In the 2022 10-K, Alico "restate[d] the Company's previously issued audited consolidated balance sheet, audited consolidated statements of changes in equity and related disclosures as of September 30, 2021 included in the Company's Annual Report on Form 10-K for the year ended September 30, 2021 (the '2021 10-K') previously filed with the SEC and the Company's previously issued unaudited consolidated balance sheet, unaudited consolidated statements of changes in equity and related disclosures as of the end of each quarterly periods ended June 30, 2022, March 31, 2022, December 31, 2021, June 30, 2021, March 31, 2021 and December 31, 2020 included in the Company's respective Quarterly Report on Form 10-Q for each of the quarters then ended previously filed with the SEC (together with the 2021 10-K, the 'Financial Statements')." The Company also disclosed that "[o]n December 12, 2022, the audit committee (the 'Audit Committee') of the board of directors of the Company concluded that the Company's previously issued Financial Statements can no longer be relied upon due to an error identified during the

completion of the 2022 10-K.” Specifically, Alico stated that “[t]he error that led to the Audit Committee’s conclusion relates to the calculation of the deferred tax liabilities for the fiscal years 2015 through 2019, which resulted in a cumulative reduction in the Company’s deferred tax liability, and a corresponding cumulative increase in retained earnings, of approximately \$2,512,000 on the Company’s balance sheet as of September 30, 2022.”

8. On this news, Alico’s stock price fell \$2.64 per share, or 9.53%, to close at \$25.05 per share on December 14, 2022.

9. 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.

JURISDICTION AND VENUE

10. 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).

11. 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.

12. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Alico is headquartered

in this Judicial District, Defendants conduct business in this Judicial District, and a significant portion of Defendants' actions took place within this Judicial District.

13. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

PARTIES

14. Plaintiff, as set forth in the attached Certification, acquired Alico securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

15. Defendant Alico is incorporated under the laws of Florida with principal executive offices located at 10070 Daniels Interstate Court, Suite 200, Fort Myers, Florida 33913. Alico's common stock trades in an efficient market on the Nasdaq Global Select Market ("NASDAQ") under the ticker symbol "ALCO".

16. Defendant John E. Kiernan ("Kiernan") has served as Alico's President and Chief Executive Officer at all relevant times.

17. Defendant Perry Del Vecchio ("Del Vecchio") has served as Alico's Chief Financial Officer ("CFO") since September 6, 2022.

18. Defendant Richard Rallo ("Rallo") served as Alico's Senior Vice President and CFO from before the start of the Class Period to May 31, 2022.

19. Defendants Kiernan, Del Vecchio, and Rallo are sometimes referred to herein as the “Individual Defendants.”

20. The Individual Defendants possessed the power and authority to control the contents of Alico’s SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of Alico’s SEC filings and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because of their positions with Alico, and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

21. Alico and the Individual Defendants are collectively referred to herein as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Background

22. Alico, together with its subsidiaries, operates as an agribusiness and land management company in the U.S. The Company operates in two segments: (i) Alico Citrus; and (ii) Land Management and Other Operations. The Alico Citrus

segment cultivates citrus trees to produce citrus for delivery to the processed and fresh citrus markets. The Land Management and Other Operations segment owns and manages land in Collier, Glades, and Hendry Counties, and also leases land for recreational and grazing purposes, conservation, and mining activities.

Materially False and Misleading Statements Issued During the Class Period

23. The Class Period begins on February 4, 2021, when Alico filed a Quarterly Report on Form 10-Q with the SEC during pre-market hours, reporting the Company's financial and operational results for the quarter ended December 31, 2020 (the "Q1 2021 10-Q"). The Q1 2021 10-Q contained the following representations regarding the Company's disclosure controls and procedures and internal control over financial reporting:

Our Principal Executive Officer and Chief Financial Officer have evaluated the effectiveness of our disclosure controls and procedures as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the "Exchange Act") as of the end of the period covered by this report. Based on this evaluation, our Principal Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.

* * *

During the fiscal quarter ended December 31, 2020, there were no changes in our internal controls over financial reporting that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

24. Further, the Q1 2021 10-Q reported net deferred income tax liabilities of \$39.728 million for the quarter.

25. Appended to the Q1 2021 10-Q as exhibits were signed certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants Kiernan and Rallo, attesting that “[t]he information contained in the Q1 2021 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.”

26. On May 5, 2021, Alico filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company’s financial and operational results for the quarter ended March 31, 2021 (the “Q2 2021 10-Q”). The Q2 2021 10-Q contained the following representations regarding the Company’s disclosure controls and procedures and internal control over financial reporting:

Our Principal Executive Officer and Chief Financial Officer have evaluated the effectiveness of our disclosure controls and procedures as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) as of the end of the period covered by this report. Based on this evaluation, our Principal Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.

During the fiscal quarter ended March 31, 2021, there were no changes in our internal controls over financial reporting that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

Further, the Q2 2021 10-Q reported net deferred income tax liabilities of \$39.728 million for the quarter.

27. Appended to the Q2 2021 10-Q as exhibits were SOX certifications substantively similar to those discussed, *supra*, at ¶ 25.

28. On August 5, 2021, Alico filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operational results for the quarter ended June 30, 2021 (the "Q3 2021 10-Q"). The Q3 2021 10-Q contained the following representations regarding the Company's disclosure controls and procedures and internal control over financial reporting:

Our Principal Executive Officer and Chief Financial Officer have evaluated the effectiveness of our disclosure controls and procedures as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the "Exchange Act") as of the end of the period covered by this report. Based on this evaluation, our Principal Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.

During the fiscal quarter ended June 30, 2021, there were no changes in our internal controls over financial reporting that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

29. Further, the Q3 2021 10-Q reported net deferred income tax liabilities of \$39.728 million for the quarter.

30. Appended to the Q3 2021 10-Q as exhibits were SOX certifications substantively similar to those discussed, *supra*, at ¶ 25.

31. On December 7, 2021, Alico filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operational results for the year ended September 30, 2021 (the "2021 10-K"). The 2021 10-K contained the following representations regarding the Company's disclosure controls and procedures and internal control over financial reporting:

Our Principal Executive Officer and Chief Financial Officer have evaluated the effectiveness of our disclosure controls and procedures as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the "Exchange Act") as of the end of the period covered by this report. Based on this evaluation, our Principal Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.

During the fourth fiscal quarter ended September 30, 2021, there were no changes in our internal controls over financial reporting that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

The Company's internal control over financial reporting includes those policies and procedures that:

- (i) pertain to the maintenance of records, that in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and
- (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Management assessed the effectiveness of the Company's internal control over financial reporting as of September 30, 2021. In making this assessment, management used the criteria described in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO").

Based on our assessment and those criteria, management concluded that our internal control over financial reporting was effective as of September 30, 2021. Management reviewed the results of their assessment with our Audit Committee.

32. Further, the 2021 10-K reported total net deferred income tax liabilities of \$41.977 million for the year.

33. Appended to the 2021 10-K as exhibits were SOX certifications substantively similar to those discussed, *supra*, at ¶ 25.

34. On February 3, 2022, Alico filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operational results for the quarter ended December 31, 2021 (the "Q1 2022 10-Q"). The Q1 2022 10-Q contained the following representations regarding the Company's disclosure controls and procedures and internal control over financial reporting:

Our Principal Executive Officer and Chief Financial Officer have evaluated the effectiveness of our disclosure controls and procedures as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the "Exchange Act") as of the end of the period covered by this report. Based on this evaluation, our Principal Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.

During the fiscal quarter ended December 31, 2021, there were no changes in our internal controls over financial reporting that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

35. Further, the Q1 2022 10-Q reported net deferred income tax liabilities of \$37.101 million for the quarter.

36. Appended to the Q1 2022 10-Q as exhibits were SOX certifications substantively similar to those discussed, *supra*, at ¶ 25.

37. On May 9, 2022, Alico filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operational results for the quarter ended March 31, 2022 (the "Q2 2022 10-Q"). The Q2 2022 10-Q contained the following

representations regarding the Company's disclosure controls and procedures and internal control over financial reporting:

Our Principal Executive Officer and Chief Financial Officer have evaluated the effectiveness of our disclosure controls and procedures as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the "Exchange Act") as of the end of the period covered by this report. Based on this evaluation, our Principal Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.

During the fiscal quarter ended March 31, 2022, there were no changes in our internal controls over financial reporting that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

38. Further, the Q2 2022 10-Q reported net deferred income tax liabilities of \$37.321 million for the quarter.

39. Appended to the Q2 2022 10-Q as exhibits were SOX certifications substantively similar to those discussed, *supra*, at ¶ 25.

40. On August 3, 2022, Alico filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operational results for the quarter ended June 30, 2022 (the "Q3 2022 10-Q"). The Q3 2022 10-Q stated the following regarding the Company's disclosure controls and procedures and internal control over financial reporting:

Our management, with the participation of our Principal Executive Officer/Principal Financial Officer, evaluated the effectiveness of our

disclosure controls and procedures as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) as of the end of the period covered by this report. Based on this evaluation, our Principal Executive Officer/Principal Financial Officer has concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.

During the fiscal quarter ended June 30, 2022, there were no changes in our internal controls over financial reporting that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

41. Further, the Q3 2022 10-Q reported net deferred income tax liabilities of \$37.219 million for the quarter.

42. Appended to the Q3 2022 10-Q as exhibits were SOX certifications substantively similar to those discussed, *supra*, in ¶ 25.

43. The statements referenced in ¶¶ 23-42 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Alico had deficient disclosure controls and procedures and internal control over financial reporting; (ii) as a result, the Company had improperly calculated Alico’s deferred tax liabilities over a multi-year period; (iii) accordingly, the Company would likely be required to restate one or more of its previously issued financial statements; (iv) the foregoing would impede

the timely completion of the audit of the Company's financial results in advance of its year-end earnings call; and (v) as a result, the Company's public statements were materially false and misleading at all relevant times.

The Truth Emerges

44. On December 6, 2022, Alico issued a press release announcing that the Company was postponing its year-end earnings call. Specifically, the press release stated that "additional time is required for completion of the audit of its financial results for the period ended September 30, 2022 by its independent registered public accounting firm."

45. On this news, the Company's stock price fell \$3.06 per share, or 10.42%, to close at \$26.29 per share on December 6, 2022.

46. Then, on December 7, 2022, Alico issued a press release providing a further update on the delays that the Company faced in reporting fiscal year 2022 results and making associated filings. Specifically, the press release stated, in relevant part:

Alico [. . .] announced on December 6, 2022 that although the Company had planned to be able to report its financial results for the period ended September 30, 2022 on December 6, 2022, the Company and its independent public accounting firm determined they need additional time to complete the audit of such financial results.

The key item that is requiring such additional time involves evaluation of the proper amount of the Company's Deferred Tax Liability, particularly certain portions of that Deferred Tax Liability arising in

prior fiscal years, including those going back to fiscal year 2019 or possibly several years before fiscal year 2019.

Potential adjustments related to this portion of the Deferred Tax Liability, if required, would be a decrease in the Deferred Tax Liability and an increase in Retained Earnings for the prior period or an out of period adjustment increasing Net Income for fiscal year 2022.

Although it remains uncertain as to whether the time needed to complete the evaluation will require an extension of time to file the Company's Form 10-K for its fiscal year 2022, the Company is optimistic that the evaluation will be completed early enough to be able to file before the applicable filing deadline.

47. Finally, on December 13, 2022, Alico filed its 2022 10-K with the SEC, which stated, in relevant part:

This Annual Report on Form 10-K for the year ended September 30, 2022 includes the restatements of our previously issued audited consolidated balance sheet, audited consolidated statements of changes in equity and related disclosures as of September 30, 2021 included in our Annual Report on Form 10-K for the year ended September 30, 2021 previously filed with the Securities and Exchange Commission (the "SEC") (the "2021 10-K") and our previously issued unaudited consolidated balance sheet, unaudited consolidated statements of changes in equity and related disclosures as of the end of each quarterly period ended June 30, 2022, March 31, 2022, December 31, 2021, June 30, 2021, March 31, 2021, and December 31, 2020 included in our respective Quarterly Report on Form 10-Q for each of the quarters then ended previously filed with the SEC (together with the 2021 10-K, the "Financial Statements"). The restatement had no impact on our Consolidated Statements of Operations or our Consolidated Statements of Cash Flows for any period after fiscal year 2019.

Except where specifically noted herein, all information set forth in this Annual Report on Form 10-K as of September 30, 2022 is reflected on a restated basis.

As disclosed in our Current Report on Form 8-K filed on the date hereof, on December 12, 2022, the audit committee of our board of directors (the “Audit Committee”) concluded that the Company’s previously issued Financial Statements can no longer be relied upon due to an error identified during the completion of this Annual Report on Form 10-K. The error that led to the Audit Committee’s conclusion relates to the calculation of deferred tax liabilities for the fiscal years 2015 through 2019[.]

During the audit of our financial statements for the period ending September 30, 2022, the Company discovered an error in the calculation of the deferred tax liabilities for the fiscal years 2015 through 2019, remaining present in the deferred tax liabilities previously reported in the financial statements in the fiscal year ended September 30, 2020 and 2019.

The Company has presented a restated consolidated balance sheet as of September 30, 2022 in this Form 10-K to reflect the changes in the amounts of previously reported deferred tax liabilities and retained earnings to reflect the correction of this error. The impact of the accounting errors was a cumulative reduction in the deferred tax liability of approximately \$2,512,000 and a cumulative increase in the Retained Earnings of approximately \$2,512,000, and it had no impact on our Consolidated Statements of Operations or our Consolidated Statements of Cash Flows for the periods presented.

48. On this news, Alico’s stock price fell \$2.64 per share, or 9.53%, to close at \$25.05 per share on December 14, 2022.

49. 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

50. 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 those who purchased or otherwise acquired Alico securities during the Class Period (the “Class”); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

51. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Alico 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 or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Alico or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

52. 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.

53. 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.

54. 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 federal securities laws were 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, operations and management of Alico;
- whether the Individual Defendants caused Alico to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Alico 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.

55. 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.

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

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Alico securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Alico securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

57. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

58. 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, 92 S. Ct. 2430 (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

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

59. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

60. This Count is asserted against Defendants and 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.

61. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and 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; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended

to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Alico securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Alico securities and options 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.

62. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Alico securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Alico's finances and business prospects.

63. By virtue of their positions at Alico, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts

were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.

64. Information showing that Defendants acted knowingly or with reckless disregard for the truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors of Alico, the Individual Defendants had knowledge of the details of Alico's internal affairs.

65. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of Alico. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Alico's businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Alico securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Alico's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Alico securities at artificially inflated prices and

relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

66. During the Class Period, Alico securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Alico securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Alico securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Alico securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

67. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

68. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with

their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

COUNT II

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

69. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

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

71. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Alico's financial condition and results of operations, and to correct promptly any public statements issued by Alico which had become materially false or misleading.

72. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Alico disseminated in the

marketplace during the Class Period concerning Alico's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Alico to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of Alico 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 Alico securities.

73. Each of the Individual Defendants, therefore, acted as a controlling person of Alico. By reason of their senior management positions and/or being directors of Alico, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Alico to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Alico and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

74. 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 Alico.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated:

