

1 Laurence M. Rosen, Esq. (SBN 219683)  
2 **THE ROSEN LAW FIRM, P.A.**  
3 355 South Grand Avenue, Suite 2450  
4 Los Angeles, CA 90071  
5 Telephone: (213) 785-2610  
6 Facsimile: (213) 226-4684  
7 Email: lrosen@rosenlegal.com

8 *Counsel for Plaintiff*

9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 \_\_\_\_\_, Individually and on behalf of all others  
12 similarly situated,

13 Plaintiff,

14 v.

15 RH, GARY FRIEDMAN, and JACK  
16 PRESTON,

17 Defendants.

**Case No:**

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

18 Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all other persons similarly  
19 situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants  
20 (defined below), alleges the following based upon personal knowledge as to Plaintiff and  
21 Plaintiff’s own acts, and information and belief as to all other matters, based upon, inter alia,  
22 the investigation conducted by and through Plaintiff’s attorneys, which included, among other  
23 things, a review of the Defendants’ public documents, conference calls and announcements  
24 made by defendants, United States Securities and Exchange Commission (“SEC”) filings,  
25 wire and press releases published by and regarding RH (“RH” or the “Company”), analysts’  
26 reports and advisories about the Company, and information readily obtainable on the Internet.  
27 Plaintiff believes that substantial evidentiary support will exist for the allegations set forth  
28 herein after a reasonable opportunity for discovery.

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**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 who purchased or otherwise acquired publicly traded RH securities between June 2, 2022 and February 6, 2023, both dates inclusive (the “Class Period”). Plaintiff seeks to recover compensable 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.

**JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to §§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 under 28 U.S.C. §1331 and §27 of the Exchange Act.

4. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as Defendants conduct business and the Company is headquartered 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 mail, interstate telephone communications and the facilities of the national securities exchange.

**PARTIES**

6. Plaintiff, as set forth in the accompanying certification, purchased RH securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosure.

1           7.       Defendant RH purports to be “a leading retailer and luxury lifestyle brand  
2 operating primarily in the home furnishings market.” Its “curated and fully integrated  
3 assortments are presented consistently across [its] sales channels, including [its] retail  
4 locations, websites, and Source Books.” It purports to offer merchandise assortments across a  
5 number of categories, including furniture, lighting, textiles, bathware, décor, outdoor and  
6 garden, and baby, child and teen furnishings.

7           8.       Defendant RH is incorporated in Delaware and its head office is located at 15  
8 Koch Road, Suite J, Corte Madera, California 94925. RH securities trade on New York Stock  
9 Exchange (“NYSE”) under the ticker symbol “RH.”

10          9.       Defendant Gary Friedman (“Friedman”) has been the Company’s Chief  
11 Executive Officer (“CEO”) since January 2014, and also serves as the Chairman of the Board  
12 of Directors (the “Board”).

13          10.      Defendant Jack Preston (“Preston”) has been the Company’s Chief Financial  
14 Officer (“CFO”) since March 2019.

15          11.      Defendants Friedman and Preston are collectively referred to herein as the  
16 “Individual Defendants.”

17          12.      Each of the Individual Defendants:

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

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

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

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

26           (e)     was directly or indirectly involved in the oversight or implementation of the  
27 Company’s internal controls;  
28

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

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

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

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

11 15. Defendant RH and the Individual Defendants are collectively referred to herein  
12 as “Defendants.”

13  
14 **SUBSTANTIVE ALLEGATIONS**  
15 **Materially False and Misleading Statements**  
16 **Issued During the Class Period**

17 16. On June 3, 2022, RH filed with the SEC its quarterly report on Form 10-Q for  
18 the period ended April 30, 2022 (the “1Q22 Report”). Attached to the 1Q22 Report were  
19 certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants  
20 Friedman and Preston attesting to the accuracy of financial reporting, the disclosure of any  
21 material changes to the Company’s internal control over financial reporting and the disclosure  
22 of all fraud.

23 17. The 1Q22 Report provided the following, in pertinent part, regarding basic and  
24 diluted net income per share:

NOTE 13—NET INCOME PER SHARE

The calculation of our net income per share is as follows:

	THREE MONTHS ENDED	
	APRIL 30, 2022	MAY 1, 2021
	<i>(in thousands, except share and per share amounts)</i>	
Net income	\$ 200,711	\$ 130,656
Loss on extinguishment of debt	146,116	
Net income available to common shareholders <sup>(1)</sup>	\$ 346,827	
Weighted-average shares—basic	22,608,537	21,003,244
Effect of dilutive stock-based awards	4,367,607	6,716,485
Effect of dilutive convertible senior notes <sup>(2)</sup>	1,551,102	3,490,282
Weighted-average shares—diluted	28,527,246	31,210,011
Basic net income per share	\$ 15.34	\$ 6.22
Diluted net income per share	\$ 12.16	\$ 4.19

(1) *Effective the first quarter of fiscal 2022 upon adoption of ASU 2020-06, the loss on extinguishment of debt related to convertible securities is added back to net income to calculate net income per share.*

(2) We adopted ASU 2020-06 in the first quarter of fiscal 2022, and the adoption requires the dilutive impact of the 2023 Notes and 2024 Notes for diluted net income per share purposes to be determined under the if-converted method which assumes share settlement of the entire convertible debt instrument. Prior to adoption of ASU 2020-06, we applied the treasury stock method to determine the dilutive impact of the 2023 Notes and 2024 Notes for diluted net income per share purposes.

The 2023 Notes and the 2024 Notes have an impact on our dilutive share count beginning at stock prices of \$193.65 per share and \$211.40 per share, respectively. The warrants associated with the 2023 Notes and 2024 Notes had an impact on our dilutive share count beginning at stock prices of \$309.84 per share and \$338.24 per share, respectively. The warrants associated with the 2023 Notes and 2024 Notes were repurchased in April 2022 and, as a result, no warrant instruments are outstanding as of April 30, 2022. Refer to Note 9—*Convertible Senior Notes*. Accordingly, the warrants have no impact on our dilutive shares post-repurchase.

(Emphasis added).

18. The 1Q22 Report provided the following, in pertinent part, regarding the Company's internal controls:

***Our senior leadership team, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this quarterly report. Based on that evaluation, our Chief 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 to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and include controls and procedures designed to ensure that the information required to be disclosed by us in such reports is accumulated and***

1 *communicated to our senior leadership team, including our Chief Executive*  
 2 *Officer and Chief Financial Officer, as appropriate, to allow timely decisions*  
 3 *regarding required disclosures.*

4 (Emphasis added).

5 19. On September 8, 2022, the Company filed with the SEC its quarterly report on  
 6 Form 10-Q for the period ended July 30, 2022 (the “2Q22 Report”). Attached to the 2Q22  
 7 Report were certifications pursuant to SOX signed by Defendants Friedman and Preston  
 8 attesting to the accuracy of financial reporting, the disclosure of any material changes to the  
 9 Company’s internal control over financial reporting and the disclosure of all fraud.

10 20. The 2Q22 Report provided the following, in pertinent part, regarding basic and  
 11 diluted net income per share:

12 NOTE 13—NET INCOME PER SHARE

13 The calculation of our net income per share is as follows:

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JULY 30, 2022	JULY 31, 2021	JULY 30, 2022	JULY 31, 2021
	<i>(in thousands, except share and per share amounts)</i>			
Net income	\$ 122,275	\$ 226,746	\$ 322,986	\$ 357,402
Loss on extinguishment of debt	23,462		169,578	
Net income available to common shareholders <sup>(1)</sup>	\$ 145,737		\$ 492,564	
Weighted-average shares—basic	24,475,373	21,166,638	23,541,955	21,084,941
Effect of dilutive stock-based awards	2,252,480	6,757,728	3,310,044	6,737,107
Effect of dilutive convertible senior notes <sup>(2)</sup>	414,370	4,054,732	982,736	3,772,507
Weighted-average shares—diluted	27,142,223	31,979,098	27,834,735	31,594,555
Basic net income per share	\$ 5.95	\$ 10.71	\$ 20.92	\$ 16.95
Diluted net income per share	\$ 5.37	\$ 7.09	\$ 17.70	\$ 11.31

14 (1) *Effective the first quarter of fiscal 2022 upon adoption of ASU 2020-06, the loss on extinguishment of debt related to convertible securities is added back to net income to calculate net income per share.*

15 (2) We adopted ASU 2020-06 in the first quarter of fiscal 2022, and the adoption requires the dilutive impact of the 2023 Notes and 2024 Notes for diluted net income per share purposes to be determined under the if-converted method which assumes share settlement of the entire convertible debt instrument. Prior to adoption of ASU 2020-06, we applied the treasury stock method to determine the dilutive impact of the 2023 Notes and 2024 Notes for diluted net income per share purposes.

16 The 2023 Notes and the 2024 Notes have an impact on our dilutive share count beginning at stock prices of \$193.65 per share and \$211.40 per share, respectively. The warrants associated with the 2023 Notes and 2024 Notes had an impact on our dilutive share count beginning at stock prices of \$309.84 per share and \$338.24 per share, respectively. The warrants

1 associated with the 2023 Notes and 2024 Notes were repurchased in April 2022 and, as a result, no warrant instruments are  
2 outstanding as of July 30, 2022. Accordingly, the warrants have no impact on our dilutive shares post-repurchase. Refer to  
3 Note 9—*Convertible Senior Notes*.

4 The following number of options and restricted stock units were excluded from the  
5 calculation of diluted net income per share because their inclusion would have been anti-  
6 dilutive:

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JULY 30, 2022	JULY 31, 2021	JULY 30, 2022	JULY 31, 2021
Options	1,079,767	82,562	1,083,158	68,918
Restricted stock units	19,468	—	19,510	—
Total anti-dilutive stock-based awards	<u>1,099,235</u>	<u>82,562</u>	<u>1,102,668</u>	<u>68,918</u>

8 (Emphasis added).

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10 21. The 2Q22 Report provided the following, in pertinent part, regarding the  
11 Company's internal controls:

12 *Our senior leadership team, with the participation of our Chief Executive*  
13 *Officer and Chief Financial Officer*, evaluated the effectiveness of our  
14 disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e)  
15 under the Securities Exchange Act of 1934, as amended) as of the end of the  
16 period covered by this quarterly report. *Based on that evaluation, our Chief*  
17 *Executive Officer and Chief Financial Officer have concluded that as of the*  
18 *end of the period covered by this report our disclosure controls and*  
19 *procedures were effective to provide reasonable assurance that information*  
20 *required to be disclosed by us in reports that we file or submit under the*  
21 *Securities Exchange Act of 1934, as amended, is recorded, processed,*  
22 *summarized and reported within the time periods specified in the SEC's rules*  
23 *and forms, and include controls and procedures designed to ensure that the*  
24 *information required to be disclosed by us in such reports is accumulated and*  
25 *communicated to our senior leadership team, including our Chief Executive*  
26 *Officer and Chief Financial Officer, as appropriate, to allow timely decisions*  
27 *regarding required disclosures.*

28 (Emphasis added).

22. On December 8, 2022, the Company filed with the SEC its quarterly report on  
Form 10-Q for the period ended October 29, 2022 (the "3Q 2022 Report"). Attached to the  
3Q22 Report were certifications pursuant to SOX signed by Defendants Friedman and Preston  
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.

23. The 3Q22 Report provided the following, in pertinent part, regarding basic and diluted net income per share:

NOTE 13—NET INCOME PER SHARE

The calculation of our net income per share is as follows:

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	OCTOBER 29, 2022	OCTOBER 30, 2021	OCTOBER 29, 2022	OCTOBER 30, 2021
	<i>(in thousands, except share and per share amounts)</i>			
Net income	\$ 98,760	\$ 184,099	\$ 421,746	\$ 541,501
Loss on extinguishment of debt	—		169,578	
Net income available to common stockholders <sup>(1)</sup>	\$ 98,760		\$ 591,324	
Weighted-average shares—basic	23,681,482	21,430,557	23,588,464	21,200,146
Effect of dilutive stock-based awards	2,209,736	6,462,775	2,943,274	6,645,663
Effect of dilutive convertible senior notes <sup>(2)</sup>	207,047	3,397,747	724,173	3,647,587
Weighted-average shares—diluted	26,098,265	31,291,079	27,255,911	31,493,396
Basic net income per share	\$ 4.17	\$ 8.59	\$ 25.07	\$ 25.54
Diluted net income per share	\$ 3.78	\$ 5.88	\$ 21.70	\$ 17.19

(1) *Effective the first quarter of fiscal 2022 upon adoption of ASU 2020-06, the loss on extinguishment of debt related to convertible securities is added back to net income to calculate net income per share.*

(2) We adopted ASU 2020-06 in the first quarter of fiscal 2022, and the adoption requires the dilutive impact of the 2023 Notes and 2024 Notes for diluted net income per share purposes to be determined under the if-converted method which assumes share settlement of the entire convertible debt instrument. Prior to adoption of ASU 2020-06, we applied the treasury stock method to determine the dilutive impact of the 2023 Notes and 2024 Notes for diluted net income per share purposes.

The 2023 Notes and the 2024 Notes have an impact on our dilutive share count beginning at stock prices of \$193.65 per share and \$211.40 per share, respectively. The warrants associated with the 2023 Notes and 2024 Notes had an impact on our dilutive share count beginning at stock prices of \$309.84 per share and \$338.24 per share, respectively. The warrants associated with the 2023 Notes and 2024 Notes were repurchased in April 2022 and, as a result, no warrant instruments are outstanding as of October 29, 2022. Accordingly, the warrants have no impact on our dilutive shares post-repurchase. Refer to Note 9—Convertible Senior Notes.

The following number of options and restricted stock units were excluded from the calculation of diluted net income per share because their inclusion would have been anti-dilutive:

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	OCTOBER 29, 2022	OCTOBER 30, 2021	OCTOBER 29, 2022	OCTOBER 30, 2021
Options	1,084,920	121,587	1,083,745	86,474
Restricted stock units	19,310	—	19,443	—
Total anti-dilutive stock-based awards	1,104,230	121,587	1,103,188	86,474

(Emphasis added).

24. The 3Q22 Report provided the following, in pertinent part, regarding the Company's internal controls:



1 *Our senior leadership team, with the participation of our Chief Executive*  
2 *Officer and Chief Financial Officer, evaluated the effectiveness of our*  
3 *disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e)*  
4 *under the Securities Exchange Act of 1934, as amended) as of the end of the*  
5 *period covered by this quarterly report. Based on that evaluation, our Chief*  
6 *Executive Officer and Chief Financial Officer have concluded that as of the*  
7 *end of the period covered by this report our disclosure controls and*  
8 *procedures were effective to provide reasonable assurance that information*  
9 *required to be disclosed by us in reports that we file or submit under the*  
10 *Securities Exchange Act of 1934, as amended, is recorded, processed,*  
11 *summarized and reported within the time periods specified in the SEC's rules*  
12 *and forms, and include controls and procedures designed to ensure that the*  
13 *information required to be disclosed by us in such reports is accumulated and*  
14 *communicated to our senior leadership team, including our Chief Executive*  
15 *Officer and Chief Financial Officer, as appropriate, to allow timely decisions*  
16 *regarding required disclosures.*

17 (Emphasis added).

18 25. The statements contained in ¶¶16-24 were materially false and/or misleading  
19 because they misrepresented and failed to disclose the following adverse facts pertaining to  
20 the Company's business, operations and prospects, which were known to Defendants or  
21 recklessly disregarded by them. Specifically, Defendants made false and/or misleading  
22 statements and/or failed to disclose that: (1) RH failed to disclose serious issues with its  
23 internal controls; (2) RH's financial statements for the interim periods ended April 30, July  
24 30, and October 29, 2022 contained material errors in the way the Company accounted for  
25 and calculated and reported basic and diluted net income per share; (3) as a result, RH would  
26 need to restate its previously issued financial statements for those periods; (4) as a result, the  
27 fiscal 2022 revenue growth outlook would now be at the lower end of the range provided in  
28 December 2022; and (5) 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**

32. On February 3, 2023, after market hours, the Company announced that it  
would restate its financial statements for each of the quarterly periods ended April 30, July

1 30, and October 29, 2022 (the “Non-Reliance Periods”) stating the following, in pertinent  
2 part, in its current report filed with the SEC on Form 8-K:

3 **Item 4.02. Non-Reliance on Previously Issued Financial Statements or a**  
4 **Related Audit Report or Completed Interim Review.**

5 During the preparation of our response to a comment letter (the “SEC Comment  
6 Letter”) from the Division of Corporation Finance of the Securities and  
7 Exchange Commission (“SEC”) related to a routine review of our Annual  
8 Report on Form 10-K for the fiscal year ended January 29, 2022, and Quarterly  
9 Report on Form 10-Q for the fiscal quarter ended October 29, 2022, RH (“we”  
or the “Company”) became aware of errors in the calculation of net income per  
share.

10 On February 1, 2023, the Audit Committee of the Board of Directors, after  
11 discussion with our senior leadership and independent registered public  
12 accountants, *determined that our previously unaudited financial statements*  
13 *for the three months ended April 30, 2022, the three and six months ended*  
14 *July 30, 2022, and the three and nine months October 29, 2022 (collectively*  
15 *the “Prior Financial Statements”) should no longer be relied upon due to*  
16 *material unintentional errors in certain of these financial periods with respect*  
17 *to our calculation of basic and diluted net income per share.* Accordingly, a  
restatement is required to correct these errors and our Prior Financial Statements  
for each of the quarterly periods ended April 30, 2022, July 30, 2022, and  
October 29, 2022 (the “Non-Reliance Periods”) included in the associated Form  
10-Qs previously filed with the SEC should no longer be relied upon.

18 The unintentional errors in the Prior Financial Statements were as follows:

19 *We misinterpreted relevant authoritative guidance and added back the pre-*  
20 *tax loss on extinguishment of debt in connection with a portion of the*  
21 *convertible senior notes in the computation of net income available to*  
*common stockholders used in calculating basic net income per share.*

22 *As a consequence of the above errors, the computation of diluted net income*  
23 *per share was therefore incorrect as a result of the anti-dilutive impact of (i)*  
24 *adding back the pre-tax loss on extinguishment of debt and (ii) including the*  
25 *potential shares related to the extinguished convertible senior notes in the*  
26 *calculation of weighted-average diluted shares.* The miscalculation of diluted  
net income per share became evident when correcting for the errors to basic net  
income per share.

27 We will file amendments to our Quarterly Reports on Form 10-Q for the fiscal  
28 quarters ended April 30, 2022, July 30, 2022, and October 29, 2022 (the  
“Restatement Filings”) to correct these errors. Similarly, basic and diluted net

1 income per share and related financial information affected by the restatement  
2 that is included in any previously issued or filed reports, press releases, earnings  
3 releases, shareholder letters, and investor presentations or other  
4 communications covering the Non-Reliance Periods should no longer be relied  
5 upon.

#### 6 Restatement Only Expected to Affect Calculation of Basic and Diluted GAAP 7 Net Income Per Share

8 The restatement is not anticipated to affect previously reported net income  
9 prepared in accordance with generally accepted accounting principles  
10 (“GAAP”) and is limited to the calculation of basic and diluted net income per  
11 share. The restatement is also not expected to affect any other previously  
12 reported GAAP financial information, including assets, liabilities, equity,  
13 revenues, gross profit, operating income or cash flows, and the related non-  
14 GAAP measures, as well as EBITDA, adjusted EBITDA, free cash flow and  
15 adjusted free cash flow.

16 While the restatement itself is not anticipated to affect the previously reported  
17 non-GAAP measures of adjusted net income and adjusted diluted net income  
18 per share for the affected time periods, refer to “Adjustments to Non-GAAP  
19 Adjusted Effective Tax Rate” below for expected changes to these previously  
20 reported measures that are unrelated to the restatement.

21 (Emphasis added).

22 33. The same 8-K disclosed that the Company had at least one material weakness  
23 in its internal controls during the Non-Reliance Periods. The 8-K stated, in pertinent part:

24 *In connection with the restatement, we determined that we had at least one*  
25 *material weakness in our internal control over financial reporting during*  
26 *the Non-Reliance Periods that continued to exist at January 28, 2023, the*  
27 *end of fiscal 2022. In connection with the material weakness, we have*  
28 *additionally concluded that our disclosure controls and procedures are also*  
*not effective.*

29 We will provide further specifics on the deficiencies in our internal control  
30 over financial reporting and our disclosure controls and procedures, and our  
31 plan for remediation, in the Restatement Filings.

32 (Emphasis added).

33 36. On this news, RH’s stock fell 7.3%, or \$25.19 per share, to close at \$318.43 on  
34 February 6, 2023, on unusually heavy trading volume, damaging investors.

1           37.     As a result of Defendants’ wrongful acts and omissions, and the precipitous  
2 decline in the market value of the Company’s common stock, Plaintiff and other Class  
3 members have suffered significant losses and damages.

4                           **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

5           38.     Plaintiff brings this action as a class action pursuant to Federal Rule of Civil  
6 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or  
7 otherwise acquired the publicly traded common stock of RH during the Class Period (the  
8 “Class”) and were damaged upon the revelation of the alleged corrective disclosures. Excluded  
9 from the Class are Defendants herein, the officers and directors of the Company, at all relevant  
10 times, members of their immediate families and their legal representatives, heirs, successors  
11 or assigns and any entity in which Defendants have or had a controlling interest.

12           39.     The members of the Class are so numerous that joinder of all members is  
13 impracticable. Throughout the Class Period, RH common stock actively traded on the NYSE.  
14 While the exact number of Class members is unknown to Plaintiff at this time and can be  
15 ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or  
16 thousands of members in the proposed Class. Record owners and other members of the Class  
17 may be identified from records maintained by the Company or its transfer agent and may be  
18 notified of the pendency of this action by mail, using the form of notice similar to that  
19 customarily used in securities class actions.

20           40.     Plaintiff’s claims are typical of the claims of the members of the Class as all  
21 members of the Class are similarly affected by Defendants’ wrongful conduct in violation of  
22 federal law that is complained of herein.

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

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

- 1 • whether the federal securities laws were violated by Defendants' acts as alleged  
2 herein;
- 3 • whether statements made by Defendants to the investing public during the Class  
4 Period misrepresented material facts about the financial condition, business,  
5 operations, and management of the Company;
- 6 • whether Defendants' public statements to the investing public during the Class  
7 Period omitted material facts necessary to make the statements made, in light  
8 of the circumstances under which they were made, not misleading;
- 9 • whether the Individual Defendants caused the Company to issue false and  
10 misleading SEC filings and public statements during the Class Period;
- 11 • whether Defendants acted knowingly or recklessly in issuing false and  
12 misleading SEC filings and public statements during the Class Period;
- 13 • whether the prices of RH common stock during the Class Period were  
14 artificially inflated because of the Defendants' conduct complained of herein;  
15 and
- 16 • whether the members of the Class have sustained damages and, if so, what is  
17 the proper measure of damages.

18 42 A class action is superior to all other available methods for the fair and efficient  
19 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as  
20 the damages suffered by individual Class members may be relatively small, the expense and  
21 burden of individual litigation make it impossible for members of the Class to individually  
22 redress the wrongs done to them. There will be no difficulty in the management of this action  
23 as a class action.

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

- 26 • RH shares met the requirements for listing, and were listed and actively traded  
27 on NYSE, an efficient market;
- 28 • As a public issuer, RH filed periodic public reports;

- 1 • RH regularly communicated with public investors via established market  
2 communication mechanisms, including through the regular dissemination of  
3 press releases via major newswire services and through other wide-ranging  
4 public disclosures, such as communications with the financial press and other  
5 similar reporting services;
- 6 • RH's securities were liquid and traded with moderate to heavy volume during  
7 the Class Period; and
- 8 • RH was followed by a number of securities analysts employed by major  
9 brokerage firms who wrote reports that were widely distributed and publicly  
10 available.

11 44. Based upon the foregoing, the market for RH securities promptly digested  
12 current information regarding RH from all publicly available sources and reflected such  
13 information in the prices of the shares, and Plaintiff and the members of the Class are entitled  
14 to a presumption of reliance upon the integrity of the market

15 45. Alternatively, Plaintiff and the members of the Class are entitled to the  
16 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State*  
17 *of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material  
18 information in their Class Period statements in violation of a duty to disclose such information,  
19 as detailed above.

## 20 **COUNT I**

### 21 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5** 22 **Against All Defendants**

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

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

28 48. During the Class Period, the Company and the Individual Defendants,  
individually and in concert, directly or indirectly, disseminated or approved the false

1 statements specified above, which they knew or deliberately disregarded were misleading in  
2 that they contained misrepresentations and failed to disclose material facts necessary in order  
3 to make the statements made, in light of the circumstances under which they were made, not  
4 misleading.

5 49. The Company and the Individual Defendants violated §10(b) of the 1934 Act  
6 and Rule 10b-5 in that they:

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

14 50. The Company and the Individual Defendants acted with scienter in that they  
15 knew that the public documents and statements issued or disseminated in the name of the  
16 Company were materially false and misleading; knew that such statements or documents  
17 would be issued or disseminated to the investing public; and knowingly and substantially  
18 participated, or acquiesced in the issuance or dissemination of such statements or documents  
19 as primary violations of the securities laws. These defendants by virtue of their receipt of  
20 information reflecting the true facts of the Company, their control over, and/or receipt and/or  
21 modification of the Company's allegedly materially misleading statements, and/or their  
22 associations with the Company which made them privy to confidential proprietary information  
23 concerning the Company, participated in the fraudulent scheme alleged herein.

24 51. Individual Defendants, who are the senior officers and/or directors of the  
25 Company, had actual knowledge of the material omissions and/or the falsity of the material  
26 statements set forth above, and intended to deceive Plaintiff and the other members of the  
27 Class, or, in the alternative, acted with reckless disregard for the truth when they failed to  
28

1 ascertain and disclose the true facts in the statements made by them or other personnel of the  
2 Company to members of the investing public, including Plaintiff and the Class.

3 52. As a result of the foregoing, the market price of RH common stock was  
4 artificially inflated during the Class Period. In ignorance of the falsity of the Company's and  
5 the Individual Defendants' statements, Plaintiff and the other members of the Class relied on  
6 the statements described above and/or the integrity of the market price of RH common stock  
7 during the Class Period in purchasing RH common stock at prices that were artificially inflated  
8 as a result of the Company's and the Individual Defendants' false and misleading statements.

9 53. Had Plaintiff and the other members of the Class been aware that the market  
10 price of RH common stock had been artificially and falsely inflated by the Company's and the  
11 Individual Defendants' misleading statements and by the material adverse information which  
12 the Company's and the Individual Defendants did not disclose, they would not have purchased  
13 RH common stock at the artificially inflated prices that they did, or at all.

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

16 55. By reason of the foregoing, the Company and the Individual Defendants have  
17 violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable  
18 to the Plaintiff and the other members of the Class for substantial damages which they suffered  
19 in connection with their purchases of RH common stock during the Class Period.

## 20 **COUNT II**

### 21 **Violation of Section 20(a) of The Exchange Act** 22 **Against The Individual Defendants**

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

25 57. During the Class Period, the Individual Defendants participated in the operation  
26 and management of the Company, and conducted and participated, directly and indirectly, in  
27 the conduct of the Company's business affairs. Because of their senior positions, they knew  
28 the adverse non-public information regarding the Company's business practices.



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

5 59. Because of their positions of control and authority as senior officers, the  
6 Individual Defendants were able to, and did, control the contents of the various reports, press  
7 releases and public filings which the Company disseminated in the marketplace during the  
8 Class Period. Throughout the Class Period, the Individual Defendants exercised their power  
9 and authority to cause the Company to engage in the wrongful acts complained of herein. The  
10 Individual Defendants therefore, were "controlling persons" of the Company within the  
11 meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the  
12 unlawful conduct alleged which artificially inflated the market price of RH common stock.

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

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

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

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

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