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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

_____, Individually and on behalf of all
others similarly situated,

Plaintiff,

v.

IMMUNITYBIO, INC., and PATRICK
SOON-SHIONG,

Defendants.

No.

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

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiff ____ (“Plaintiff”), individually and on behalf of all
2 other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
3 complaint against Defendants (defined below), alleges the following based upon
4 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and
5 belief as to all other matters, based upon, among other things, the investigation
6 conducted by and through his attorneys, which included, among other things, a
7 review of the Defendants’ public documents, public filings, wire and press releases
8 published by and regarding ImmunityBio, Inc. (“ImmunityBio” or the
9 “Company”), and information readily obtainable on the Internet. Plaintiff believes
10 that substantial evidentiary support will exist for the allegations set forth herein
11 after a reasonable opportunity for discovery.¹

12 **NATURE OF THE ACTION**

13 1. This is a class action on behalf of persons or entities who purchased
14 or otherwise acquired publicly traded ImmunityBio securities between January 19,
15 2026 and March 24, 2026, both dates inclusive (the “Class Period”). Plaintiff seeks
16 to recover compensable damages caused by Defendants’ violations of the federal
17 securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

18 **JURISDICTION AND VENUE**

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28 ¹ Unless otherwise stated, all emphasis is added and internal citations are omitted.

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 (defined below), 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 ImmunityBio securities during the Class Period and was economically damaged thereby.

1 7. ImmunityBio is a biotechnology company. Pertinent to this action is
2 ANKTIVA (“Anktiva”), the Company’s lead biologic product.

3 8. The Company is incorporated in Delaware and its principal executive
4 offices are located at 3530 John Hopkins Court, San Diego, California 92121.
5 Within this judicial district, ImmunityBio has laboratories in Culver City and El
6 Segundo. Additionally, the Warning Letter (defined below), was addressed to CEO
7 Richard Adcock at the Company’s facility in Culver City, California.
8

9 9. ImmunityBio common stock trades on The Nasdaq Global Select
10 Market (the “NASDAQ”) under the ticker symbol “IBRX.”
11

12 10. Defendant Dr. Patrick Soon-Shiong (“Soon-Shiong”) served as the
13 Company’s Executive Chairman and Global Chief Scientific and Medical Officer
14 at all relevant times. To counsel’s knowledge, Defendant Soon-Shiong lives in Los
15 Angeles, California.
16

17 11. Defendant Soon-Shiong is collectively referred to herein as the
18 “Individual Defendant.”
19

20 12. The Individual Defendant:
21

22 (a) directly participated in the management of the Company;
23

24 (b) was directly involved in the day-to-day operations of the Company at
25 the highest levels;
26

- 1 (c) was privy to confidential proprietary information concerning the
2 Company and its business and operations;
3
4 (d) was directly or indirectly involved in drafting, producing, reviewing
5 and/or disseminating the false and misleading statements and information
6 alleged herein;
7
8 (e) was directly or indirectly involved in the oversight or implementation
9 of the Company's internal controls;
10
11 (f) was aware of or recklessly disregarded the fact that the false and
12 misleading statements were being issued concerning the Company; and/or
13
14 (g) approved or ratified these statements in violation of the federal
15 securities laws.

16 13. The Company is liable for the acts of the Individual Defendant and its
17 employees under the doctrine of *respondeat superior* and common law principles
18 of agency because all of the wrongful acts complained of herein were carried out
19 within the scope of his employment.
20

21 14. The scienter of the Individual Defendant and other employees and
22 agents of the Company is similarly imputed to ImmunityBio under *respondeat*
23 *superior* and agency principles.
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25 15. Defendant ImmunityBio and the Individual Defendant are
26 collectively referred to herein as "Defendants."
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SUBSTANTIVE ALLEGATIONS

Materially False and Misleading Statements Issued During the Class Period

16. On January 19, 2026, Defendant Soon-Shiong appeared on a podcast, a link to which was posted on the Company's website (as of the time of this action, the Company has removed the podcast from its website, presumably due to the Warning Letter, as defined below) (the "Podcast").

17. Defendant Soon-Shiong made the following statements on the Podcast (alterations taken from the FDA's Warning Letter):

- "[Interleuken-15 (IL-15) is a molecule that] stimulates the natural killer (NK) cell and the T cell...the most important molecule that could cure cancer...nobody could figure out how to get IL-15 into your body with a single jab, and that is Anktiva."
- "We have now discovered and developed this drug...approved for bladder cancer, but it actually can treat all cancers...is this little vial that you inject subcutaneously that really is on the path to curing the cancer." As the FDA noted, this statement was made in conjunction with the on-screen claim, "Cancer Therapeutic Vaccine (BioShield)."
- "We have the therapy to prevent cancer if you were exposed to radiation, and that's Anktiva". As the FDA noted, that statement was

1 made “while the screen displays a patient brochure, titled “Getting
2 Started with ANKTIVA®”

- 3
- 4 • “This thing called checkpoint inhibitors...It fails. The only thing that
5 can rescue it is Anktiva...If you have lung cancer, you get radiation,
6 chemotherapy, and you fail. And then you get a checkpoint inhibitor,
7 and you fail. There’s nothing left. The only thing left is this terrible
8 drug called docetaxel...”
9

10 18. The statements in ¶ 17 were materially false and misleading at the
11 time they were made for many reasons. Among others, as the FDA noted, the
12 representations “misleadingly suggest that Anktiva will allow all NMIBC patients
13 treated with Anktiva to be cancer-free for the long term, when this has not been
14 demonstrated.” Further, the claim that Anktiva is a cancer vaccine was false.
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17 19. The statements contained in ¶ 17 were materially false and/or
18 misleading because they misrepresented and failed to disclose the following
19 adverse facts pertaining to the Company’s business, operations and prospects,
20 which were known to Defendants or recklessly disregarded by them. Specifically,
21 Defendants made false and/or misleading statements and/or failed to disclose that:
22 (1) Defendant Soon-Shion materially overstated Anktiva’s capabilities; and (2) as
23 a result, Defendants’ statements about ImmunityBio’s business, operations, and
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1 prospects were materially false and misleading and/or lacked a reasonable basis at
2 all relevant times.

3
4 **THE TRUTH BEGINS TO EMERGE**

5 20. On March 24, 2026, a warning letter (dated March 13, 2026) from the
6 U.S. Food and Drug Administration (the “FDA”) to CEO Richard Adcock (the
7 “Warning Letter”) at the Company’s Culver City, California address, was
8 publicized.
9

10 21. The Warning Letter stated the following about Defendant Soon-
11 Shiong’s claims about Anktiva on a podcast (as well as claims about Anktiva in tv
12 ads (undated))
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14
15 The Office of Prescription Drug Promotion (OPDP) of the U.S. Food and
16 Drug Administration (FDA) has reviewed the promotional communications,
17 a direct-to-consumer (DTC) broadcast advertisement (US-ANK-250065-v1)
18 (TV ad) submitted by ImmunityBio, Inc. (ImmunityBio) under cover of
19 Form FDA 2253 *and a DTC podcast (podcast) titled, “Is the FDA*
20 *BLOCKING Life Saving Cancer Treatments?” regarding ANKTIVA®*
21 *(nogapendekin alfa inbakicept-pmln) solution, for intravesical use*
22 *(Anktiva). The podcast features Dr. Patrick Soon-Shiong¹, Executive*
23 *Chairman and Global Chief Scientific and Medical Officer for*
24 *ImmunityBio. The podcast originally aired on The Sean Spicer Show on*
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1 *January 19, 2026, and can also be accessed through ImmunityBio's*
2 *website.*² The FDA Bad Ad Program also received complaints regarding
3 promotional communications for Anktiva. FDA has determined that the TV
4 ad and podcast are false or misleading. *Thus, the TV ad and podcast*
5 *misbrand Anktiva and make the distribution of the drug in violation of the*
6 *Federal Food, Drug, and Cosmetic Act (FD&C Act). 21 U.S.C. 352(a), (n);*
7 *321(n); 331(a). See 21 CFR 202.1 (e)(5); (e)(7)(viii).* Furthermore, the TV
8 ad and podcast provide evidence that Anktiva is intended for new uses for
9 which it lacks approval, and for which its labeling does not provide adequate
10 directions for use. 21 U.S.C. 352(f)(1); 331(a). See 21 CFR 201.5; 201.100;
11 201.115; 201.128. *In addition, the podcast was not submitted at the time of*
12 *initial dissemination or publication as required by 21 CFR 314.81(b)(3)(i).*
13 *These violations are concerning from a public health perspective because*
14 *the promotional communications create a misleading impression that*
15 *Anktiva, a treatment for a certain type of bladder cancer, can cure and*
16 *even prevent all cancer.* Cancer is the second leading cause of death in the
17 United States and a significant public health concern that affects a vulnerable
18 patient population at increased risk of medical complications and adverse
19 outcomes.³
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22. The Warning Letter highlighted the following statements that Defendant Soon-Shiong made on the podcast as false and misleading regarding Anktiva's purported efficacy:

- DR. SOON-SHIONG (13:27): "[Interleukin-15 (IL-15) is a molecule that] stimulates the natural killer (NK) cell and the T cell...the most important molecule that could cure cancer...nobody could figure out how to get IL-15 into your body with a single jab, and that is Anktiva."
- ON-SCREEN (13:47): "ANKTIVA BioShield" presented inside a glowing, circular image and "IMMUNITYBIO" prominently presented at the bottom of the frame
- DR. SOON-SHIONG (19:40): "We have now discovered and developed this drug...approved for bladder cancer, but it actually can treat all cancers...is this little vial that you inject subcutaneously that really is on the path to curing the cancer." In conjunction with the on-screen claim, "Cancer Therapeutic Vaccine (BioShield)."
- DR. SOON-SHIONG (47:03): "We have the therapy to prevent cancer if you were exposed to radiation, and that's Anktiva," while the screen displays a patient brochure, titled "Getting Started with ANKTIVA®"

23. The Warning Letter further said the following about how the claims about the drug were false:

The representations in the TV ad and podcast are misleading for multiple reasons. ***First, the representations in the TV ad and podcast misleadingly suggest that Anktiva will allow all NMIBC patients treated with Anktiva to be cancer-free for the long term,*** when this has not been demonstrated. According to the CLINICAL STUDIES section of the PI, efficacy of Anktiva was evaluated in the QUILT-3.032 study, a single-arm, multicenter

1 trial in 77 adults with BCG-unresponsive, high-risk, NMIBC with CIS with
2 or without Ta/T1 papillary disease following transurethral resection. The
3 major efficacy outcome measures were complete response (CR) at any time
4 (as defined by negative results for cystoscopy [with transurethral resection
5 of bladder tumor and biopsies as applicable] and urine cytology) and
6 duration of response (DOR). As the papillary component of the tumor was
7 resected prior to treatment with Anktiva and BCG, only the effect on the CIS
8 component could be directly observed. The CR was 62% (95% CI: 51,73)
9 for patients treated with Anktiva and BCG (n=77). Of the 62% of patients
10 who responded, 58% had a DOR greater than or equal to 12 months, and
11 40% had a DOR greater than or equal to 24 months. Therefore, these data do
12 not support that treatment with Anktiva will allow all NMIBC patients to be
13 cancer-free for the long term, as suggested in the TV ad and podcast, and we
14 are not aware of other data that would support such suggestions. Moreover,
15 the claims and representations that Anktiva is a “single jab” and a “little
16 vial...on the path to curing the cancer” misleadingly suggest that Anktiva
17 has a treatment effect as a single agent. The efficacy of Anktiva was
18 established based on the results of Cohort A of QUILT-3.032, which only
19 studied Anktiva in combination with BCG, while Cohort C, which evaluated
20 Anktiva as a single agent in the same disease setting, was stopped early for
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1 futility.⁶ We are not aware of data that would support suggestions that
2 Anktiva alone is an effective treatment for NMIBC.

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5 Furthermore, QUILT-3.032 did not provide interpretable results on disease-
6 free survival (DFS), and we are not aware of data that support the efficacy
7 claims and representations that Anktiva can “cure” cancer. As QUILT-3.032
8 was designed as a single-arm study (i.e., with no comparator arm), and DFS
9 is a time-to-event efficacy endpoint, the reported DFS results are
10 uninterpretable; absent an appropriate comparator, it is not possible to
11 determine if lack of recurrence is attributable to Anktiva or to other factor(s),
12 such as the natural history of the disease. Claims such as “treat the tumor,
13 and it doesn’t come back” and “the most important molecule that could cure
14 cancer...and that is Anktiva” suggest an improvement on the DFS endpoint
15 even though the single-arm design of the QUILT-3.032 study was not
16 capable of establishing improvement on this time-to-event efficacy
17 endpoint.
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19 In addition, the representation in both the TV ad and podcast that Anktiva is
20 a cancer vaccine is false and is further compounded by the claim in the
21 podcast that Anktiva is “the therapy to prevent cancer if you were exposed
22 to radiation.” According to the CLINICAL PHARMACOLOGY,
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1 Mechanism of Action section of the PI, Anktiva is an IL-15 receptor agonist
2 that results in proliferation and activation of NK, CD8+ and memory T cells
3 without proliferation of immuno-suppressive Treg cells. Anktiva is not a
4 vaccine, and we are not aware of data showing that Anktiva has a
5 preventative effect in patients without cancer, including patients who have
6 been exposed to radiation.
7

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9 *The consistent and pervasive misleading efficacy claims and*
10 *representations presented across promotional materials on different*
11 *platforms are especially concerning from a public health perspective,*
12 *given that they grossly misrepresent the benefits of Anktiva. We are not*
13 *aware of data that would support the claims and representations described*
14 *above.*
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17 24. The Warning Letter also highlighted the following claims, as
18 discussed above, which were false:
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TV ad and Podcast

The podcast includes the following claims:

- DR. SOON-SHIONG (19:40): “We have now discovered and developed this drug...It’s approved for bladder cancer, but it actually can treat all cancers.”
- DR. SOON-SHIONG (36:04): “This thing called checkpoint inhibitors...It fails. The only thing that can rescue it is Anktiva...If you have lung cancer, you get radiation, chemotherapy, and you fail. And then you get a checkpoint inhibitor, and you fail. There’s nothing left. The only thing left is this terrible drug called docetaxel...”
- DR. SOON-SHIONG (47:03): “We have the therapy to prevent cancer if you were exposed to radiation and that’s Anktiva.”

25. The Warning Letter provided the following additional information for why those statements were false:

These claims and representations from ImmunityBio, represented by Dr. Soon-Shiong, provide evidence that Anktiva is intended for new uses for which it lacks approval in the United States⁷ and for which its labeling does not provide adequate directions for use. Anktiva is not approved as a treatment for “all cancers” or lung cancer after failure of checkpoint inhibitors, nor is it approved for any form of cancer prevention. Anktiva’s labeling does not contain adequate directions for such uses, thereby rendering the drug misbranded.

1 *These claims and representations, which misleadingly suggest that*
2 *Anktiva is safe and effective for uses for which it is not approved, are*
3 *especially concerning from a public health perspective.* Bladder cancer
4 represents only 4.2% of the estimated 2,041,910 new cancer cases in
5 2025⁸ and BCG-unresponsive, high-risk, NMIBC with CIS with or without
6 papillary tumors represents an even smaller proportion of these cases. These
7 broad promotional claims misleadingly suggest that Anktiva has been shown
8 to be appropriate for use in the vast majority of patients with cancer when it
9 is only approved for use in patients with a specific type of NMIBC.
10

11
12 In addition, the representations made in both the TV ad and podcast provide
13 evidence that Anktiva is intended for use as an injection, including
14 subcutaneously, even though its labeling does not provide adequate
15 directions for use in this manner. *As noted above, Dr. Soon-Shiong refers*
16 *to Anktiva as a “single jab” and a “little vial that you inject*
17 *subcutaneously” during the podcast.* Similarly, after introducing Anktiva
18 and referring to its approval, the TV ad displays the Anktiva logo on the
19 entire screen, in large font, followed by footage of a vial of Anktiva being
20 removed from its carton. The TV ad then presents a close-up view of a vial
21 of Anktiva being picked up, followed by a health care practitioner preparing
22 to administer a dose, and then a patient in a chair after an injection.
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1 Subsequently, another patient is being injected in the arm with a syringe.
2 *However, according to the DOSAGE AND ADMINISTRATION section*
3 *of the PI, Anktiva is for intravesical use only, and should not be*
4 *administered by subcutaneous or intravenous or intramuscular routes.*
5 *These representations from the TV ad and podcast, which erroneously*
6 *suggest that Anktiva has been shown to be safe and effective for use in*
7 *injectable routes of administration, are particularly alarming from a*
8 *public health perspective given that the safety and efficacy of Anktiva*
9 *when administered via a route other than intravesically are unknown at*
10 *this time.*

14 26. On March 24, 2026, Bloomberg published an article entitled
15 “ImmunityBio Plunges After Getting FDA Warning on Cancer Drug”. The article
16 stated the following:
17

18 ImmunityBio Inc.’s shares plunged after the biotechnology company and its
19 billionaire executive chairman, Patrick Soon-Shiong, were hit with a [FDA]
20 warning letter for false and misleading promotion of its bladder cancer drug
21 Anktiva.
22

23 The warning letter takes issue with both a TV ad for the drug, which is
24 currently approved for a specific type of bladder cancer, and a January
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1 episode of The Sean Spicer Show where Soon-Shiong said it could treat “all
2 cancers.”

3 27. On this news, ImmunityBio common stock fell \$1.98 per share, or
4
5 21%, to close at \$7.42 per share on March 24, 2026.

6 28. As a result of Defendants’ wrongful acts and omissions, and the
7
8 precipitous decline in the market value of the Company’s shares, Plaintiff and other
9 Class members have suffered significant losses and damages.

10 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

11 29. Plaintiff brings this action as a class action pursuant to Federal Rule
12
13 of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons
14 other than defendants who acquired the Company’s securities publicly traded on
15 NASDAQ during the Class Period, and who were damaged thereby (the “Class”).
16
17 Excluded from the Class are Defendants, the officers and directors of the Company,
18 members of the Individual Defendant’s immediate families and their legal
19 representatives, heirs, successors or assigns and any entity in which Defendants
20 have or had a controlling interest.
21

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

3 31. Plaintiff's claims are typical of the claims of the members of the Class
4 as all members of the Class are similarly affected by Defendants' wrongful conduct
5 in violation of federal law that is complained of herein.
6

7 32. Plaintiff will fairly and adequately protect the interests of the
8 members of the Class and has retained counsel competent and experienced in class
9 and securities litigation. Plaintiff has no interests antagonistic to or in conflict with
10 those of the Class.
11

12 33. Common questions of law and fact exist as to all members of the Class
13 and predominate over any questions solely affecting individual members of the
14 Class. Among the questions of law and fact common to the Class are:
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- 16 • whether the Exchange Act was violated by Defendants' acts as alleged
17 herein;
18
- 19 • whether statements made by Defendants to the investing public during
20 the Class Period misrepresented material facts about the business and
21 financial condition of the Company;
22
- 23 • whether Defendants' public statements to the investing public during
24 the Class Period omitted material facts necessary to make the statements
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1 made, in light of the circumstances under which they were made, not
2 misleading;

3 • whether the Defendants caused the Company to issue false and
4 misleading filings during the Class Period;

5 • whether Defendants acted knowingly or recklessly in issuing false
6 filings;

7 • whether the prices of the Company securities during the Class Period
8 were artificially inflated because of the Defendants' conduct complained of
9 herein; and

10 • whether the members of the Class have sustained damages and, if so,
11 what is the proper measure of damages.

12
13 34. A class action is superior to all other available methods for the fair
14 and efficient adjudication of this controversy since joinder of all members is
15 impracticable. Furthermore, as the damages suffered by individual Class members
16 may be relatively small, the expense and burden of individual litigation make it
17 impossible for members of the Class to individually redress the wrongs done to
18 them. There will be no difficulty in the management of this action as a class action.

19 35. Plaintiff will rely, in part, upon the presumption of reliance
20 established by the fraud-on-the-market doctrine in that:
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- the Company's shares met the requirements for listing, and were listed and actively traded on NASDAQ, an efficient market;
- as a public issuer, the Company filed periodic public reports;
- the Company regularly 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.

36. Based on the foregoing, the market for the Company's securities promptly digested current information regarding the Company from all publicly available sources and reflected such information in the prices of the shares, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

37. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute*

1 *Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants
2 omitted material information in their Class Period statements in violation of a duty
3 to disclose such information as detailed above.
4

5 **COUNT I**

6 **For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**
7 **Against All Defendants**

8 38. Plaintiff repeats and realleges each and every allegation contained
9 above as if fully set forth herein.
10

11 39. This Count is asserted against Defendants is based upon Section 10(b)
12 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder
13 by the SEC.
14

15 40. During the Class Period, Defendants, individually and in concert,
16 directly or indirectly, disseminated or approved the false statements specified
17 above, which they knew or deliberately disregarded were misleading in that they
18 contained misrepresentations and failed to disclose material facts necessary in
19 order to make the statements made, in light of the circumstances under which they
20 were made, not misleading.
21

22 41. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that
23 they:
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- 25
- 26 • employed devices, schemes and artifices to defraud;
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- 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.

42. 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.

43. The Individual Defendant, who is a senior officer and director 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

1 members of the Class, or, in the alternative, acted with reckless disregard for the
2 truth when they failed to ascertain and disclose the true facts in the statements made
3 by them or any other of the Company's personnel to members of the investing
4 public, including Plaintiff and the Class.
5

6 44. As a result of the foregoing, the market price of the Company's
7 securities was artificially inflated during the Class Period. In ignorance of the
8 falsity of Defendants' statements, Plaintiff and the other members of the Class
9 relied on the statements described above and/or the integrity of the market price of
10 the Company's securities during the Class Period in purchasing the Company's
11 securities at prices that were artificially inflated as a result of Defendants' false and
12 misleading statements.
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16 45. Had Plaintiff and the other members of the Class been aware that the
17 market price of the Company's securities had been artificially and falsely inflated
18 by Defendants' misleading statements and by the material adverse information
19 which Defendants did not disclose, they would not have purchased the Company's
20 securities at the artificially inflated prices that they did, or at all.
21
22

23 46. As a result of the wrongful conduct alleged herein, Plaintiff and other
24 members of the Class have suffered damages in an amount to be established at trial.
25

26 47. By reason of the foregoing, Defendants have violated Section 10(b)
27 of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the
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1 plaintiff and the other members of the Class for substantial damages which they
2 suffered in connection with their purchase of the Company's securities during the
3 Class Period.
4

5 **COUNT II**

6 **Violations of Section 20(a) of the Exchange Act**

7 **Against the Individual Defendants**

8 48. Plaintiff repeats and realleges each and every allegation contained in
9 the foregoing paragraphs as if fully set forth herein.
10

11 49. During the Class Period, the Individual Defendant participated in the
12 operation and management of the Company, and conducted and participated,
13 directly and indirectly, in the conduct of the Company's business affairs. Because
14 of his senior positions, he knew the adverse non-public information about the
15 Company's business practices.
16

17 50. As officers of a publicly owned company, the Individual Defendant
18 had a duty to disseminate accurate and truthful information with respect to the
19 Company's financial condition and results of operations, and to correct promptly
20 any public statements issued by the Company which had become materially false
21 or misleading.
22

23 51. Because of his positions of control and authority as a senior officer,
24 the Individual Defendant was able to, and did, control the contents of the various
25 reports, press releases and public filings which the Company disseminated in the
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1 marketplace during the Class Period concerning the Company's results of
2 operations. Throughout the Class Period, the Individual Defendant exercised his
3 power and authority to cause the Company to engage in the wrongful acts
4 complained of herein. The Individual Defendant therefore, was a "controlling
5 persons" of the Company within the meaning of Section 20(a) of the Exchange
6 Act. In this capacity, they participated in the unlawful conduct alleged which
7 artificially inflated the market price of the Company's securities.

10 52. By reason of the above conduct, the Individual Defendant is liable
11 pursuant to Section 20(a) of the Exchange Act for the violations committed by the
12 Company.

13
14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for
16 judgment and relief as follows:

17 (a) declaring this action to be a proper class action, designating Plaintiff
18 as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of
19 the Federal Rules of Civil Procedure and designating Plaintiff's counsel as Lead
20 Counsel;

21 (b) awarding damages in favor of Plaintiff and the other Class members
22 against all Defendants, jointly and severally, together with interest thereon;
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1 (c) awarding Plaintiff and the Class reasonable costs and expenses
2 incurred in this action, including counsel fees and expert fees; and

3 (d) awarding Plaintiff and other members of the Class such other and
4 further relief as the Court may deem just and proper.
5

6 **JURY TRIAL DEMANDED**

7 Plaintiff hereby demands a trial by jury.
8

9 Dated:
10

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