

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

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

Plaintiff,

v.

HARSCO CORPORATION, F.
NICHOLAS GRASBERGER III, and
PETER F. MINAN,

Defendants.

Case No.: DRAFT

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

JURY TRIAL DEMANDED

Law Offices of Howard G. Smith

Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Harsco Corporation (“Harsco” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Harsco; and (c) review of other publicly available information concerning Harsco.

NATURE OF THE ACTION AND OVERVIEW

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Harsco securities between July 31, 2019 and January 23, 2020, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Harsco is purportedly a diversified provider of environmental solutions and services and engineered products that are fundamental to infrastructure development and worldwide economic growth. It has three reportable segments: (i) Harsco Rail, which provides highly engineered maintenance equipment, after-market parts and safety and diagnostic systems for railroad and transit customers; (ii) Harsco Environmental, which provides critical services and support for the steelmaking process as well as environmental and zero waste solutions for manufacturing byproducts within the metals industry; and (iii) Harsco Clean Earth, which provides environmental services for a variety of contaminated materials, such as soils and hazardous waste, for third-party beneficial use.

3. On January 23, 2020, after the market closed, Harsco announced preliminary fourth quarter 2019 financial results, expecting approximately \$400 million revenue. The Company also expected adjusted operating income of approximately \$31 million, below prior guidance in the range of \$53 million to \$58 million, citing “operational challenges following the consolidation of Rail’s North American manufacturing into a single facility in South Carolina,” among other things.

4. On this news, Harsco’s stock price fell as much as \$3.48 per share, or nearly 18%, during intraday trading on January 24, 2020, on unusually heavy trading volume.

5. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Harsco was experiencing operational challenges in connection with the consolidation of Rail’s North American manufacturing into a single facility; (2) that these challenges would likely lead to customer shipment delays; (3) that, as a result, Harsco was reasonably likely to incur higher manufacturing costs; and (4) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

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

JURISDICTION AND VENUE

7. The claims asserted herein arise under 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).

8. 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).

9. 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)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, the Company's principal executive offices are located in this District.

10. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

PARTIES

11. Plaintiff _____, as set forth in the accompanying certification, incorporated by reference herein, purchased Harsco securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

12. Defendant Harsco is incorporated under the laws of Delaware with its principal executive offices located in Camp Hill, Pennsylvania. Harsco's common stock trades on the New York Stock Exchange ("NYSE") under the symbol "HSC."

13. Defendant F. Nicholas Grasberger III ("Grasberger") was the Chief Executive Officer ("CEO") of the Company at all relevant times.

14. Defendant Peter F. Minan ("Minan") was the Chief Financial Officer ("CFO") of the Company at all relevant times.

15. Defendants Grasberger and Minan (collectively the “Individual Defendants”), because of their positions with the Company, possessed the power and authority to control the contents of the Company’s reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. The Individual Defendants were provided with copies of the Company’s reports 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 cause them to be corrected. Because of their positions and access to material non-public information available to them, 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 which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

SUBSTANTIVE ALLEGATIONS

Background

16. Harsco is purportedly a diversified provider of environmental solutions and services and engineered products that are fundamental to infrastructure development and worldwide economic growth. It has three reportable segments: (i) Harsco Rail, which provides highly engineered maintenance equipment, after-market parts and safety and diagnostic systems for railroad and transit customers; (ii) Harsco Environmental, which provides critical services and support for the steelmaking process as well as environmental and zero waste solutions for manufacturing byproducts within the metals industry; and (iii) Harsco Clean Earth, which provides environmental services for a variety of contaminated materials, such as soils and hazardous waste, for third-party beneficial use.

17. In 2019, Harsco expanded its facility for Rail in South Carolina and consolidate its domestic production into this facility. The Company expected to complete the transition mid-2019.

**Materially False and Misleading
Statements Issued During the Class Period**

18. The Class Period begins on July 31, 2019. On that day, Harsco announced its second quarter 2019 financial results in a press release that stated, in relevant part:

- Q2 GAAP Operating Income Totaled \$18 Million and GAAP Diluted Loss per Share From Continuing Operations of \$0.04 Including Unusual Items and After Reclassification of Harsco Industrial as Discontinued Operations
- Operating Income and Diluted Earnings per Share Excluding Unusual Items and Including Harsco Industrial Totaled \$53 Million and \$0.37; Compared with Prior Guidance of \$53 Million to \$58 Million and \$0.35 to \$0.40, Respectively
- 2019 Adjusted Operating Income Now Expected to be Between \$215 Million to \$225 Million; Excluding Remaining Industrial Business Earnings in H2 2019 and Acquisition-Related Amortization Expense

CAMP HILL, PA (July 31, 2019) - Harsco Corporation (NYSE:HSC) today reported second quarter 2019 results. On a U.S. GAAP (“GAAP”) basis, second quarter of 2019 diluted loss per share from continuing operations was \$0.04, including transaction costs and other unusual items and after the reclassification of Harsco Industrial as Discontinued Operations. *The unusual items included* expenses to execute two strategic transactions and capital market financings, a bad debt provision related to a Harsco Environmental customer in the U.K. that entered into administration, *costs to implement Harsco Rail’s productivity improvement initiative* and a non-cash accounting adjustment to a contingent consideration liability. This figure compares with second quarter of 2018 GAAP diluted earnings per share from continuing operations of \$0.37. Excluding unusual items, diluted earnings per share from continuing operations were \$0.21 in second quarter of 2019 and \$0.25 in the second quarter of 2018.

* * *

Revenues [in the Rail segment] increased 21 percent to \$82 million, due to improved demand for original equipment from North American customers and higher after-market parts sales. The segment’s operating income in the second quarter of 2019 totaled \$9 million, or \$11 million when excluding unusual items in the period. These figures compare with GAAP and adjusted operating income of \$9 million in the prior-year quarter. The 23 percent improvement in adjusted

operating income relative to the prior-year quarter is attributable to the above factors and a more favorable product-sales mix, partially offset by higher SG&A and engineering expenses. As a result, the segment's operating margin was 11.6 percent in the second quarter of 2019 (13.0 percent on adjusted basis), compared with 12.8 percent in the same quarter of 2018.

(Emphases added.)

19. During a conference call held the same day in connection with these results, defendant Minan stated that the "productivity improvement initiative [in Rail] is progressing well and on schedule." Additionally, defendant Minan stated:

Our new facility addition in South Carolina is complete and we are currently moving our equipment from the legacy plant in Michigan. Our remaining project spending will occur in the third quarter and the annualized savings of \$7 million will begin to be realized in Q4.

20. The same day, the Company filed its quarterly report on Form 10-Q with the SEC for the period ended June 30, 2019, affirming the previously reported financial results. Regarding the Rail productivity improvement, the report stated, in relevant part:

As previously disclosed, the Company began to consolidate and centralize North American manufacturing and distribution into one facility, allowing for improved efficiency and better service to customers. The capital investment to complete this program and other expenditures will continue through 2019. The annualized savings anticipated from this latest action are approximately \$7 million, with a portion of these benefits expected to materialize in the second-half of 2019. The net impact of such costs and savings will not have a significant impact on 2019 operating results.

21. On October 29, 2019, Harsco announced its third quarter 2019 financial results in a press release that stated, in relevant part:

- Q3 GAAP Operating Income of \$47 Million
- Adjusted Operating Income Excluding Unusual Items and Acquisition-Related Amortization Expense Totaled \$57 Million and Adjusted Operating Margin Reached 13.5 Percent; Results Were Consistent with Guidance

* * *

- 2019 Adjusted Operating Income Now Expected to Increase Nearly 10% Year-over-Year at Guidance Midpoint; Full Year Range is Now \$209 Million to \$214 Million

CAMP HILL, PA (October 29, 2019) - Harsco Corporation (NYSE: HSC) today reported third quarter 2019 results. On a U.S. GAAP (“GAAP”) basis, third quarter of 2019 diluted earnings per share from continuing operations were \$0.22. *Unusual items during the quarter included acquisition integration and strategy costs as well as further costs to implement Harsco Rail’s productivity improvement initiative.* Adjusted diluted earnings per share from continuing operations in the third quarter of 2019 were \$0.36 excluding unusual items and acquisition-related amortization expense.

* * *

Revenues [in the Rail segment] totaled \$75 million, a decrease that had been anticipated compared with a strong third quarter of 2018. The segment’s operating income in the third quarter of 2019 totaled \$12 million, or \$13 million when excluding unusual items in the period. These figures compare with GAAP and adjusted operating income of \$19 million in the prior-year quarter. The change in earnings performance relative to the 2018 quarter is the result of volume and product mix changes for equipment and after-market parts, partially offset by manufacturing cost improvements. As a result, the segment’s operating margin was 16.2 percent in the third quarter of 2019 (17.5 percent on adjusted basis), compared with 23.0 percent in the same quarter of 2018.

* * *

2019 Outlook

The Company expects full-year revenues to grow mid-single digits and adjusted earnings to increase nearly 10 percent compared with 2018. *This growth reflects continued strength in Rail and Clean Earth, where the Company’s guidance is unchanged.* This full year outlook is also updated to reflect external economic pressures within the Environmental segment, where performance for the balance of the year is expected to be impacted by lower underlying steel output and commodity prices as well as changes in foreign exchange rates.

. . . For Rail, adjusted operating income is anticipated to be significantly higher than 2018 due to increased global demand for equipment, after-market parts and Protran Technology products as well as productivity initiatives.

(Emphases added.)

22. During a conference call held the same day in connection with these results, defendant Minan stated that “optimism for Harsco Rail remains very high” and that the segment benefited from lower manufacturing costs. Specifically, he stated:

[R]egarding our Rail business. The segment had another strong quarter. Revenues reached \$75 million, and Rail's adjusted operating margin exceeded 17%. As I mentioned, Q3 2018 was an unusually strong quarter and therefore, a tough comp. Year-on-year change in profitability was driven by lower shipments and a less favorable product mix of equipment and parts, and these factors were partially offset by lower manufacturing costs.

Beyond the financial results, there were a number of other positive developments in Rail during Q3. ***Our initiative to consolidate our North American manufacturing footprint into our South Carolina facility is largely complete.*** We launched our next generation tamper technology, which has been under development for some time. And we experienced a nice growth in our backlog. In particular, we won a large order in Germany, which we recently announced. And there are other significant wins in the quarter as well.

* * *

And Rail is expected to benefit from higher volumes and more favorable product mix for equipment, parts and Protran Technology products.

(Emphases added.)

23. The same day, the Company filed its quarterly report on Form 10-Q for the period ended September 30, 2019, affirming the previously reported financial results. Regarding the Rail productivity improvement, the report stated, in relevant part:

As previously disclosed, the Company began to consolidate and centralize North American manufacturing and distribution into one facility, allowing for improved efficiency and better service to customers. The capital investment to complete this program and other expenditures will continue through 2019. The annualized savings anticipated from this latest action are approximately \$7 million. The Company began to realize a portion of these benefits in the third quarter of 2019 and such benefits are expected to accelerate through the remainder of 2019 and into 2020. The net impact of such costs and savings will not have a significant impact on 2019 operating results.

24. The above statements identified in ¶¶ 18-23 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business,

operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Harsco was experiencing operational challenges in connection with the consolidation of Rail's North American manufacturing into a single facility; (2) that these challenges would likely lead to customer shipment delays; (3) that, as a result, Harsco was reasonably likely to incur higher manufacturing costs; and (4) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

Disclosures at the End of the Class Period

25. On January 23, 2020, after the market closed, Harsco announced preliminary fourth quarter 2019 financial results, expecting approximately \$400 million revenue. The Company also expected adjusted operating income of approximately \$31 million, below prior guidance in the range of \$53 million to \$58 million, citing "operational challenges following the consolidation of Rail's North American manufacturing into a single facility in South Carolina," among other things. Specifically, Harsco issued a press release that stated, in relevant part:

On a preliminary basis for the fourth quarter, the Company currently expects revenues of approximately \$400 million and U.S. GAAP operating income from continuing operations of approximately \$20 million. Adjusted operating income (before acquisition-related amortization) is anticipated to be approximately \$31 million. ***This adjusted operating income compares with the Company's previous guidance for the quarter of between \$53 million and \$58 million.*** Additionally, the Company's free cash flow totaled approximately \$28 million in the quarter, or approximately \$41 million before growth-related capital spending, and it ended the year with a net leverage ratio of 2.4x.

The variance to guidance was driven by results in Harsco's Environmental and Rail segments. Clean Earth performed well in the quarter, with the segment's adjusted earnings up strongly compared with the year-ago period.

In Harsco Environmental, performance was principally impacted by lower services demand and weak customer production levels relative to earlier expectations. Many Environmental customers slowed production and extended output curtailments in response to seasonal weakness and challenging fundamentals within their markets. Operations in North America and Europe were

most impacted by these actions. These moves should ultimately facilitate a recovery in core customer markets, but these actions weighed on Environmental's Q4 results.

Performance in Rail meanwhile was primarily impacted by customer shipment delays that pushed deliveries beyond year-end and *operational challenges following the consolidation of Rail's North American manufacturing into a single facility in South Carolina. In the context of strong underlying demand, this facility consolidation hasn't progressed as smoothly as planned, leading to shipment deferrals, higher manufacturing costs and lower profit margins than originally anticipated.* Many of these missed shipments are expected to be recouped in 2020 as operational improvements are implemented and facility capacity constraints ease.

(Emphases added.)

26. On this news, Harsco's stock price fell as much as \$3.48 per share, or nearly 18%, during intraday trading on January 24, 2020, on unusually heavy trading volume.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Harsco securities between July 31, 2019 and January 23, 2020, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

28. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Harsco's common shares actively traded on the NYSE. 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 there are at least hundreds or thousands of members in the proposed Class. Millions of Harsco common stock were traded publicly during the Class Period on the NYSE. Record owners and other members

of the Class may be identified from records maintained by Harsco 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.

29. 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.

30. 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.

31. 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 federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Harsco; and

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

32. 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 makes 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.

UNDISCLOSED ADVERSE FACTS

33. The market for Harsco's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, Harsco's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Harsco's securities relying upon the integrity of the market price of the Company's securities and market information relating to Harsco, and have been damaged thereby.

34. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Harsco's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about Harsco's business, operations, and prospects as alleged herein.

35. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Harsco's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period

resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

LOSS CAUSATION

36. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

37. During the Class Period, Plaintiff and the Class purchased Harsco's securities at artificially inflated prices and were damaged thereby. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

SCIENTER ALLEGATIONS

38. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or 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 federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding Harsco, their control over, and/or receipt and/or modification of Harsco's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Harsco, participated in the fraudulent scheme alleged herein.

**APPLICABILITY OF PRESUMPTION OF RELIANCE
(FRAUD-ON-THE-MARKET DOCTRINE)**

39. The market for Harsco's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, Harsco's securities traded at artificially inflated prices during the Class Period. On December 23, 2019, the Company's share price closed at a Class Period high of \$23.51 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of Harsco's securities and market information relating to Harsco, and have been damaged thereby.

40. During the Class Period, the artificial inflation of Harsco's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Harsco's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Harsco and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

41. At all relevant times, the market for Harsco's securities was an efficient market for the following reasons, among others:

(a) Harsco shares met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, Harsco filed periodic public reports with the SEC and/or the NYSE;

(c) Harsco regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) Harsco was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

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

43. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business operations and financial prospects—information that Defendants were obligated to disclose—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 the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

NO SAFE HARBOR

44. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Harsco who knew that the statement was false when made.

FIRST CLAIM

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

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

46. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and

other members of the Class to purchase Harsco's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

47. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Harsco's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

48. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Harsco's financial well-being and prospects, as specified herein.

49. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Harsco's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Harsco and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a

course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

50. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

51. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Harsco's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to

obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

52. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of Harsco's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Harsco's securities during the Class Period at artificially high prices and were damaged thereby.

53. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Harsco was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Harsco securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

54. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

55. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

SECOND CLAIM

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

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

57. Individual Defendants acted as controlling persons of Harsco within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

58. In particular, Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

59. As set forth above, Harsco and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

PRAYER FOR RELIEF

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

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (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) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: _____, 2020

By: DRAFT

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