

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

PLDT INC., MANUEL V.
PANGILINAN, ALFRED S.
PANLILIO, ANNABELLE L. CHUA,
MARILYN A. VICTORIO-AQUINO,
ABNER TITO L. ALBERTO, GIL
SAMSON D. GARCIA, MA.
LOURDES C. RAUSA-CHAN,
FLORENTINO D. MABASA JR. AND
JUNE CHERYL A. CABAL-
REVILLA,

Defendants.

Case No.

CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS

Plaintiff, individually and on behalf of all other persons similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, among other things, the investigation conducted by and through her attorneys, which included, among other things, a review of the Defendants' public documents, public filings, wire and press releases published by and regarding PLDT, Inc. ("PLDT" or the "Company"), and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded PLDT securities between January 1, 2019 and December 19, 2022, inclusive (the "Class Period"). Plaintiff seeks to recover compensable damages caused by Defendants' violations of the federal securities laws under the Securities Exchange Act of 1934 (the "Exchange Act").

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C. §78aa).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants (defined below), directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased PLDT securities during the Class Period and was economically damaged thereby.

7. Defendant PLDT purports to be the Philippines' largest fully integrated telco company. Through its principal business groups, it offers a wide range of telecommunications and digital services across the Philippines' most extensive fiber optic backbone, and fixed line and cellular networks.

8. Defendant PLDT is incorporated in the Philippines and its principal office is located at Ramon Cojuangco Building, Makati Avenue, Makati City, Postal Code 1200. PLDT is listed on the Philippine Stock Exchange ("PSE") (PSE: TEL) and its American Depositary Shares ("ADS") are listed on the New York Stock Exchange (NYSE: PHI).

9. Defendant Manuel V. Pangilinan ("Pangilinan") has been a director of PLDT since November 24, 1998. He was appointed as PLDT's Chairman of the Board of Directors after serving as its President and Chief Executive Officer ("CEO") from November 1998 to February 2004. From January 1, 2016 until June 7, 2021, he also held the position of President and CEO, before stepping down as President and CEO while retaining his post as PLDT Chairman.

10. Defendant Alfredo S. Panlilio ("Panlilio") has served as Chief Revenue Officer since July 1, 2019 and President and CEO of PLDT since June 8, 2021.

11. Defendant Annabelle L. Chua (“Chua”) serves as the Company’s Chief Financial Officer, Senior Vice President and Corporate Finance and Treasury Head.

12. Defendant Marilyn A. Victorio-Aquino (“Victorio-Aquino”) has been PLDT’s Chief Legal Counsel since December 1, 2018 and Senior Vice President since January 1, 2019.

13. Defendant Abner Tito Alberto (“Alberto”) serves as PLDT’s Assistant Corporate Secretary.

14. Defendant Gil Samson D. Garcia (“Garcia”) has served as PLDT’s Officer-in-Charge of Financial Reporting and Controllershship since December 1, 2020.

15. Defendant Ma. Lourdes C. Rausa-Chan (“Rausa-Chan”) has been a PLDT director since March 29, 2011. Additionally, she has served as PLDT’s Corporate Secretary and Chief Governance Officer since November 1998 and March 2008, respectively.

16. Defendant Florentino D. Mabasa Jr. (“Mabasa Jr.”) was First Vice President of PLDT until February 1, 2021 while continuing to serve as Assistant Corporate Secretary since 2018.

17. Defendant June Cheryl A. Cabal-Revilla (“Cabal-Revilla”) serves as PLDT’s Group Controller and Chief Sustainability Officer.

18. Defendants Pangilinan, Panlilio, Chua, Victorio-Aquino, Alberto, Garcia, Rausa-Chan, Mabasa Jr., and Cabal-Revilla are collectively referred to herein as the “Individual Defendants.”

19. Each of the Individual Defendants:

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

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

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

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

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

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

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

20. The Company is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law

principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

21. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to PLDT under *respondeat superior* and agency principles.

22. Defendant PLDT and the Individual Defendants are collectively referred to herein as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Materially False and Misleading Statements Issued During the Class Period

23. On March 7, 2019, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results as at and for the year ended December 31, 2018 (the “March 7, 2019 Form 17-C”), which was signed by Defendant Rausa-Chan. Attached to the March 7, 2019 Form 17-C was a press release, which stated, in pertinent part, as follows:

Historic Capex, Part II

To further enhance their network advantage, PLDT and Smart are undertaking yet another massive capex program by allocating up to Php78.4 billion budget in 2019, or Php20 billion higher than the previous year. This aggressive roll-out is intended to further push the already significant network advantage of PLDT and Smart, and, to support our active campaign for more revenues. PLDT’s infrastructure edge is most significant in fixed broadband...

To take full advantage of on the fixed broadband opportunity, the 2019 capex budget includes a substantial allocation for “Customer

Capex”. This is intended for the purchase of last-mile and customer-premises equipment like modems and also the acquisition of vehicles, equipment and office space for the new corps of technicians Page 6 of 12 being assembled to fast-track the installation and repair of fixed broadband connections...

“In 2019, we aim to attain a higher level of growth by leveraging even more the power of the combined PLDT and Smart, working as ONE team, focused on delivering the customer experience - not as a traditional telco as we have been - but as a data-driven, digital services company. Given the positive trends in 2018 and our plans for 2019, we expect our Telco Core Income to rise to Php26.0 billion, and, our capex to increase by Php20 billion to Php78.4 billion,” Pangilinan concluded.

24. On March 26, 2019, PLDT filed with the PSE its Form 17-A Annual Report in connection with its unaudited consolidated financial results for the year ended December 31, 2018 (the “2018 17-A Annual Report”), which was signed by Defendants Pangilinan, Rausa-Chan, Chua and Cabal-Revilla. Attached to the 2018 17-A Annual Report was a press release which stated, in pertinent part, as follows:

...Our current estimate for our consolidated capital expenditures in 2019 is approximately Php78 billion. Our capital spending is focused on our objective to improve network quality and provide customers a superior data experience.

We plan to expand our LTE network in line with our desire to provide coverage to substantially all of the country’s cities and municipalities by the end of 2019. We intend to expand and upgrade our fixed access networks for cable fortification and resiliency in various locations. The expansion of our national and domestic networks is intended to follow the roll-out of our access networks.

We also plan to continue the transformation of our service delivery

platforms and IT in order to facilitate a real-time, on demand and personalized customer experience across all touch points and channels...

Furthermore, in anticipation of the rollout of 5G, the company's capex investments, particularly in the transport network, aim to make the PLDT network 5G-ready.

Our capital expenditure budget includes projects addressing the following objectives:

(1) Commercial expansion of capacity and footprint of our wired and wireless services, as well as new platforms to expand service offerings;

(2) Technical transformation of the PLDT Group's service delivery platform in order to realize operating and cost efficiencies, provision of greater resilience and redundancy for the network, and investments in additional cable systems;

(3) Continuing investments to ensure that the PLDT network is 5G-ready; and

(4) IT/Support Systems –upgrade of our IT and support systems.

We expect to fund incremental capital expenditures from free cash flow.

25. On April 15, 2019, PLDT filed with the SEC its Form 20-F Annual Report for the year ended December 31, 2018 (the "2018 20-F Annual Report"), which was signed by Defendants Pangilinan and Chua. Attached to the 2018 20-F Annual Report were certifications pursuant to SOX signed by Defendants Pangilinan and Chua attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud. The 2018 20-F Annual Report stated, in pertinent

part, as follows:

Plans

...Our current estimate for our consolidated capital expenditures in 2019 is approximately Php78 billion. Our capital spending is focused on our objective to improve network quality and provide customers a superior data experience.

We plan to expand our LTE network in line with our desire to provide coverage to substantially all of the country's cities and municipalities by the end of 2019. We intend to expand and upgrade our fixed access networks for cable fortification and resiliency in various locations. The expansion of our national and domestic networks is intended to follow the roll-out of our access networks.

We also plan to continue the transformation of our service delivery platforms and IT in order to facilitate a realtime, on demand and personalized customer experience across all touch points and channels...

Furthermore, in anticipation of the rollout of 5G, the company's capex investments, particularly in the transport network, aim to make the PLDT network 5G-ready.

Our capital expenditure budget includes projects addressing the following objectives:

- (1) Commercial expansion of capacity and footprint of our wired and wireless services, as well as new platforms to expand service offerings;
- (2) Technical transformation of the PLDT Group's service delivery platform in order to realize operating and cost efficiencies, provision of greater resilience and redundancy for the network, and investments in additional cable systems;
- (3) Continuing investments to ensure that the PLDT network is 5G-ready; and
- (4) IT/Support Systems –upgrade of our IT and support systems.

We expect to fund incremental capital expenditures from free cash flow.

26. On May 9, 2019, PLDT filed with the PSE its Form 17-C in connection in connection with its unaudited consolidated financial results for the three months ended March 31, 2019 (the “May 9, 2019 Form 17-C”), which was signed by Defendant Rausa-Chan. Attached to the May 9, 2019 Form 17-C was a press release, which stated, in pertinent part, as follows:

...Underpinning all these business initiatives and the accelerating rise of our data revenues is the continuing expansion and modernization of the fixed and mobile networks of PLDT and Smart, which in 2019 is being supported by an historic-high capital expenditure of Php78.4 billion...

“In this light, and based on the momentum we have seen in the first quarter, we maintain our guidance that full-year telco core income shall rise to (at least) Php26.0 billion, and holding our capex level at Php78.4 billion,” Pangilinan concluded.

27. On August 8, 2019, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the six months ended June 30, 2019 (the “August 8, 2019 Form 17-C”), which was signed by Defendant Rausa-Chan. Attached to the August 8, 2019 Form 17-C was a press release, which stated, in pertinent part, as follows:

... PLDT provided for an historic-high capital expenditure program in 2019 amounting to Php78.4 billion. In the first half of this year, Php32.7 billion was already spent, further enhancing the reach and capacity of our fiber-powered fixed line broadband network and our

LTE and 3G mobile data networks, as well as modernizing our IT support systems...

The beneficial impact of this capex program has been validated yet once more by Ookla, the global leader in internet testing and analysis. In its July 2019 report, Ookla named PLDT and Smart as the country's fastest fixed and mobile data internet services in the first half of 2019. The Ookla report showed PLDT and Smart posting download and upload speeds nearly double that of the competition. PLDT and Smart had previously won several internet speed awards from Ookla and other international independent internet testing agencies such as OpenSignal and Tutela.

28. On November 7, 2019, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the nine months ended September 30, 2019 (the "November 7, 2019 Form 17-C"), which was signed by Defendant Mabasa Jr. Attached to the November 7, 2019 Form 17-C was a press release, which stated, in pertinent part, as follows:

... This sustained improvement in the PLDT network has been supported by PLDT's stepped up capital expenditures program spanning several years. Of Php78.4 billion earmarked for capex in 2019, total capex amounted to Php53.4 billion in the first nine months of 2019...

About 75% of the capex has been poured into network and IT systems which includes investments in increased LTE coverage and capacity, expanded fiber transport to support both fixed broadband and mobile data, and new international cable networks.

This capex program also includes the roll-out of last mile installation and customer premises equipment for fixed broadband, investments to support the restructured installation and repair operations of PLDT Home, as well as the expansion of the data center network of PLDT Enterprise.

29. On March 5, 2020, PLDT filed with the PSE its Form 17-C in connection with its consolidated financial results for the year ended December 31, 2019 (the “March 5, 2020 Form 17-C”), which was signed by Defendant Mabasa Jr. Attached to the March 5, 2020 Form 17-C was a press release, which stated, in pertinent part, as follows:

...Enabled by a record-high capital expenditures (capex) in 2019 of P72.9 billion, PLDT significantly raised its service quality levels, particularly in data and digital services, and consequently boosted service revenues to their highest level ever. P61.0 billion capex were spent in 2019 on network and IT expansion and transformation programs, the balance of P11.9 billion for the installation of broadband connections.

“This sustained level of investments in the country’s telecommunications infrastructure now totals P257.7 billion in the last five years. But to raise even further our service quality standards and attain unmatched customer experience (CX), PLDT has allocated a larger capex budget of P83.0 billion for 2020. This will allow us to serve better the fastgrowing data usage of our customers and continue to provide superior data CX. Of this amount, P64.6 billion are earmarked for network and IT projects, mainly to support the explosive growth in data traffic. In addition, P18.5 billion, inclusive of P5.5 billion carried over from 2019, are to be spent for broadband installations, which are projected to grow strongly in 2020,” said Manuel V. Pangilinan, Chairman, President and Chief Executive Officer of PLDT...

“Despite continuing challenges, 2019 was a productive year, with revenues reaching record levels on the back of robust growth of our consumer wireless business. This was achieved in large part by making the needed investments in our data and IT networks. Moving forward, we shall continue pursuing a focused investment program to further improve our services, and consequently raise the level of customer experience,” added Pangilinan.

30. On April 1, 2020, PLDT filed with the PSE its Form 17-A Annual Report in connection with its unaudited consolidated financial results for the year ended December 31, 2019 (the “2019 17-A Annual Report”), which was signed by Defendants Pangilinan, Chua, Rausa-Chan, and Cabal-Revilla. The 2019 17-A Annual Report stated, in pertinent part, as follows:

Plans

... Our current estimate for our consolidated capital expenditures in 2020 is approximately Php83 billion, of which approximately Php65 billion is expected to be spent on network maintenance and expansion and IT projects, mainly to support the growing data traffic, and approximately Php18 billion is expected to be spent for broadband installations. Our capital spending is focused on our objective to improve network quality and provide customers a superior data experience.

We plan to expand our LTE network in line with our desire to provide coverage to substantially all of the country’s cities and municipalities by the end of 2020. We intend to expand and upgrade our fixed access networks for cable fortification and resiliency in various locations. The expansion of our national and domestic networks is intended to follow the roll-out of our access networks.

We also plan to continue the transformation of our service delivery platforms and IT in order to facilitate a real-time, on demand and personalized customer experience across all touch points and channels...

Furthermore, in anticipation of the rollout of 5G, the company’s capex investments, particularly in the transport network, aim to make the PLDT network 5G-ready.

Our capital expenditure budget includes projects addressing the following objectives:

(1) Commercial expansion of capacity and footprint of our wired and wireless services, as well as new platforms to expand service offerings;

(2) Technical transformation of the PLDT Group's service delivery platform in order to realize operating and cost efficiencies, provision of greater resilience and redundancy for the network, and investments in additional cable systems;

(3) Continuing investments to ensure that the PLDT network is 5G-ready; and

(4) IT/Support Systems –upgrade of our IT and support systems.

We expect to fund incremental capital expenditures from loan financing, free cash flow and proceeds from sale of real estate assets and Rocket Internet shares...

31. On April 23, 2020, PLDT filed with the SEC its Form 20-F Annual Report for the year ended December 31, 2019 (the "2019 20-F Annual Report"), which was signed by Defendants Pangilinan and Chua. Attached to the 2019 20-F Annual Report were certifications pursuant to SOX signed by Defendants Pangilinan and Chua attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud. The 2019 20-F Annual Report stated, in pertinent part, as follows:

Plans

...Our current estimate for our consolidated capital expenditures in 2020 is approximately Php83 billion, of which approximately Php65 billion is expected to be spent on network maintenance and expansion and IT projects, mainly to support the growing data traffic, and approximately Php18 billion is expected to be spent for broadband

installations. Our capital spending is focused on our objective to improve network quality and provide customers a superior data experience.

We plan to expand our LTE network in line with our desire to provide coverage to substantially all of the country's cities and municipalities by the end of 2019. We intend to expand and upgrade our fixed access networks for cable fortification and resiliency in various locations. The expansion of our national and domestic networks is intended to follow the roll-out of our access networks.

We also plan to continue the transformation of our service delivery platforms and IT in order to facilitate a realtime, on demand and personalized customer experience across all touch points and channels....

Furthermore, in anticipation of the rollout of 5G, the company's capex investments, particularly in the transport network, aim to make the PLDT network 5G-ready.

Our capital expenditure budget includes projects addressing the following objectives:

- (1) Commercial expansion of capacity and footprint of our wired and wireless services, as well as new platforms to expand service offerings;
- (2) Technical transformation of the PLDT Group's service delivery platform in order to realize operating and cost efficiencies, provision of greater resilience and redundancy for the network, and investments in additional cable systems;
- (3) Continuing investments to ensure that the PLDT network is 5G-ready; and
- (4) IT/Support Systems –upgrade of our IT and support systems.

We expect to fund incremental capital expenditures from loan financing, free cash flow and proceeds from sale of real estate assets and Rocket Internet shares...

32. On May 7, 2020, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the three months ended March 31, 2020 (the “May 7, 2020 Form 17-C”), which was signed by Defendant Rausa-Chan. Attached to the May 7, 2020 Form 17-C was a press release, which stated, in pertinent part:

Capex Guidance Tempered

...PLDT’S original capex guidance for 2020 of Php83.0 billion will probably be pared down, with anywhere between 20% to 25% of the budget deferred, suggesting that capex levels will be in the Php60-plus billion level. Our network roll out activities have been constrained by the reduced mobility of our Network teams since the ECQ was imposed. The network roll-out for the balance of 2020 will prioritize projects that support the changing demand profile of our customers, and to help corporates revive their business under these new conditions.

33. On August 6, 2020, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the six months ended June 30, 2020 (the “August 6, 2020 Form 17-C”), which was signed by Defendant Rausa-Chan. Attached to the August 6, 2020 Form 17-C was a press release, which stated, in pertinent part, as follows:

...PLDT’s commitment to improve internet services has been consistent and continuing. Since 2015, PLDT’s total capex totaled nearly Php260 billion. The upswing in capex was particularly marked in the last two years, when PLDT ploughed 38% of its revenues in 2018, and 45% of revenues in 2019, back into capex – a clear demonstration of its commitment to improve its services.

These investments cover the different components of the digital infrastructure ecosystem. For example, this includes the ongoing modernization programs for Page 5 of 15 PLDT's overseas cable systems and its domestic fiber network. This also covers ePLDT's network of data centers that provide vital support to, and raises the quality and resiliency of, internet and digital services in the country...

"Our strong performance will allow us to further boost our already significant investments. These investments, which total some Php260 billion over the past five years, enabled our networks to carry all the additional traffic during these past few months and also to bring new technologies such as 5G which we launched just last week. Given that our network rollout efforts have regained momentum, we are levelling up our target capital expenditures for 2020 back up to about Php70 billion. The balance of our original Php83 billion capex budget will be spent next year," he added.

"While our capex/investment strategy is premised on our short-term requirements, it is always with an eye to the future. Yes, it may seem simple as turning on a switch but that switch is part of a complex network system, with multiple layers of technology elements, embedded over years of investments. And we will not stop investing in our networks, in our people, in our country. Our promise is this - to keep improving and upgrading your connections so that all facets of life - be it work, education, family, health, business - will benefit," he concluded.

34. On November 5, 2020, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the nine months ended September 30, 2020 (the "November 5, 2020 Form 17-C"), which was signed by Defendant Rausa-Chan. Attached to the November 5, 2020 Form 17-C was a press release, which stated, in pertinent part, as follows:

PLDT announced capital spending this year will reach over Php 70 billion, similar to 2019, despite the mobility challenges posed by the

quarantine period. The final level will depend on actual home broadband installations, as Filipinos continue to shift more of their daily activities online, from the safety of their homes...

The massive capex investments have fortified PLDT's network superiority, reinforcing its position as the largest integrated telco in the Philippines. PLDT's investments in capital expenditures total nearly Php 260 billion in the past 5 years. PLDT's expansion efforts and investments helped the Group cope with sustained growth in data traffic when COVID-19 community quarantines commenced in March...

"As we enter the fourth quarter of what has been an extraordinary year, we are fortunate to be where we are," says Pangilinan. "With Service Revenues at an all-time Page 7 of 12 high, we are poised to surpass last year's Core Income. Capital expenditures remain demand-driven and are likely to hit over Php 70 billion for the year..."

35. On March 29, 2021, PLDT filed with the PSE its Form 17-A Annual Report in connection with its unaudited consolidated financial results for the year ended December 31, 2020 (the "2020 17-A Annual Report"), which was signed by Defendants Pangilinan, Victorio-Aquino, Chua, and Garcia. The 2020 17-A Annual Report stated, in pertinent part, as follows:

Plans

...Our current estimate for our consolidated capital expenditures in 2021 will be between Php88 billion to Php92 billion, which is expected to be spent on network maintenance and expansion and IT projects, mainly to support the exponential rise in mobile data traffic, and for broadband installations. Our capital spending is focused on our objective to support the changing demand profile of our customers, allow delivery of superior customer experience, and help corporate customers revive their businesses.

We plan to expand our LTE network in line with our desire to provide coverage to substantially all of the country's cities and municipalities by the end of 2021. We intend to expand and upgrade our fixed access networks for cable fortification and resiliency in various locations. The expansion of our national and domestic networks is intended to follow the roll-out of our access networks.

We also plan to continue the transformation of our service delivery platforms and IT in order to facilitate a real-time, on demand and personalized customer experience across all touch points and channels.

Furthermore, the company's capex investments, particularly in the transport network, aim to make the PLDT network 5G-ready.

Our capital expenditure budget includes projects addressing the following objectives:

(1) Commercial expansion of capacity and footprint of our wired and wireless services, as well as new platforms to expand service offerings;

(2) Technical transformation of the PLDT Group's service delivery platform in order to realize operating and cost efficiencies, provision of greater resilience and redundancy for the network, and investments in additional cable systems;

(3) Continuing investments to ensure that the PLDT network is 5G-ready; and

(4) IT/Support Systems –upgrade of our IT and support systems.

We expect to fund incremental capital expenditures from loan financing and free cash flow.

36. On April 23, 2021, PLDT filed with the SEC its Form 20-F Annual Report for the year ended December 31, 2020 (the "2020 20-F Annual Report"), which was signed by Defendants Panlilio and Chua. Attached to the 2020 20-F

Annual Report were certifications pursuant to SOX signed by Defendants Panlilio and Chua attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud. The 2020 20-F Annual Report stated, in pertinent part, as follows:

Capital Expenditure Plans

We are one of the leading telecommunications and digital services provider in the Philippines. We intend to reinforce our leading position while offering a broader range and higher quality of products and services. Our current estimate for our consolidated capital expenditures in 2021 is approximately Php88 billion to Php92 billion, which is expected to be spent on network maintenance and expansion and IT projects, mainly to support the exponential rise in mobile data traffic, and for broadband installations. Our capital spending is focused on our objective of supporting the changing demand profile of our customers, allowing the delivery of a superior customer experience, and helping corporate customers revive their businesses.

We plan to expand our LTE network in line with our desire to provide coverage to substantially all of the country's cities and municipalities by the end of 2021. We intend to expand and upgrade our fixed access networks for cable fortification and resiliency in various locations. The expansion of our national and domestic networks is intended to follow the roll-out of our access networks.

We also plan to continue the transformation of our service delivery platforms and IT in order to facilitate a realtime, on demand and personalized customer experience across all touch points and channels. Furthermore, the company's capex investments, particularly in the transport network, aim to make the PLDT network 5G-ready.

Our capital expenditure budget includes projects addressing the following objectives:

(1) Commercial expansion of capacity and footprint of our wired and wireless services, as well as new platforms to expand service offerings;

(2) Technical transformation of the PLDT Group's service delivery platform in order to realize operating and cost efficiencies, provision of greater resilience and redundancy for the network, and investments in additional cable systems;

(3) Continuing investments to ensure that the PLDT network is 5G-ready; and

(4) IT/Support Systems –upgrade of our IT and support systems.

We expect to fund incremental capital expenditures from loan financing, free cash flow and proceeds from sale of real estate assets.

37. On May 6, 2021, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the six months ended June 30, 2021 (the "May 6, 2021 Form 17-C"), which was signed by Defendant Rausa-Chan. Attached to the May 6, 2021 Form 17-C was a press release, which stated, in pertinent part, as follows:

Sustained demand for data and broadband underpinned the growth of total Service Revenues across the company's three customer segments, led by Home, followed by Consumer Wireless and Enterprise. Despite COVID-19 mobility restrictions, PLDT and Smart continued investing to expand the network resulting in capital expenditure of ₱20.7 billion in the first quarter. Network upgrades made up bulk of the capex spend, helping fortify the telco's infrastructure and deliver consistently superior customer experience. The unrelenting rollout of fiber, 5G and 4G/LTE networks to support business demand underpin the 2021 capex commitment of between ₱88 billion and ₱92 billion, supporting revenue growth.

38. On August 5, 2021, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the six months ended June 30, 2021 (the “August 5, 2021 Form 17-C”), which was signed by Defendant Rausa-Chan. Attached to the August 5, 2021 Form 17-C was a press release, which stated, in pertinent part, as follows:

PLDT and Smart continuously invested in network expansion to support the exponential rise in data traffic, bringing total first half capex to ₱41.3 billion. Network upgrades represent the bulk of capital expenditure, as the company stays ontrack in building the country’s most extensive digital infrastructure to improve customer experience. In line with business demand and in support of revenue growth, the Group’s continued rollout of its fiber, 5G and 4G/LTE networks is underpinned by its 2021 capex guidance of between ₱88 billion and ₱92 billion. The investment empowers increasingly connected societies in the new normal, where customers’ digital lifestyles rely on strong connectivity.

39. On November 4, 2021, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the nine months ended September 30, 2021(the “November 4, 2021 Form 17-C”), which signed by Defendant Rausa-Chan. Attached to the November 4, 2021 Form 17-C was a press release, which stated, in pertinent part, as follows:

... To support this expanded digital ecosystem, PLDT and its mobile unit Smart continued their network buildout, bringing total capital expenditures to ₱63.3 billion for the first nine months. PLDT and Smart are on track to meeting the 2021 full-year capex guidance of at least ₱88 billion...

PLDT President Al Panlilio expressed his pride and satisfaction at the Company’s results to-date, stating “We are cautiously optimistic that

as the economy reopens, we are bestpositioned to serve our customers through the new normal, as evidenced by our strong results for the first nine months of 2021. While all business units continue to show solid performance, this is more apparent in the Home business, where we pushed record installations in recognition of the connectivity needs of our customers.”

40. On March 3, 2022, PLDT filed with the PSE its Form 17-A Annual Report with the PSE in connection with its unaudited consolidated financial results as at and for the year ended December 31, 2021 (the “2021 17-A Annual Report”), which was signed by Defendant Garcia. The 2021 17-A Annual Report stated, in pertinent part, as follows:

Record capex in 10 years: elevating customer experience

Despite mobility restrictions, PLDT was able to put its capital expenditures to work by carrying on with the nationwide network buildout. Network-related initiatives made up the bulk of the ₱89 billion spend for 2021, in line with guidance. These network initiatives include the LTE and 5G rollout, migration of customers from copper to fiber, and the fiberization of base stations. This capex also includes ₱17.5 billion for business capex directly in support of growth in PLDT’s home broadband business, including last-mile and new connects with immediate revenue contribution.

This brings total capex spent over the last 10 years to a record ₱518.5 billion. For 2022, in line with resource optimization plans, PLDT is expected to invest between ₱76-80 billion in demand-driven capex, underpinning its goal to achieve positive free cash flow, alongside revenue growth and controlled opex.

41. On April 6, 2022 PLDT filed with the SEC its Form 20-F Annual Report for the year ended December 31, 2021 (the “2021 20-F Annual Report”), which was signed by Defendants Panlilio and Chua. Attached to the 2021 20-F

Annual Report were certifications pursuant to SOX signed by Defendants Panlilio and Chua attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud. The 2021 20-F Annual Report stated, in pertinent part, as follows:

Capital Expenditure Plans

We are one of the leading telecommunications and digital services providers in the Philippines. We intend to reinforce our leading position while offering a broader range and higher quality of products and services. Our current estimate for our consolidated capital expenditures in 2022 is approximately Php76 billion to Php80 billion, which is expected to be spent on network maintenance and expansion and IT projects, mainly to support the exponential rise in mobile data traffic, and for broadband installations. Our capital spending is focused on our objective of supporting the changing demand profile of our customers, allowing the delivery of a superior customer experience, and helping corporate customers revive their businesses.

We plan to expand our LTE and 5G network in line with our desire to provide coverage to substantially all of the country's cities and municipalities by the end of 2022. We intend to expand and upgrade our fixed access networks for cable fortification and resiliency in various locations. The expansion of our national and domestic networks is intended to follow the roll-out of our access networks.

We also plan to continue the transformation of our service delivery platforms and IT in order to facilitate a realtime, on demand and personalized customer experience across all touch points and channels.

Our capital expenditure budget includes projects addressing the following objectives:

(1) Commercial expansion of capacity and footprint of our wired and wireless services, as well as new platforms to expand service offerings;

(2) Technical transformation of the PLDT Group's service delivery platform in order to realize operating and cost efficiencies, provision of greater resilience and redundancy for the network, and investments in additional cable systems;

(3) Continuing investments to expand our LTE and 5G coverage; and

(4) IT/Support Systems –upgrade of our IT and support systems.

We expect to fund incremental capital expenditures from internally generated funds, loan financing, and proceeds from sale of non-strategic assets...

42. On May 5, 2022, PLDT filed with the PSE its Form 17-C in connection in connection with its unaudited consolidated financial results for the three months ended March 31, 2022 (the "May 5, 2022 Form 17-C"), which was signed by Defendant Victorio-Aquino. Attached to the May 5, 2022 Form 17-C was a press release, which stated, in pertinent part, as follows:

Revised capex guidance

PLDT has revised its capex guidance for 2022 to ₱85 billion, from the original capex guidance of ₱76-80 billion. This increase will support updated requirements for the Home broadband and data center businesses and additional upgrades of the towers and their passive infrastructure assets—subject of the tower sale and leaseback transaction.

43. On August 4, 2022, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the six months

ended June 30, 2022 (the “May 5, 2022 Form 17-C”), which was signed by Defendant Victorio-Aquino. Attached to the May 5, 2022 Form 17-C was a press release, which stated, in pertinent part, as follows:

Capex guidance

PLDT’s continuous investment in expanding its network to reach more Filipinos and improve overall customer experience brought total first half capex spending to ₱46.0 billion. This includes investments in capacity to support the Home broadband business and the rise in network traffic, the construction of the 11th data center targeting hyperscalers, the international cabling systems Jupiter and Apricot, and the impact of the sale and leaseback of towers and build out of additional towers by tower companies. Capex guidance for 2022 is ₱85 billion.

44. On November 3, 2022, PLDT filed with the PSE its Form 17-C in connection with its unaudited consolidated financial results for the nine months ended September 30, 2022 (the “November 3, 2022 Form 17-C”), which was signed by Defendant Alberto. Attached to the November 3, 2022 Form 17-C was a press release which stated, in pertinent part, as follows:

Capex guidance

PLDT is in the process of reviewing its consolidated capex for 2022, which could exceed the initial capex guidance of P85 billion. Once the review is completed PLDT will issue a separate disclosure on the matter...

CEO Panlilio is quoted as saying:

“We are also watching our capex levels, especially the impact of the weakening peso on our dollar-denominated debts and imported

capex, even capex committed in previous years and current ones. With the disciplined effort led by our Transformation Office, we are trying to manage some softness in our topline, as well as tightly control our costs.”

45. The statements contained in ¶¶ 23-44 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) there were capital spending budget overruns; (2) Defendants failed to address weaknesses that allowed such budget overruns; and (3) as a result, Defendants’ statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.

THE TRUTH EMERGES

46. On December 16, 2022, PLDT filed with the SEC a Form 6-K, which signed by Defendant Victorio-Aquino. The Form 6-K included copies of disclosure letters filed with the PSE regarding a disclosable event/information, which stated, in pertinent part, as follows:

ELEVATED CAPEX SPEND

...OVER THE PAST FOUR YEARS (2019-2022), PLDT INC AND ITS SUBSIDIARY, SMART COMMUNICATIONS INC, EMBARKED ON A MASSIVE NETWORK TRANSFORMATION PROGRAM AND LAUNCHED LARGE MULTI-YEAR CAPEX PROJECTS—WHICH INCLUDED LTE AND 5G ROLLOUT,

FTTH ROLLOUT, TRANSPORT NETWORK TRANSFORMATION, FIBER REBUILD AND FIBER TO THE BTS, SUBMARINE CABLE EXPANSION, CORE NETWORK TRANSFORMATION AND TOWERS UPGRADE, AMONGST OTHERS. THESE MULTI-YEAR INVESTMENTS WERE DESIGNED TO REGAIN AND SUSTAIN NETWORK AND TECHNOLOGY LEADERSHIP AS WELL AS PROVIDE THE BEST CUSTOMER EXPERIENCE...

WHILE THESE SUBSTANTIAL CAPEX INVESTMENTS WERE KEY TO MEETING PLDT'S GOALS, THEY CAME AT A PRICE—CAPEX INVESTMENTS FOR THESE FOUR YEARS AGGREGATED PHP 379 BILLION, INCLUDING AN ESTIMATED BUDGET OVERRUN OF NO MORE THAN PHP 48 BILLION. WE MUST STRESS THAT THE MAXIMUM PHP 48 BILLION CAPEX BUDGET OVERRUN REPRESENTS ABOUT 12.7% OF TOTAL CAPEX SPEND OVER THE PERIOD. THIS BEST ESTIMATE IS SUBJECT TO: (A) ONGOING INTERNAL FORENSICS MANDATED BY THE BOARD AND ITS AUDIT COMMITTEE AND (B) DISCUSSIONS WITH PRINCIPAL VENDORS WITH A VIEW TO RECONCILIATION OF ACCOUNTS AND REDUCTION OF SUCH BUDGET OVERRUNS.

THE INVESTIGATION HAS, SO FAR, NOT UNCOVERED ANY FRAUDULENT TRANSACTIONS, PROCUREMENT ANOMALIES, OR LOSS OF ASSETS ARISING FROM THE CAPEX SPEND...

CAPEX FOR 2023 WILL CONTINUE TO BE ELEVATED AS THE CAPEX OVERRUNS ENTER THE FINANCIAL STATEMENTS THIS YEAR AND NEXT, CUSHIONED HOWEVER BY SIGNIFICANT GAINS ON TOWER SALES. CAPEX LEVELS ARE EXPECTED TO BE LOWER 2024 ONWARDS.

PLDT IS UNDERTAKING A MANAGEMENT REORGANIZATION PROCESS AND HAS INITIATED IMPROVEMENTS ON ITS PROCESSES AND SYSTEMS TO ADDRESS WEAKNESSES THAT ALLOWED SUCH BUDGET

OVERRUNS TO OCCUR. A SEPARATE ANNOUNCEMENT WILL BE MADE ONCE THE REORGANIZATION IS IMPLEMENTED.

47. On December 19, 2022, Bloomberg reported, in pertinent part, as follows:

The Philippines' Securities and Exchange Commission has launched an inquiry into the 48-billion peso (\$866 million) capital spending budget overrun at PLDT Inc. that triggered a record plunge in the stock amid questions over its corporate governance and fiscal control. PLDT shares tumbled more than 19% on Monday, with almost 62 billion pesos in market value wiped out.

The spending probe casts a stain on the finances and governance of PLDT, the country's biggest phone company by revenue and among the nation's most widely held stocks by foreign investors. It also raised questions about the management of PLDT Chairman Manuel Pangilinan, 76, who was also president and CEO until June 2021.

The cost overrun and the selloff in the shares on Friday just ahead of PLDT's disclosure are "areas of concern" for SEC, the regulator said in a statement, adding that it immediately commenced an inquiry into the matter. The commission also ordered the Philippine Stock Exchange to submit its report on its own investigation on the Dec. 16 trading activities.

The regulator's move should provide clarity to investors on what's happening in PLDT, said Japhet Tantiangco, analyst at Philstocks Financial Inc. "It's highly possible that there were lapses and violations committed that led to this problem and PLDT as a public company must explain to investors what happened," Tantiangco said. "The SEC must see to it that investors are protected."

The SEC said it "will closely monitor the investigation and will continue to conduct a parallel, independent inquiry into the matter." PLDT's US-traded depository receipts dropped 2.4% on Friday, when PLDT announced the budget irregularity from 2019 through 2022 when it spent 379 billion pesos to bulk up its network for broadband

and data to stave off rival Globe Telecom Inc. The core issue here and the primary reason PLDT is getting sold down is corporate governance,” said Manny Cruz, strategist at Papa Securities Corp. “The overrun is quite a substantial amount and it went on for years. That raises questions on how that could have happened to a blue chip company.”

The budget overrun is almost equivalent to PLDT’s combined 2020 and 2021 net income. It’s also more than twice the 21.46 billion pesos of cash and cash equivalents that PLDT had at the end of last quarter. While PLDT hasn’t given details, Pangilinan said in a Philippine Daily Inquirer report that as much as 130 billion pesos in undocumented purchases were made from 2019 through 2022 and an audit lowered the “questionable deals” to 48 billion pesos.

Given the growing scrutiny on environmental, social and governance issues, PLDT’s debacle will raise concerns among its large base of foreign investors, which currently hold more than 40% stake in the company. More than 1.18 million PLDT shares changed hands Monday, the most since June 2017.

SGV & Co., the nation’s biggest auditing firm, is on its 20th year as the company’s external auditor. In other jurisdictions like the European Union, a company is required to invite bids for other auditors or have joint audits after 10 years.

PLDT also has the second lowest percentage of independent directors among the 30 companies in the benchmark Philippine Stock Exchange Index, according to data compiled by Bloomberg. In the broader MSCI Asia Pacific, it ranks 1,453 out of 1,486 companies.

The Philippine Stock Exchange will look into trades involving shares of PLDT after bourse officials noticed heavy selling before the market closed Friday and an hour before the company disclosed the overrun, the Philippine Daily Inquirer reported, citing PSE President Ramon Monzon.

“It’s too early to judge PLDT’s quality of governance without the details” on how this came about, said Noel Reyes, chief investment

officer at Security Bank Corp. “PLDT never had an issue like this before under Pangilinan.”

PLDT’s shareholders include Japan’s Nippon Telegraph & Telephone Corp., Hong Kong’s First Pacific Co. and Manila-based JG Summit Holdings Inc. Vanguard Group Inc. and BlackRock Inc. are among the biggest asset managers that hold the stock, according to Bloomberg data.

Several other companies of which Pangilinan is also chairman declined. Metro Pacific Investments Corp., owned by First Pacific, sank as much as 5.4%, while Manila Electric Co. fell as much as 3.6%. Pangilinan stunned the Philippines in 1998 when he engineered a 30-billion peso takeover of PLDT that he later merged with Smart Communications Inc., a mobile phone startup he funded through First Pacific.

“Pangilinan will have to take responsibility for what transpired following the principles of command responsibility,” said Papa Securities’ Cruz. “This could end his career on a sour note and blemish a sterling legacy.”

48. Also on December 19, 2022, *Light Reading* reported, in pertinent part, as follows:

“Shares in PLDT, the largest Philippines telco, dived 19% Monday after the company acknowledged a 48 billion Philippine pesos (US\$866 million) capex "overrun" it could not account for. It also faces an investigation into possible insider trading after a week of stock sell-offs ahead of the disclosure at the end of trading Friday.

The operator, formerly known as Philippine Long Distance Telephone Company, revealed that its "best estimate" was the missing funds represented 12.7% of PHP379 billion (\$6.8 billion) in capital spending over the past four years.

Stock in Philippines biggest telco dumped after disclosing undocumented capex spending over four years.

Several senior executives have been suspended over the unreported spending, chairman Manny Pangilinan told a local newspaper without elaborating.

The company announced on December 15 that it had appointed a new group controller a month earlier. It will have a new CTO and senior vice president starting on January 1.

PLDT's stock on the Philippines exchange plunged 19.35% on Monday in the wake of the disclosure. As of 10:50 AM ET on the NYSE, PLDT's stock was down \$5.54 (20.66%) to \$21.27.

But the stock had already contracted nearly 15% in the previous five days, catching the attention of the local Securities Exchange Commission (SEC).

The SEC said it had begun an inquiry into the reported budget overruns as well as the selloff in shares prior to the official disclosure. These were "areas of concern," it said.

Unexplained spending

It has called for a report from the stock exchange's independent audit arm on PLDT stock trades that had "resulted in the sudden and sharp decline" in the share price before the overruns disclosure.

Pangilinan said PLDT initially had uncovered PHP130 billion (\$2.3 billion) in undocumented purchases but had reduced that to PHP48 billion (\$866 million) following discussions with its main vendors and through "ongoing internal forensics."..."

49. On December 19, 2022, the *Philippine Daily Inquirer* reported, in pertinent part, as follows:

Heads to Roll at PLDT, Says 'Disappointed' MVP

..."Certainly, we've taken a knock on our reputation. We pride ourselves on governance, on disclosures, and we're gonna get a knock. We have a job in trying to recover our credibility."

Thus said Manuel V. Pangilinan (MVP), who chairs PLDT Inc., after he detailed in an exclusive to the Inquirer how he learned of initially as much as P130 billion in undocumented purchase orders made in the last four years at the country's largest telecommunications firm.

On Friday, the company said the latest estimate of these questionable deals — which it described as “budget overruns” — had been trimmed to P48 billion, representing 12 percent of PLDT's P379-billion capital spending program of the last four years.

The 76-year-old billionaire businessman said a senior company executive had informed him about the problem with unrecorded transactions in early October.

This official had discovered that the company had been ordering and paying for billions of pesos worth of internet and phone network equipment without the documentation needed for accurate record keeping.

Without such controls, it becomes difficult to determine whether the deals are aboveboard or if unscrupulous corporate officials or vendors are committing fraud or earning kickbacks from multibillion-peso purchases. “At that early stage, the numbers were very different from what we disclosed [on Friday],” he said. “They were closer to the numbers being quoted in those rumors: 128, 130 [billion pesos].”

Internal forensics

Pangilinan — who oversaw the transformation of PLDT from an analog telephone monopoly in the 1990s to the digital giant it is today — said he immediately ordered the assembly of an internal forensics team to assess the damage.

He also ordered the hiring of a third-party auditor that was not associated with PLDT's external auditor, SGV & Co., to scour the company's books from top-to-bottom to search for potential cases of fraud.

More importantly, the PLDT chair also ordered officials to renegotiate and, in many cases, altogether cancel these large supply deals with vendors, which he said had ballooned beyond expectations, all below the radar of the company's top leaders and board of directors.

Thus, what was initially rumored in the vendor community to be irregularities worth P130 billion were cut to P48 billion, and may be "slightly" reduced further in the coming weeks.

Pangilinan said the company was preparing to mete out harsh sanctions to officials who are proven to be involved in or have had knowledge of the scheme.

"We have to set an example," he stressed, "We have to send a message. We have to be firm."

PLDT has already suspended, with pay, four key officials pending the results of a more in-depth investigation, Pangilinan said.

These included the firm's heads of finance, procurement, and networks. Sources said a fourth suspended official was responsible for recommending the equipment suppliers and vendors to the company, which eventually turned out to be part of the questionable transactions.

Meanwhile, he has also been busy trying to buttress the company's books from the financial fallout of this discovery.

In particular, the main impact will be on PLDT's depreciation expenses, with P48 billion representing uncompleted capital expenditures carried over from 2020 and 2021, and fulfilled in 2022 and 2023...

50. On this news, on December 19, 2022, PLDT's share price fell \$6.35 per share, or more than 19%, to close at \$20.46 damaging investors.

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

PLAINTIFF'S CLASS ACTION ALLEGATIONS

52. 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 other than defendants who acquired the Company's securities publicly traded on NASDAQ during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

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

54. 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.

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

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

- whether the Exchange Act was violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of the Company;
- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

- whether the Defendants caused the Company to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of the Company securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

57. 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.

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

- the Company's shares met the requirements for listing, and were listed and actively traded on NASDAQ, an efficient market;

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

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

60. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants

omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

COUNT I

Violation of Section 10(b) of The Exchange Act and Rule 10b-5

Against All Defendants

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

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

63. During the Class Period, Defendants, individually and in concert, directly or indirectly, 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.

64. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;

- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of the Company's securities during the Class Period.

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

66. Individual Defendants, who are the senior officers of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other

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

67. As a result of the foregoing, the market price of the Company's securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of the Company's securities during the Class Period in purchasing the Company's securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

68. Had Plaintiff and the other members of the Class been aware that the market price of the Company's securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased the Company's securities at the artificially inflated prices that they did, or at all.

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

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

COUNT II

Violation of Section 20(a) of the Exchange Act

Against the Individual Defendants

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

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

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

74. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period concerning the Company's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of the Company's securities.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for judgment and relief as follows:

(a) declaring this action to be 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 designating Plaintiff's counsel as Lead Counsel;

(b) awarding damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, together with interest thereon;

(c) awarding Plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

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

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.