UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PLAINITFF, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ACM RESEARCH, INC., DAVID HUI WANG, LISA FENG, and MARK A. MCKECHNIE, Defendants.	Case No: <u>CLASS ACTION</u> COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS <u>DEMAND FOR JURY TRIAL</u>

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 upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of United States ("U.S.") Securities and Exchange Commission ("SEC") filings, press releases, earnings presentations, conference call transcripts and other information prepared for investors by ACM Research, Inc. ("ACM" or the "Company"), as well as media and analyst reports about the Company. 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 all those who purchased or otherwise acquired ACM securities between March 6, 2019 and October 7, 2020, inclusive (the "Class Period"). Plaintiff seeks to pursue remedies against ACM and certain of the Company's current and former senior executives under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 promulgated thereunder.

2. ACM, together with its subsidiaries, develops, manufactures, and sells single-wafer wet cleaning equipment for enhancing the manufacturing process and yield for integrated chips worldwide. The Company markets and sells its products under the Ultra C brand name through direct sales force and third-party representatives.

3. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company's business, operational and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company's revenue and profits had been diverted to undisclosed related parties; (ii) accordingly, the Company had

materially overstated its revenues and profits; and (iii) as a result, the Company's public statements were materially false and misleading at all relevant times.

4. On October 8, 2020, analyst J Capital Research ("J Capital") published a report concerning ACM, in which J Capital concluded that ACM "is a fraud, over-reporting both revenue and profit." The report cited, among other things, J Capital's visits to "sites in China, Korea, and California" and "more than 40 interviews." J Capital asserted that "[w]hat real profit the company has is apparently being siphoned off to related parties." The J Capital report concluded that ACM's revenue was overstated by 15-20% and claimed to have "evidence that undisclosed related parties are diverting revenue and profit from the company."

5. On this news, ACM's stock price fell $1.09 per share, or 1.52%, to close at $70.79 per share on October 8, 2020.

6. As a result of defendants' wrongful acts and omissions, and the decline in the price of ACM common shares detailed herein, Plaintiff and other members of the Class (as defined below) have suffered significant losses and damages.

JURISDICTION AND VENUE

7. Jurisdiction is conferred by Section 27 of the Exchange Act. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

8. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b), because the Company conducts business in this District and the events and omissions giving rise to the claims asserted herein occurred in substantial part in this District, including the dissemination of false and misleading statements into this District. Defendant ACM maintains its corporate headquarters in this District.

9. 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

10. Plaintiff, as set forth in the accompanying Certification, which is incorporated by reference herein, purchased or otherwise acquired ACM securities during the Class Period and has been damaged thereby.

11. Defendant ACM is a Delaware corporation that was founded in 1998 and headquartered in Fremont, California. The Company, together with its subsidiaries, develops, manufactures, and sells single-wafer wet cleaning equipment for enhancing the manufacturing process and yield for integrated chips worldwide. ACM's securities trade on the Nasdaq Global Select market ("NASDAQ") under the ticker symbol "ACMR."

12. Defendant David Hui Wang ("Wang") has served as ACM's Chairman, Chief Executive Officer, and President at all relevant times.

13. Defendant Lisa Feng ("Feng") served as ACM's Interim Chief Financial Officer from prior to the start of the Class Period until November 2019.

14. Defendant Mark A. McKechnie ("McKechnie") has served as ACM's Chief Financial Officer since November 2019.

15. The Individual Defendants possessed the power and authority to control the contents of ACM's SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of ACM'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 ACM, 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.

16. ACM and the Individual Defendants are collectively referred to herein as "Defendants."

SUBSTANTIVE ALLEGATIONS

Background

17. ACM, together with its subsidiaries, develops, manufactures, and sells single-wafer wet cleaning equipment for enhancing the manufacturing process and yield for integrated chips worldwide. The Company markets and sells its products under the Ultra C brand name through direct sales force and third-party representatives.

Materially False and Misleading Statements Issued During the Class Period

18. The Class Period begins on March 6, 2019, when ACM issued a press release announcing the Company's fourth quarter and fiscal year 2018 results. The press release stated, in relevant part:

> ACM's President and Chief Executive Officer Dr. David Wang commented, "Our strong financial performance in 2018 was a result of robust customer demand and crisp execution. We delivered 104% revenue growth, expanded operating margins, and generated $6.9 million in cash flow from operations. In addition to strong financial results, we made significant operating progress in 2018. We ramped production at our second factory, delivered a significant number of first tools, and introduced our newest major platform, the Ultra-C Tahoe."
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> Dr. Wang continued, "As we head into 2019, we continue to see solid business momentum. We are committed to achieving our vision of becoming a major player in the semiconductor equipment market, and we look forward to delivering another strong year in 2019."
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> - **Revenue**. Revenue for 2018 was $74.6 million, up 104% from 2017, due primarily to an increase in revenue from single-wafer wet cleaning tools. Revenue for the fourth quarter of 2018 was $20.8 million, up 21% from the fourth quarter of 2017, due to an increased volume of tools shipped for revenue, and higher prices associated with these tools.
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Outlook

For fiscal year 2019, the Company expects revenue to be approximately $100 million.

19. On March 7, 2019, ACM hosted an earnings call with investors and analysts to discuss the Company's fourth quarter 2018 results (the "Q4 2018 Earnings Call"). During the scripted portion of the Q4 2018 Earnings Call, Defendant Wang touted, in relevant part:

> In the fourth quarter, ***we delivered strong revenue, profitability and cash flow from operations***. For the full year, we grew revenue by 104% to $74.6 million, driven by robust customer demand for our tools and crisp executions. Our product differentiation, improved production scale and expanded operating leverage drove non-GAAP gross margin of 46.2% and non-GAAP operating margin of 13.2%. We generate $6.9 million in cash flow from operations and ended the year with more than $27 million of cash. Total shipments, which including two deliveries but not yet fully recognized as revenue were $95 million, up 137% from $40 million in 2017.
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> We are excited by our business prospects and remain committed to gain the share with new products, new customers and more production steps. ***For 2019, we expect revenue of $100 million, up 34%, reflecting strong demand from our existing customers***.

(Emphasis added.)

20. In addition, during the scripted portion of the call, Defendant Feng stated, in relevant part:

> Revenue was 74.6 million, up 104%. Total shipments were 95 million versus 40 million in 2017. Gross margin was 46.2 % compared to 47.2% in 2017. Non-GAAP operating margin was at 13.2% versus 6.4% a year ago. Non-GAAP net income was 9.9 million compared to the net income of 1.3 million in 2017. Other income in 2018 was positive 1.3 million versus a loss of 0.8 million in 2017. The income in 2018 was due to our 5.7% decline in Chinese renminbi versus the dollar during the year.
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> For the fourth quarter, revenue was 20.8 million, up 21%. ***Growth was driven by solid demand for our single-wafer cleaning equipment***. Total shipments were approximately 32 million compared to 13 million last year. And the 32 million last quarter total shipments, including tools shipped and recognized as revenue in the quarter plus shipments pending customer acceptance.

(Emphasis added.)

21. On March 14, 2019, ACM filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the year ended December 31, 2018 (the

"2018 10-K"). In providing an overview of the business, the 2018 10-K stated, in relevant part:

> We focus our selling efforts on establishing a referenceable base of leading foundry, logic and memory chip makers, whose use of our products can influence decisions by other manufacturers. We believe this customer base will help us penetrate the mature chip manufacturing markets and build credibility with additional industry leaders. Using a "demo-to-sales" process, we have placed evaluation equipment, or "first tools," with a number of selected customers. Since 2009 we have delivered more than 55 single-wafer wet cleaning tools, more than 50 of which have been accepted by customers and thereby generated revenue to us and the balance of which are awaiting customer acceptance should contractual conditions be met.

22. Further, in describing the Company's customers and its sales and marketing, the 2018 10-K stated, in relevant part:

> **Our Customers**
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> As of December 31, 2018, chip fabricators had purchased and deployed more than 55 of our single-wafer wet cleaning tools. To date, all of our sales of single-wafer wet cleaning equipment for front-end manufacturing have been to customers located in Asia, and we anticipate that a substantial majority of our revenue from these products will continue to come from customers located in this region for the near future. We have increased our efforts to penetrate the markets in North America and Western Europe, and we believe we are well positioned to begin generating sales in those regions.
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> We generate most of our revenue from a limited number of customers as the result of our strategy of initially placing single-wafer wet cleaning equipment with a small number of leading chip manufacturers that are driving technology trends and key capability implementation. In 2018, 85.7% of our revenue was derived from three customers: Yangtze Memory Technologies Co., Ltd., a leading PRC memory chip company, together with one of its subsidiaries, accounted for 38.8% of our revenue; Shanghai Huali Microelectronics Corporation, a leading PRC foundry, accounted for 23.6% of our revenue; and SK Hynix Inc., a leading Korean memory chip company, accounted for 23.3% of our revenue. In 2017, 55.2% of our revenue was derived from four customers: SK Hynix Inc. accounted for 18.1% of our revenue; Shanghai Integrated Circuit Research and Development Center Ltd., a public research consortia for the Chinese semiconductor industry, accounted for 14.1% of our revenue; JiangYin ChangDian Advanced Packaging Co. Ltd., a leading PRC foundry, accounted for 12.8% of our revenue; and Yangtze Memory Technologies Co., Ltd., together with one of its subsidiaries, accounted for 10.2% of our revenue.
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> Based on our market experience, we believe that implementation of our single-wafer wet cleaning equipment by one of our selected chip manufacturers will attract and encourage other manufacturers to evaluate our equipment, because the leading company's implementation will serve as validation of our equipment and could enable the other manufacturers to shorten their evaluation processes. We placed our first SAPS tool in 2009 as a prototype. We worked closely with the customer for two years in debugging and modifying the tool, and the customer then spent two more years of qualification and

running pilot production before beginning volume manufacturing. Our revenue in 2015 included sales of SAPS tools following the customer's completion of its qualification process. We believe that the period from new product introduction to high volume manufacturing could range from one to several years.

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Sales and Marketing

We market and sell our products worldwide using a combination of our direct sales force and third-party representatives. We employ direct sales teams in Asia, Europe and North America, and have located these teams near our customers, primarily in the PRC, Korea, Taiwan and the United States. Each sales person has specific local market expertise. We also employ field application engineers, who are typically co-located with our direct sales teams, to provide technical pre- and post-sale support tours and other assistance to existing and potential customers throughout the customers' fab planning and production line qualification and fab expansion phases. Our field application engineers are organized by end markets as well as core competencies in hardware, control system, software and process development to support our customers.

23. Next, in comparing the Company's revenue, cost of revenue, and gross margin for the year ended December 31, 2018 and 2017, the 2018 10-K stated, in relevant part:

Revenue for the year ended December 31, 2018 compared to the year ended December 31, 2017 increased by $38.1 million. The increase was due to a $41.4 million increase in revenue from single-wafer wet cleaning tools to our front-end customers, offset in part by a $3.2 million decline in revenue of tools to our back-end customers. Our revenue for 2018 compared to 2017 reflected significant growth for three of our large front-end customers, partly offset by a decline at one front-end and one back-end customer.

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Cost of revenue increased $20.9 million, and gross profit increased $17.2 million, for the year ended December 31, 2018 compared to 2017, reflecting the growth in sales.

24. In addition, with respect to the Company's controls and procedures, the 2018 10-K stated, in relevant part:

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Accounting Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, or the Exchange Act, as of December 31, 2018. The evaluation included certain internal control areas in which we have made and are continuing to make changes to improve and enhance controls. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on that evaluation, our Chief Executive Officer and Chief Accounting Officer concluded that our disclosure controls and procedures are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Accounting Officer, as appropriate, to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

Management 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. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with general accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management, with the participation of our Chief Executive Officer and Chief Accounting Officer, assessed the effectiveness of our internal control over financial reporting as of December 31, 2018. In making this assessment, our management used the criteria set forth in the Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its assessment, management concluded that our internal control over financial reporting was effective as of December 31, 2018.

25. On May 7, 2019, ACM issued a press release announcing the Company's first quarter 2019 results. The press release stated, in relevant part:

ACM's President and Chief Executive Officer Dr. David Wang commented, "Business momentum continued, and we executed well relative to our expectations. We delivered solid revenue growth and profitability, and we introduced two new electrochemical plating products. First quarter results demonstrate the competitive strength of our technical expertise, product differentiation and production scale. All of our products, from SAPS, TEBO and Tahoe to our new Ultra ECP products, incorporate our innovative and differentiated technologies, which we have committed to continuously develop to exceed the expectations of our customers."

Dr. Wang continued, “As we look ahead to the remainder of 2019, we are excited by our business prospects and are committed to continuing to gain market share with new products, new customers, and more production steps. We are executing our strategy, and remain focused on achieving our vision of becoming a major player in the semiconductor equipment market.”

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- **Revenue** increased 110% to $20.5 million, due to an increased volume of tools shipped for revenue and higher prices associated with these tools. Revenue for the first quarter included repeat shipments, and several customer acceptances of tools shipped in previous quarters.

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Outlook

For fiscal year 2019, the Company continues to expect revenue to be approximately $100 million.

26. That same day, ACM hosted an earnings call with investors and analysts to discuss the Company’s first quarter 2019 results (the “Q1 2019 Earnings Call”). During the scripted portion of the Q1 2019 Earnings Call, Defendant Wang stated, in relevant part:

We delivered a solid revenue growth, excellent profitability, and we introduce key new electrical plating or ECP products. First-quarter results demonstrate the competitive strength of our technical expertise. Product differentiation and the production scale. Revenue would double from the same period last year, solid operating leverage grew gross margin of a 43.1% and operating margin of 14.6%. We ended the quarter with more than $27 million of cash.

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We are excited by our business prospects and remain committed to gaining share with new products, new customers, and a more production steps. ***We are maintaining our guidance for the full year for 2019. We'll continue to expect a revenue of highly million up 34% which reflects the strong demand from our existing customers***. Importantly, visibility for the full-year improved due to a solid orders and a customer forecast during Q1.

To conclude, our solid results show that we are executing our strategy, we are participating in the growth of our major new [indiscernible]. We are ramping production at our new factory, and we continue to deliver innovative and new products. We remain committed to achieving our vision of become a major player in a semiconductor equipment market. We look forward to continuing to deliver strong results in the balance of this year and beyond.

(Emphasis added.) Further, also during the scripted portion of the Q1 2019 Earnings Call, Defendant Fang stated, in relevant part, "[r]evenue was $20.5 million, up 110%. ***Growth was driven by solid demand for our single wafer cleaning equipment and our back end tool***. And we had a customer acceptances at a first the tools that had shipped in prior periods." (Emphasis added.)

27. In addition, when asked a question regarding improved visibility, Defendant Wang responded, in relevant part, "[b]ut based on our forecast and also our tool has been shipped last year which is some of them we recognized revenue this year. ***So where we are fully confident about a $100 million revenue in 2019***." (Emphasis added.)

28. On May 14, 2019, ACM filed a Quarterly Report on Form 10-Q with the SEC, reporting he Company's financial and operating results for the quarter ended March 31, 2019 (the "Q1 2019 10-Q"). The Q1 2019 10-Q touted a substantively similar overview of the Company as referenced in ¶ 25, *supra*. Further, in comparing the Company's revenue, cost of revenue, and gross margin for the three months ended March 31, 2019 and 2018, the Q1 2019 10-Q stated, in relevant part:

> The increase in revenue of $10.7 million in the three months ended March 31, 2019 as compared to the same period in 2018 reflected increases in revenue of $3.3 million from single-wafer cleaning equipment, and a $7.4 million increase in revenue from back-end equipment and spares. The revenue increase reflected an increased number of tools shipped, coupled with higher selling prices associated with the equipment sold and customer acceptances from prior period shipments received and recognized as revenue during the three month ended March 31, 2019.
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> Cost of revenue increased $7.0 million and gross profit increased $3.7 million in the three months ended March 31, 2019, as compared to the corresponding period in 2018, primarily due to increased sales volume.

29. Finally, with respect to controls and procedures, the Q1 2019 10-Q stated, in relevant part:

> **Disclosure Controls and Procedures**
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> Our management, with the participation of our chief executive officer and interim chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of March 31, 2019. The term "disclosure controls and procedures," as

defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of March 31, 2019, our chief executive officer and interim chief financial officer concluded that, as of such date, our disclosure controls and procedures over financial reporting were effective.

30. Appended to the Q1 2019 10-Q as an exhibit was a signed certification pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by Defendants Wang and Feng, attesting that, "the information contained in the [Q1 2019 10-Q] fairly presents, in all material respects, the financial condition and results of operations of ACM Research, Inc. for the period presented therein."

31. On August 7, 2019, ACM issued a press release announcing the Company's second quarter 2019 results. The press release stated, in relevant part:

ACM's President and Chief Executive Officer Dr. David Wang commented, "We are pleased with our second quarter results, and the momentum we have been building throughout 2019. Despite the industry cycle, we executed well in the June quarter, achieving strong top- and bottom-line growth. As we look ahead to the remainder of 2019, we are excited by our business opportunities. We have strong demand, our visibility remains solid, and the team is executing to plan."

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- **Revenue** increased 39.0% to $29.0 million, due to an increased volume of tools shipped for revenue and higher prices associated with these tools. Revenue for the second quarter included repeat shipments and several customer acceptances of tools shipped in previous quarters.

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Outlook

The Company has increased its full year 2019 revenue guidance to $105 million, an increase of $5 million from the Company's previous 2019 revenue guidance.

32. On August 8, 2019, ACM hosted an earnings call with investors and analysts to discuss the Company's second quarter 2019 results (the "Q2 2019 Earnings Call"). During the scripted portion of the Q2 2019 Earnings Call," Defendant Wang stated, in relevant part:

> ***Revenue grew to $29 million up 39% from last year, a strong top-line good growth margin and disciplined spending resulted in high-teens operating margin for the quarter***. Total shipments rebounded to $33 million up more than 50%. We ended the quarter with $27.6 million of cash.
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> We remain committed to balancing our near-term profitability with investment to drive longer-term growth.
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> For 2019, we're raising our revenue outlook to US$105 million, representing more than 40% annual growth. This is an increase of $5 million from the guidance we provided on last quarter's call. ***Our outlook reflects strong demand from our existing customers. We have a good visibility for the remains of the year, due to solid order and forecasts provided by our key customers***.
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> . . . our strong results show that we are exciting our strategy -- executing our strategy; we are participating in the growth of the major new IC fabs; we are ramping production at our new factory; and we continue to deliver innovative new products. We remain committed to achieving our vision of become a major player in the semiconductor equipment market.

(Emphasis added.) Further, also during the scripted portion of the Q2 2019 Earnings Call, Defendant Feng stated, in relevant part, "Revenue was $29 million, up 39%. ***Growth was driven by solid demand for our single-wafer cleaning equipment and our back-end tools***." (Emphasis added.)

33. On August 12, 2019, ACM filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended June 30, 2019 (the "Q2 2019 10-Q"). The Q2 2019 10-Q touted a substantively similar overview of the Company as referenced in ¶ 31, *supra*. Further, in comparing the Company's revenue, cost of revenue, and gross margin for the three months ended June 30, 2019 and 2018, the Q2 2019 10-Q stated, in relevant part:

The increase in revenue of $8.1 million in the three months ended June 30, 2019 as compared to the same period in 2018 reflected increases in revenue of $9.7 million from single-wafer cleaning equipment. . The revenue increase reflected an increased number of tools shipped, coupled with higher selling prices associated with the equipment sold and customer acceptances from prior period shipments received and recognized as revenue during the three month ended June 30, 2019.

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Cost of revenue increased $3.7 million and gross profit increased $4.4 million in the three months ended June 30, 2019, as compared to the corresponding period in 2018, primarily due to increased sales volume.

34. Finally, with respect to controls and procedures, the Q2 2019 10-Q stated, in relevant part:

Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and interim chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2019. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of June 30, 2019, our chief executive officer and interim chief financial officer concluded that, as of such date, our disclosure controls and procedures over financial reporting were effective.

35. Appended as an exhibit to the Q2 2019 10-Q was substantively the same SOX certification as referenced in ¶ 30, *supra*, signed by Defendants Wang and Feng.

36. On November 6, 2019, ACM issued a press release announcing the Company's third quarter 2019 results. The press release stated, in relevant part:

ACM's President and Chief Executive Officer Dr. David Wang commented, "We delivered record revenue and shipments, demonstrating our ability to scale production to major customers. We had several important deliveries in the quarter, including a "first tool" to our newest customer, an emerging China-based DRAM manufacturer, and several ECP AP tools to a major packaging customer. With a successful U.S. capital raise, we now have $47 million in cash, which puts us in a good position to support our growth plans."

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- **Revenue** increased 44.2% to $33.4 million, due to an increased volume of tools shipped for revenue and higher prices associated with these tools. Revenue for the quarter was entirely driven by repeat shipments, with no acceptances contributing to revenue for the period.

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Outlook

For fiscal year 2019, the Company continues to expect revenue to be approximately $105 million.

37. On November 7, 2019, ACM hosted an earnings call with investors and analysts to discuss the Company's third quarter 2019 results (the "Q3 2019 Earnings Call"). During the scripted portion of the Q3 2019 Earnings Call, Defendant Wang stated, in relevant part:

> Our third quarter results mark another quarter of great financial results, new product development, and strategic progress. We delivered record revenue, record shipments, strong bottom line growth and we're strengthening our balance sheet. This result validated our technology, our spending product portfolio, and our ability to scale production. We remain focused on our mission to become a major proprietor of technical equipment to the semiconductor industry. Revenue growth of $33 million, up 44%, our customers push us to deliver high volume tools in the third quarter as they scale their own production capacity, with some key delivers accelerated from the fourth quarters.
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> For 2019, we continue to expect our revenue to be approximately $105 million. This represents more than 40% annual growth. We are proud of this growth, given a challenging year for the industry. As we look to 2020, we plan for growth. We plan to provide formal guidance for the full year 2020 on our next earnings call.
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> . . . we are executing our strategy. We are participating in the growth of major new IC fabs. We are ramping production and we continue to develop and deliver innovative new products. We are confident in our opportunity in China, expansion outside of China. We remain committed to achieve our mission to become a major player in the semiconductor equipment market.

38. Further, also during the scripted portion of the Q3 2019 Earnings Call, Defendant Feng stated, in relevant part, "[r]evenue was $33.4 million, up 44%. Growth was driven by solid demand for our single-wafer cleaning equipment and our new ECP copper plating tools for advanced packaging." Finally, when asked a question regarding revenue growth in 2020, Defendant Wang responded, in relevant part, ". . . we recognize revenue as we expect that fast. So come to the point is definitely, as I said, two product ECP will add the revenue. However, we've added more new customer. So maybe the most bigger revenue come to the year 2021, but we still say next year a quarter shipment, contribute like a shipment."

39. On November 13, 2019, ACM filed a Quarterly Report on Form 10-Q with the SEC, reporting he Company's financial and operating results for the quarter ended September 30, 2019 (the "Q3 2019 10-Q"). The Q3 2019 10-Q touted a substantively similar overview of the Company as referenced in ¶ 36, *supra*. Further, in comparing the Company's revenue, cost of revenue, and gross margin for the three months ended September 30, 2019 and 2018, the Q3 2019 10-Q stated, in relevant part:

> The increase in revenue of $10.3 million in the three months ended September 30, 2019 as compared to the same period in 2018 reflected increases in revenue of $5.7 million from single-wafer cleaning equipment, and increases in revenue of $4.6 million from back-end wafer assembly and packaging equipment. The increase in revenue was driven by a higher number of tools shipped for revenue, offset by a decrease in customer acceptances from prior period shipments received and recognized as revenue during the three months ended September 30, 2019.
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> Cost of revenue increased $4.3 million and gross profit increased 6.0 million in the three months ended September 30, 2019, as compared to the corresponding period in 2018, due to increased sales volume and higher gross margin.

40. Finally, with respect to controls and procedures, the Q3 2019 10-Q stated, in relevant part:

> **Disclosure Controls and Procedures**

Our management, with the participation of our chief executive officer and interim chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2019. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the Securities and Exchange Commission, or the SEC. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of September 30, 2019, our chief executive officer and interim chief financial officer concluded that, as of such date, our disclosure controls and procedures over financial reporting were effective.

41. Appended as an exhibit to the Q3 2019 10-Q was substantively the same SOX certification as referenced in ¶ 30, *supra*, signed by Defendants Wang and McKechnie.

42. On March 18, 2020, ACM issued a press release announcing the Company’s fourth quarter and fiscal year 2019 results. The press release stated, in relevant part:

ACM’s President and Chief Executive Officer Dr. David Wang commented, “2019 was a remarkable year for ACM Research as we expanded our customer base, launched new products, and ramped production capacity at our second factory. We delivered 44% revenue growth, expanded operating margins, and generated more than $9 million in cash flow from operations. We grew our cash balance to $58 million at year-end, with an additional $60 million of proceeds held in restricted cash from the private equity funding into our ACM Shanghai subsidiary.”

***

Outlook

For fiscal year 2020, the Company expects revenue to be in the range of $130 million to $150 million, unchanged from its January 13, 2020 announcement.

***

Revenue. Revenue for 2019 was $107.5 million, up 44% from 2018, due primarily to an increase in revenue from single-wafer wet cleaning tools. Revenue for the fourth quarter of 2019 was $24.6 million, up 18% from the fourth quarter of 2018, due to an increased volume of tools shipped for revenue and higher prices associated with those tools.

43. On March 19, 2020, ACM hosted an earnings call with investors and analysts to discuss the Company's fourth quarter 2019 results (the "Q4 2019 Earnings Call"). During the scripted portion of the Q4 Earnings Call, Defendant Wang stated, in relevant part, "[o]ur full year 2020 outlook is unchanged. We expect revenue to be in the range of $130 million to $150 million as we announced on January 13. This represents 30% annual growth at the midpoint[,]" and "[a]s [indiscernible] we are committed to our [indiscernible] balance between current profits and investment growth. We believe that growing fast with the profitability will deliver the maximum value to our shareholders." Further, also during the scripted portion of the call, Defendant McKechnie stated, in relevant part, "Q4 was another strong quarter ending 2019 at a high note with good profitability[,]" and "[r]evenue was $107.5, up 44%."

44. On March 24, 2020, ACM filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the year ended December 31, 2019 (the "2019 10-K"). The 2019 10-K contained a substantively similar overview of the Company, its customers, and its sales and marketing as referenced in ¶ 42, *supra*. Further, with in comparing the Company's revenue, cost of revenue, and gross margin for the year ended December 31, 2019 and 2018, the 2019 10-K stated, in relevant part, "[r]evenue for 2019 compared to 2018 increased by $32.9 million. The increase was due to a $22.4 million increase in revenue from single-wafer wet cleaning tools to our front-end customers, and an $10.5 million increase in revenue of tools to our back-end customers[,]" and "[c]ost of revenue increased $16.7 million, and gross profit increased $16.2 million, for 2019 compared to 2018, reflecting the growth in sales."

45. In addition, with respect to disclosure controls and procedures, the 2019 10-K stated, in relevant part:

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our company's disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, or the Exchange Act, as of December 31, 2019. The evaluation included certain internal control areas in which we have made and are continuing to make changes to improve and enhance controls. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs. The effectiveness of the disclosure controls and procedures is also necessarily limited by the staff and other resources available to management and the geographic diversity of our company's operations.

Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2019, our company's disclosure controls and procedures were effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

Management 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. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with general accepted accounting principles. The Company's internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of our company;
- 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 our company are being made only in accordance with authorizations of management and directors of our company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our company's assets that could have a material effect on the financial statements.

***

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, assessed the effectiveness of our internal control over financial reporting as of December 31, 2019. In making this assessment, our management used the criteria set forth in the Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its assessment, management concluded that our internal control over financial reporting was effective as of December 31, 2019.

46. Appended as an exhibit to the 2019 10-K was substantively the same SOX certification as referenced in ¶ 30, *supra*, signed by Defendants Wang and McKechnie.

47. On May 6, 2020, ACM issued a press release announcing the Company's first quarter 2020 results. The press release stated, in relevant part:

> **Outlook**
>
> For fiscal year 2020, the Company continues to expect revenue to be in the range of $130 million to $150 million.
>
> ***
>
> - **Revenue** was $24.3 million, up 18.9%, reflecting an increase in revenue from single wafer wet cleaning and other front-end processing equipment, offset in part by a decrease in revenue from back-end wafer assembly and packaging equipment.

48. On May 7, 2020, ACM hosted an earnings call with investors and analysts to discuss the Company's first quarter 2020 results (the "Q1 2020 Earnings Call"). During the scripted portion of the Q1 2020 Earnings Call, Defendant Wang stated, in relevant part, "[w]e delivered double-digit revenue growth, even though some shipments delayed from Q1 into Q2," and "[w]e expect revenue to be in the range of $130 million to $150 million. This will represent 30% annual growth at the mid-point." Further, also during the scripted portion of the Q1 2020 Earnings Call, Defendant McKechnie stated, in relevant part, "[f]or the first quarter, revenue was $24.3 million, up 19%. Q1 revenue and shipments were impacted by the COVID-19 related shutdowns. Revenue growth was driven by an increase in front-end equipment, partly offset by a decrease in back end assembly and packaging equipment."

49. On May 8, 2020, ACM filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended March 31, 2020 (the "Q1 2020 10-Q"). The Q1 2020 10-Q touted a substantively similar overview of the Company as referenced in ¶ 47,

supra. Further, in comparing the Company's revenue, cost of revenue, and gross margin for the three months ended March 31, 2020 and 2019, the Q1 2020 10-Q stated, in relevant part:

> The increase in revenue of $3.8 million in the three months ended March 31, 2020 as compared to the same period in 2019 reflected increases in revenue of $10.0 million from front-end single-wafer cleaning equipment, offset in part by a decrease in revenue of $6.1 million from back-end wafer assembly and packaging equipment.
>
> ***
>
> Cost of revenue increased $2.5 million and gross profit increased $1.4 million in the three months ended March 31, 2020, as compared to the corresponding period in 2019, due to increased sales volume and lower gross margin.

50. Finally, with respect to controls and procedures, the Q1 2020 10-Q stated, in relevant part:

> **Disclosure Controls and Procedures**
>
> Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of March 31, 2020. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the Securities and Exchange Commission, or the SEC. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of March 31, 2020, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures over financial reporting were effective.

51. Appended as an exhibit to the Q1 2020 10-Q was substantively the same SOX certification as referenced in ¶ 30, *supra*, signed by Defendants Wang and McKechnie.

52. On August 5, 2020, ACM issued a press release announcing the Company's second quarter 2020 results. The press release stated, in relevant part:

Outlook

> For fiscal year 2020, the Company now expects revenue to be in the range of $140 million to $155 million, up from the previous guidance range of $130 million to $150 million.
>
> ***
>
> - **Revenue** was $39.0 million, up 34.6%, reflecting an increase in revenue from single wafer wet cleaning and other front-end processing equipment, and an increase in revenue from back-end wafer assembly and packaging equipment.

53. On August 6, 2020, ACM hosted an earnings call with investors and analysts to discuss the Company's second quarter 2020 results (the "Q2 2020 Earnings Call"). During the scripted portion of the Q2 2020 Earnings Call, Defendant Wang stated, in relevant part:

> We delivered revenue of $39 million, up 35% year-over-year. Revenue in the quarter was evenly split between our 3D NAND customer and our 2 foundry customers. Shipments were $45 million, up 36% year-over-year and a strong rebound from the pause in Q1. We delivered good balance of growing versus profitability, with almost a 50% gross margin and 21% operating margin. We remain committed to delivering profitable growth as we continue to invest in R&D for new products and global sales and marketing.
>
> ***
>
> Accordingly, we have updated our full year 2020 outlook. We expect revenue to be between $140 million and $155 million, upper from the previous range of $130 million to $150 million. The revised revenue range represents 37% annual growth at mid-point.

54. Further, also during the scripted portion of the Q2 2020 Earnings Call, Defendant McKechnie stated, in relevant part, "[f]or the second quarter, revenue was $39 million, up 35%. Growth was driven by solid demand for our front-end equipment and back-end tools. As David noted, we had a balanced revenue contribution from our 3D NAND customer and our 2 logic customers." In addition, when asked a question regarding research and development trending for 2020, Defendant McKechnie responded, in relevant part:

> . . . I think we always started the year, we have a discipline internally to balance our near-term profitability with investments in the longer-term opportunities. ***And so when we saw our revenue moving -- got confidence, and we saw some additional upside to take our range up***. We started investing in some additional new products. So R&D for the year, we see it kind of staying at about that level, about the $5 million or so per quarter. If we

> see some additional revenue, we might increase that to bring some new products to market faster.

(Emphasis added.)

55. On August 10, 2020, ACM filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended June 20, 2020 (the "Q2 2020 10-Q"). The Q2 2020 10-Q touted a substantively similar overview of the Company as referenced in ¶ 52, *supra*. Further, in comparing the Company's revenue, cost of revenue, and gross margin for the three months ended June 30, 2020 and 2019, the Q2 2020 10-Q stated, in relevant part:

> The increase in revenue of $10.0 million in the three months ended June 30, 2020 as compared to the same period in 2019 consisted of an increase in revenue of $8.9 million from single-wafer cleaning and other front-end processing equipment and an increase in revenue of $1.1 million from back-end wafer assembly and packaging equipment and spares.
>
> ***
>
> Cost of revenue increased $3.8 million and gross profit increased $6.2 million in the three months ended June 30, 2020 as compared to the corresponding period in 2019 due to the increased sales volume noted above and a 4.3% increase in gross margin, which reflected differences in product mix and increased production scale.

56. Finally, with respect to controls and procedures, the Q2 2020 10-Q stated, in relevant part:

> **Disclosure Controls and Procedures**
>
> Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2020. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934 is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment

in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of June 30, 2020, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures over financial reporting were effective.

57. Appended as an exhibit to the Q2 2020 10-Q was substantively the same SOX certification as referenced in ¶ 30, *supra*, signed by Defendants Wang and McKechnie

58. The statements referenced in ¶¶ 18-57 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, operational and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company's revenue and profits had been diverted to undisclosed related parties; (ii) accordingly, the Company had materially overstated its revenues and profits; (iii) the foregoing, once revealed, would foreseeably subject the Company to significant financial and/or reputational harm; and (iv) as a result, the Company's public statements were materially false and misleading at all relevant times.

The Truth Begins to Emerge

59. On October 8, 2020, analyst J Capital published a report concerning ACM, in which J Capital concluded that ACM "is a fraud, over-reporting both revenue and profit." The report cited, among other things, J Capital's visits to "sites in China, Korea, and California" and "more than 40 interviews." J Capital asserted that "[w]hat real profit the company has is apparently being siphoned off to related parties." The J Capital report concluded, in relevant part:

- ACMR reports industry-beating gross margins of 47%. We believe the real gross margins are half that at best. That would wipe out the company's net profit.
- We estimate that revenue is overstated by 15-20%.
- We have evidence that undisclosed related parties are diverting revenue and profit from the company
- Key means by which ACMR tunnels over-reported profit out of the company may be through about $20 mln in overstated inventory costs and through cash that is inflated or just compromised. We think least $11 mln in warranty and service costs are understated.
- ACMR appears to be strapped for cash in spite of the $86 mln reported on the balance sheet. ACMR had $25.77 mln in shortterm borrowings in Q2 2020, up by $21.88 mln QoQ and at average annualized borrowing cost of 6.1% compared

> with annualized interest income of 1.3%. ACMR's CEO has personally guaranteed 11 of 13 short-term "lines of credit" issued on the mainland.

60. In addition, the J Capital report questioned the Company's research and development operations. For example, the J Capital report quoted a former longtime R&D employee of ACM, who stated, "I felt there was no technological content in their product. [. . .] They don't have much in way of R&D, a lab, manufacturing. It's an assembly operation."

61. Finally, the J Capital report discussed certain related party transactions, explaining, in relevant part:

> We think ACMR management is using five on-paper-only companies to divert money. In September, we learned more about this process. We obtained ACMR's responses to questions from Chinese regulators about its IPO application, and in those documents, ACMR discloses that almost all its sales run through "agents."
>
> ***
>
> We have gotten detailed pricing and invoicing information from six of ACMR's top clients. Five of them had paid more for equipment than ACMR disclosed. We think that extra payment was diverted, possibly to management via an "agent" or possibly back to the SOE customer."

62. Indeed, the J Capital report cited specific related parties whose relationships had not been disclosed to U.S. investors. For example, the J Capital report stated, in relevant part:

> Lida is responsible for 41% of ACMR 2019 sales and is owned by an undisclosed related party. The ¥15.26 mln commission that ACMR reported paying to Lida in 2019 represented 45% of Lida's income.10 These facts are disclosed to the Chinese regulator in response to questions about the draft registration document. But the English-language 8K fails to mention these things.
>
> Lida owner Wang Beiyi is also a supplier to ACMR, owner of an agency selling on behalf of ACMR, and a shareholder of both the Chinese IPO vehicle and U.S.-traded company. ACMR owns 15% the company that Wang uses to sell "filters etc." to ACMR. ACMR makes the ridiculous claim that Wang's company, Shengyi Semiconductor Technology (Wuxi) Co., Ltd., sells them filters—a commodity product that is super abundant in China—for 62% less than competitors.

63. On this news, ACM's stock price fell $1.09 per share, or 1.52%, to close at $70.79 per share on October 8, 2020.

64. As a result of defendants' wrongful acts and omissions, and the decline in the price of ACM securities detailed herein, Plaintiff and other members of the Class (as defined below) have suffered significant losses and damages.

ADDITIONAL SCIENTER ALLEGATIONS

65. As alleged herein, ACM and the Individual Defendants acted with scienter in that: (i) they knew or recklessly disregarded that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; (ii) they knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and (iii) they participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. The Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding ACM, their control over and/or receipt and/or modification of ACM's allegedly materially misleading statements, and/or their associations with the Company that made them privy to confidential proprietary information concerning ACM, participated in the fraudulent scheme alleged herein.

NO SAFE HARBOR

66. ACM's "Safe Harbor" warnings accompanying its reportedly forward-looking statements issued during the Class Period were ineffective to shield those statements from liability. To the extent that projected revenues and earnings were included in the Company's financial reports prepared in accordance with Generally Accepted Accounting Principles, including those filed with the SEC on Form 8-K, they are excluded from the protection of the statutory Safe Harbor. 15 U.S.C. § 78u-5(b)(2)(A).

67. Defendants are also liable for any false or misleading forward-looking statements pleaded because, at the time each forward-looking statement was made, the speaker knew the forward-looking statement was false or misleading and the forward-looking statement was authorized and/or approved by an executive officer of ACM who knew that the forward-looking statement was false.

None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

APPLICATION OF PRESUMPTION OF RELIANCE; FRAUD ON THE MARKET

68. At all relevant times, the market for ACM securities was an efficient market for the following reasons, among others:

(a) ACM stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) according to the Company's Form 10-K for the fiscal year ended December 31, 2019, ACM had more than 16 million shares of Class A common stock and more than 1 million shares of Class B common stock outstanding as of March 17, 2020;

(c) as a regulated issuer, ACM filed periodic public reports with the SEC;

(d) ACM regularly communicated with public investors via established market communication mechanisms, including the regular dissemination of press releases on national circuits of major newswire services, the Internet and other wide-ranging public disclosures; and

(e) unexpected material news about ACM was rapidly reflected in and incorporated into prices for the Company's shares during the Class Period.

69. As a result of the foregoing, the market for ACM securities promptly digested current information regarding ACM from publicly available sources and reflected such information in the price of ACM securities. Under these circumstances, all purchasers of ACM securities during the Class Period suffered similar injury through their purchases of ACM securities at artificially inflated prices, and a presumption of reliance applies.

70. A presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972), because Plaintiff's claims are based, in significant part, on defendants' material omissions. Because this action involves defendants' failure to disclose material adverse information regarding ACM's business, operations and risks, positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of defendants' material misstatements and omissions set forth above, that requirement is satisfied here.

LOSS CAUSATION/ECONOMIC LOSS

71. During the Class Period, as detailed herein, the defendants made false and misleading statements and engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of ACM securities and operated as a fraud or deceit on Class Period purchasers of ACM securities by misrepresenting the value of the Company's business and prospects by concealing the significant defects in its underwriting and due diligence practices and deficiencies in its commercial credit portfolio and related securitized assets. As the defendants' misrepresentations and fraudulent conduct became apparent to the market, the price of the Company's securities fell precipitously as the prior artificial inflation came out of the securities' price. As a result of their purchases of ACM securities during the Class Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

72. 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 ACM securities during the Class Period (the "Class"). Excluded from the Class are defendants and members of their immediate families, the officers and directors of the Company, at all relevant times, and

members of their immediate families, the legal representatives, heirs, successors or assigns of any of the foregoing, and any entity in which defendants have or had a controlling interest.

73. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, ACM securities were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that are thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by ACM 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.

74. 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.

75. 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.

76. 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:

(a) whether the Exchange Act was violated by defendants as alleged herein;

(b) whether statements made by defendants misrepresented material facts about the business, operations and management of ACM; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

77. 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.

COUNT I

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

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

79. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

80. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact 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 (c) 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 ACM securities during the Class Period.

81. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for ACM securities. Plaintiff and the Class would not have purchased ACM securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

COUNT II

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

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

83. Defendants acted as controlling persons of the Company within the meaning of Section 20(a) of the Exchange Act. By reason of their positions with the Company and their ownership of Company stock, the Individual Defendants had the power and authority to cause the Company to engage in the wrongful conduct complained of herein. The Company controlled the Individual Defendants and all of its employees. By reason of such conduct, defendants are liable pursuant to Section 20(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Awarding such equitable/injunctive or other relief as deemed appropriate by the Court.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury.