



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CommTouch Software, Inc.

IN RE INITIAL PUBLIC OFFERING
SECURITIES LITIGATION

Master File No. 21 MC 92 (SAS)

IN RE COMMTOUCH SOFTWARE, INC. INITIAL
PUBLIC OFFERING SECURITIES LITIGATION

X
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01 Civ. 7044 (SAS)
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:
AMENDED CLASS ACTION
COMPLAINT FOR
VIOLATIONS OF THE
FEDERAL SECURITIES LAWS
X

Plaintiff, by its undersigned attorneys, individually and on behalf of the Class described below, upon information and belief, based upon, *inter alia*, the investigation of counsel, which includes a review of public announcements made by Defendants, interviews with individuals with knowledge of the acts and practices described herein, Securities and Exchange Commission ("SEC") filings made by Defendants, press releases, and media reports, except as to Paragraph 11 applicable to the named Plaintiff which is alleged upon personal knowledge, brings this Amended Complaint (the "Complaint") against the Defendants named herein, and alleges as follows:

NATURE OF THE ACTION

1. This is a securities class action alleging violations of the federal securities laws in connection with the initial public offering conducted on or about July 13, 1999 (the "IPO" or the "Offering") of 3,000,000 shares of CommTouch Software Ltd. ("CommTouch" or the "Issuer")

and the trading of CommTouch common stock in the aftermarket from the date of the IPO through December 6, 2000, inclusive (the "Class Period").

2. In connection with the IPO, the underwriters named as Defendants herein participated in a scheme to improperly enrich themselves through the manipulation of the aftermarket trading in CommTouch shares following the IPO.

3. In this regard, these underwriters created artificial demand for CommTouch shares by conditioning share allocations in the IPO upon the requirement that customers agree to purchase shares of CommTouch in the aftermarket and, in some instances, to make those purchases at pre-arranged, escalating prices ("Tie-in Agreements").

4. As part of the scheme, these underwriters required their customers to repay a material portion of profits obtained from selling IPO share allocations in the aftermarket through one or more of the following types of transactions: (a) paying inflated brokerage commissions; (b) entering into transactions in otherwise unrelated securities for the primary purpose of generating commissions; and/or (c) purchasing equity offerings underwritten by these underwriters, including, but not limited to, secondary (or add-on) offerings that would not be purchased but for the unlawful scheme alleged herein. (Transactions "(a)" through "(c)" above will be, at varying times, collectively referred to hereinafter as "Undisclosed Compensation.")

5. In connection with the IPO, CommTouch filed with the SEC a registration statement ("Registration Statement") and a prospectus ("Prospectus"). The Registration Statement and Prospectus will be, at varying times, collectively referred to hereinafter as the "Registration Statement/Prospectus." The Registration Statement/Prospectus was declared effective by the SEC on or about July 13, 1999.

6. The Registration Statement/Prospectus was materially false and misleading in that it failed to disclose, among other things further described herein, that the underwriters named as Defendants herein had required Tie-in Agreements in allocating shares in the IPO and would receive Undisclosed Compensation in connection with the IPO.

7. As part and parcel of the scheme alleged herein, certain of the underwriters named as Defendants herein also improperly utilized their analysts, who, unbeknownst to investors, were compromised by conflicts of interest, to artificially inflate or maintain the price of CommTouch stock by issuing favorable recommendations in analyst reports.

JURISDICTION

8. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

9. Plaintiff brings this action pursuant to Section 10(b) of the Exchange Act as amended (15 U.S.C. § 78j(b)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5). Venue is proper in this District as many of the material acts and injuries alleged herein occurred within the Southern District of New York.

10. In connection with the acts alleged in the Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

PLAINTIFF

11. Plaintiff Globe Corporation ("Plaintiff") purchased or otherwise acquired shares of CommTouch common stock traceable to the IPO, in the open market or otherwise during the Class Period, at prices that were artificially inflated by Defendants' misconduct and was damaged thereby.

DEFENDANTS

THE UNDERWRITER DEFENDANTS

12. Plaintiff hereby incorporates by reference the "Underwriter Defendants" section of the Master Allegations as if set forth herein at length.

13. The following investment banking firms acted in the following capacities with respect to the Offering and substantially participated in the unlawful conduct alleged herein:

POSITION

NAME OF UNDERWRITER

LEAD MANAGER

Piper Jaffray

CO-MANAGERS

Prudential

UBS Warburg (as successor-in-interest to Dillon Read)

Dillon Read

14. The Defendants identified in the preceding paragraph will be, at varying times, collectively referred to hereinafter as the "Underwriter Defendants."

ADDITIONAL PERSONS - THE ISSUER

15. At the time of the Offering, CommTouch was an Israeli corporation with its principal executive offices located in Israel. CommTouch is described in the Registration Statement/Prospectus as "a leading global provider of email and other messaging services."

CLASS ACTION ALLEGATION

16. Plaintiff brings this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who purchased or otherwise acquired the common stock of the Issuer during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are Defendants herein, Defendants' legal counsel, any entity in which any of the Defendants has a controlling interest, and the legal representatives, heirs, successors or assigns of any of the Defendants.

17. Members of the Class are so numerous that joinder of all members is impracticable.

(a) Millions of ordinary shares were sold in the IPO and the shares were actively traded during the Class Period; and

(b) While the exact number of Class members is unknown to the Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands, of Class members who purchased or otherwise acquired the Issuer's shares during the Class Period.

18. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and other members of the Class have sustained damages because of Defendants' unlawful activities alleged herein. Plaintiff has retained counsel competent and experienced in class and securities litigation and intends to prosecute this action vigorously. The interests of the Class will

be fairly and adequately protected by Plaintiff. Plaintiff has no interests that are contrary to or in conflict with those of the Class which Plaintiff seeks to represent.

19. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Furthermore, since the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it economically impracticable for the members of the Class to seek redress individually for the wrongs they have suffered.

20. The names and addresses of the record purchasers of the Issuer's shares are available from the Issuer, its agents, and the underwriters who sold and distributed the Issuer's shares in the IPO. Notice can be provided to Class members via a combination of published notice and first class mail using techniques and forms of notice similar to those customarily used in class actions arising under the federal securities laws.

21. 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' misconduct as alleged herein;
- (b) Whether the Registration Statement/Prospectus omitted and/or misrepresented material facts;
- (c) Whether Defendants participated in the course of conduct complained of herein;

- (d) Whether the Defendants named thereunder acted with scienter; and
- (e) Whether the members of the Class have sustained damages as a result of

Defendants' conduct, and the proper measure of such damages.

SUBSTANTIVE ALLEGATIONS

22. Plaintiff hereby incorporates by reference the "Introductory" section of the Master Allegations as if set forth herein at length. Plaintiff also adopts and incorporates herein by reference the allegations set forth in the Master Allegations that specifically relate to each of the Underwriter Defendants as if set forth herein at length.

THE IPO

23. CommTouch's IPO of 3,000,000 shares was priced at \$16.00 on or about July 12, 1999. The sale and distribution of this firm commitment offering was effected by an underwriting syndicate consisting of, among others, the Underwriter Defendants. Additionally, CommTouch granted the underwriting syndicate an option to purchase 450,000 additional shares at the initial offering price less underwriting discounts and commissions.

24. On the day of the IPO, the price of CommTouch shares shot up, trading as high as \$25.875 per share, or more than 61% above the IPO price on substantial volume. This "impressive" debut however, was not the result of normal market forces; rather, it was the result of Defendants' unlawful practices more fully described herein.

25. During the Class Period, CommTouch shares traded as high as \$68.50 per share, or more than 328% above the IPO price.

UNLAWFUL CONDUCT IN CONNECTION WITH THE IPO

26. Consistent with their conduct in other initial public offerings, as set forth in the Master Allegations, the Underwriter Defendants engaged in manipulative and/or other unlawful practices described more fully herein in connection with the CommTouch IPO.

27. Customers of each of the Underwriter Defendants, as a condition to obtaining an allocation of stock in the IPO, were required or induced to enter into Tie-in Agreements and/or pay Undisclosed Compensation.

**THE REGISTRATION STATEMENT/PROSPECTUS
WAS MATERIALLY FALSE AND MISLEADING**

28. In conducting the IPO, the Underwriter Defendants violated Regulation M promulgated pursuant to the Exchange Act. Rule 101(a) of Regulation M reads as follows:

Unlawful Activity. In connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period.

17 C.F.R § 242.101.

29. As explained by the SEC's Staff Legal Bulletin No. 10, dated August 25, 2000, tie-in agreements violate Regulation M:

Tie-in agreements are a particularly egregious form of solicited transactions prohibited by Regulation M. As far back as 1961, the Commission addressed reports that certain dealers participating in distributions of new issues had been making allotments to their customers only if such customers agreed to make some comparable purchase in the open market after the issue was initially sold. The Commission said that such agreements may violate the anti-manipulative provisions of the Exchange Act, particularly Rule 10b-6 (which was replaced by Rules 101 and 102 of Regulation M) under the Exchange Act, and may violate other provisions of the federal laws.

Solicitations and tie-in agreements for aftermarket purchases are manipulative because they undermine the integrity of the market as an independent pricing mechanism for the offered security. Solicitations for aftermarket purchases give purchasers in the offering the impression that there is a scarcity of the offered securities. This can stimulate demand and support the pricing of the offering. Moreover, traders in the aftermarket will not know that the aftermarket demand, which may appear to validate the offering price, has been stimulated by the distribution participants. Underwriters have an incentive to artificially influence aftermarket activity because they have underwritten the risk of the offering, and a poor aftermarket performance could result in reputational and subsequent financial loss. (Emphasis added).

30. In particular, the Registration Statement/Prospectus stated:

To facilitate the offering, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the ordinary shares during and after the offering. Specifically, the underwriters may over-allot or otherwise create a short position in the ordinary shares for their own account by selling more ordinary shares than have been sold to them by us. The underwriters may elect to cover any such short position by purchasing ordinary shares in the open market or by exercising the over-allotment option granted to the underwriters. In addition, the underwriters may stabilize or maintain the price of the ordinary shares by bidding for or purchasing ordinary shares in the open market and may impose penalty bids. If penalty bids are imposed, selling concessions allowed to syndicate members or other broker-dealers participating in the offering are reclaimed if ordinary shares previously distributed in the offering are repurchased, whether in connection with stabilization transactions or otherwise. The effect of these transactions may be to stabilize or maintain the market price of the ordinary shares at a level above that which might otherwise prevail in the open market. The imposition of a penalty bid may also effect the price of the ordinary shares to the extent that it discourages resales of the ordinary shares. The magnitude or effect of any stabilization or other transactions is uncertain. These transactions may be effected on the Nasdaq National Market or otherwise and, if commenced, may be discontinued at any time.

31. The statements contained in the previous paragraph were materially false and misleading because the Underwriter Defendants required customers to commit to Tie-in Agreements and created the false appearance of demand for the shares at prices in excess of the IPO price and in violation of Regulation M. At no time did the Registration Statement/Prospectus disclose that the Underwriter Defendants would require their customers seeking to purchase IPO shares to engage in transactions causing the market price of CommTouch shares to rise, in transactions that cannot be characterized as stabilizing transactions, over-allotment transactions, syndicate covering transactions or penalty bids.

32. Because the Undisclosed Compensation was, in reality, underwriter compensation, it was required to be disclosed in the Registration Statement/Prospectus. As Regulation S-K, Item 508 (e) provides:

Underwriter's Compensation. Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. **In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.** (Emphasis added).

33. The NASD specifically addresses what constitutes underwriting compensation in NASD Conduct Rule 2710(c)(2)(B) (formerly Article III, Section 44 of the Association's Rules of Fair Practice):

For purposes of determining the amount of underwriting compensation, all items of value received or to be received from any source by the underwriter and related persons which are deemed to be in connection with or related to the distribution of the

public offering as determined pursuant to subparagraphs (3) and (4) below shall be included. (Emphasis added).

34. NASD Conduct Rule 2710(c)(2)(c) specifically requires:

If the underwriting compensation includes items of compensation in addition to the commission or discount disclosed on the cover page of the prospectus or similar document, a footnote to the offering proceeds table on the cover of the prospectus or similar document shall include a cross-reference to the section on underwriting or distribution arrangements.

35. Contrary to applicable law, the Registration Statement/Prospectus did not set forth, by footnote or otherwise, the Undisclosed Compensation.

36. Instead, the Registration Statement/Prospectus misleadingly stated that the underwriting syndicate would receive as compensation an underwriting discount of \$1.12 per share, or a total of \$3,360,000, based on the spread between the per share proceeds to CommTouch (\$14.88) and the Offering price to the public (\$16.00 per share). This disclosure was materially false and misleading as it misrepresented underwriting compensation by failing to include Undisclosed Compensation.

37. In addition, the Registration Statement/Prospectus stated:

The underwriters have advised us that they propose to offer the shares to the public at \$16.00 per share. The underwriters propose to offer the shares to certain dealers at the same price less a concession...

38. The Registration Statement/Prospectus was materially false and misleading in that in order to receive share allocations from the Underwriter Defendants in the CommTouch IPO, customers were required to pay an amount in excess of the IPO price in the form of Undisclosed Compensation and/or Tie-in Agreements.

39. NASD Conduct Rule 2330(f) further prohibits an underwriter from sharing directly or indirectly in the profits in any account of a customer:

[N]o member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member.

40. The Underwriter Defendants' scheme was dependent upon customers obtaining substantial profits by selling share allocations from the IPO and paying a material portion of such profits to the Underwriter Defendants. In this regard, the Underwriter Defendants shared in their customers' profits in violation of NASD Conduct Rule 2330(f).

41. The failure to disclose the Underwriter Defendants' unlawful profit-sharing arrangement as described herein, rendered the Registration Statement/Prospectus materially false and misleading.

42. NASD Conduct Rule 2440 governs Fair Prices and Commissions and, in relevant part, provides that a member:

shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and market therefor.

43. Guideline IM-2440 of the NASD states, in relevant part:

It shall be deemed a violation of . . . Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable . . . A mark-up of 5% or even less may be considered unfair or unreasonable under the 5% policy.

44. The Registration Statement/Prospectus was materially false and misleading due to its failure to disclose the material fact that the Underwriter Defendants were charging customers commissions that were unfair, unreasonable, and excessive as consideration for receiving allocations of shares in the IPO.

MARKET MANIPULATION THROUGH THE USE OF ANALYSTS

45. As demonstrated in the "Use of Analysts" section of the Master Allegations, in furtherance of their manipulative scheme, Underwriter Defendants Piper Jaffray, Prudential and UBS Warburg (Dillon Read) improperly used their analysts, who suffered from conflicts of interest, to issue glowing research reports and positive recommendations at or about the expiration of the "quiet period" so as to manipulate the Issuers aftermarket stock price.

46. On August 12, 1999, just after the expiration of the "quiet period" with respect to the CommTouch IPO, Piper Jaffray initiated coverage with a "strong buy" recommendation. On August 19, 1999, UBS Warburg (Dillon Read) initiated coverage with a "strong buy" recommendation. UBS Warburg (Dillon Read) stated that its 12-month price target was \$30.00 per share. CommTouch stock closed at \$11.063 per share on August 18, 1999. On August 23, 1999, Prudential also initiated coverage with a "strong buy" recommendation and stated that its 12-month price target was \$30.00 per share. CommTouch stock closed at \$15.00 per share on August 20, 1999, the last day of trading prior to the release of the Prudential report.

47. The price targets set forth in such reports were materially false and misleading as they were based upon a manipulated price.

THE END OF THE CLASS PERIOD

48. On December 6, 2000, The Wall Street Journal published an article concerning an investigation of various improper initial public offering practices.

DEFENDANTS' UNLAWFUL CONDUCT
ARTIFICIALLY INFLATED THE PRICE OF THE ISSUER'S SHARES

49. Defendants' conduct alleged herein had the effect of inflating the price of the Issuer's shares above the price that would have otherwise prevailed in a fair and open market throughout the Class Period.

VIOLATIONS OF THE EXCHANGE ACT

APPLICABILITY OF PRESUMPTION OF RELIANCE:
FRAUD-ON-THE-MARKET DOCTRINE

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

(a) Defendants named under Claims brought pursuant to the Exchange Act made public misrepresentations or failed to disclose material facts during the Class Period regarding the Issuer as alleged herein;

(b) The omissions and misrepresentations were material;

(c) Following the IPO and continuing throughout the Class Period, the Issuer's ordinary shares were traded on a developed national stock exchange, namely the NASDAQ National Market, which is an open and efficient market;

(d) The Issuer filed periodic reports with the SEC;

(e) The Issuer was followed by numerous securities analysts;

(f) The market rapidly assimilated information about the Issuer which was publicly available and communicated by the foregoing means and that information was promptly reflected in the price of the Issuer's ordinary shares; and

(g) The misrepresentations and omissions and the manipulative conduct alleged herein would tend to induce a reasonable investor to misjudge the value of the Issuer's shares.

THE UNDERWRITER DEFENDANTS ACTED WITH SCIENTER

51. As alleged herein, the Underwriter Defendants acted with scienter in that they: (a) knowingly or recklessly engaged in acts and practices and a course of conduct which had the effect of artificially inflating the price of the Issuer's shares in the aftermarket; (b) knowingly or recklessly disregarded that the Registration Statement/Prospectus as set forth herein was materially false and misleading; and/or (c) knowingly or recklessly misused their analysts in connection with analyst reports.

52. In addition, each of the Underwriter Defendants violated the federal securities laws as they sold the Issuer's shares in and/or after the IPO and/or recommended the Issuer's shares while in possession of material, non-public information, which they failed to disclose.

53. As evidenced by the public statements of CSFB published by The Wall Street Journal on or about June 29, 2001, the practices employed by the Underwriter Defendants in connection with public offerings complained of herein were widespread throughout the financial underwriting community. In this regard, CSFB, which recently settled regulatory claims of misconduct concerning its initial public offering allocation practices, stated during the pendency of the government's investigation, "[w]e continue to believe our [initial public offering] allocation policies are consistent with those employed by others in the industry."

54. The Underwriter Defendants knew from their direct participation in the manipulation of the IPO, or recklessly disregarded as a result of their experience with other manipulated offerings as set forth in the "Matrix" section of the Master Allegations, that the manipulations alleged herein were taking place with respect to the IPO and were not disclosed.

55. As required by NASD Conduct Rule 3010(c), each of the Underwriter Defendants had in place compliance procedures so as to better inform itself whether it was acting in the unlawful manner alleged herein.

56. Senior management of each of the Underwriter Defendants had regular access to and received timely written reports tracking the account activity of each of its customers. By comparing the ratio of brokerage firm commission income per account with the amount of dollars invested by such account that received allocations of shares in the IPO, senior management knew, or was reckless in not knowing, that such commissions were disproportionately high relative to that customer's total investment and imposed on management a duty of inquiry as is customary in the industry. Such inquiry would have revealed the illegal practices described herein. Any failure to conduct such inquiry was, at the very least, reckless, and further demonstrates that the Underwriter Defendants knew or recklessly disregarded the misconduct alleged herein.

57. Certain of the Underwriter Defendants also had the motive and opportunity to engage in the wrongful conduct described herein for the following reasons, among others:

(a) Such conduct increased the likelihood that the Issuer would retain certain of the Underwriter Defendants to undertake future investment banking services such as public offerings of equity or debt securities, financial consulting, and possible future acquisitions, thus permitting the Underwriter Defendants to receive additional fees in connection with those

services. Specifically, as described in the Registration Statement/Prospectus, Piper Jaffray was retained by CommTouch to serve as its financial advisor in connection with the issuance of a warrant to purchase 1,136,000 ordinary shares and \$13,333,328 in ordinary shares to Go2Net and \$6,666,672 in ordinary shares to Vulcan Ventures, concurrent with the IPO. Piper Jaffray earned a \$550,000 fee in connection these transactions. (See "Additional Investment Banking Business" section of the Master Allegations).

(b) Such conduct increased the likelihood of attracting the business of new issuers for the underwriting of initial and secondary public offerings, as well as debt and convertible offerings, and related investment banking fees, while simultaneously sustaining and/or enhancing their reputations as investment banks. (See "Attracting New Investment Banking Clients" section of the Master Allegations).

(c) The Undisclosed Compensation of the Underwriter Defendants was directly proportional to the amount of the aftermarket price increase achieved by the manipulative scheme as their customers were required to pay a percentage of their profits. The larger the profits, the greater the payment. (See "Maximizing Undisclosed Compensation" section of the Master Allegations).

(d) Certain of the Underwriter Defendants' analysts were motivated to and did issue favorable recommendations for companies they covered because their compensation was, at least in part, tied to the amount of investment banking fees received by their respective firms in connection with financial services provided to such companies. (See "Analyst Compensation" section of the Master Allegations).

(e) Certain of the Underwriter Defendants' analysts were further motivated to and did issue favorable recommendations because they personally owned pre-IPO stock in companies they were recommending. (See "Personal Investments of Analysts" section of the Master Allegations).

FIRST CLAIM

**(FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5
THEREUNDER AGAINST THE UNDERWRITER DEFENDANTS
BASED UPON DECEPTIVE AND MANIPULATIVE PRACTICES
IN CONNECTION WITH THE IPO)**

58. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein at length.

59. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiff and other members of the Class against the Underwriter Defendants. This Claim is based upon the deceptive and manipulative practices of the Underwriter Defendants.

60. During the Class Period, the Underwriter Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiff and other members of the Class by means of material misstatements and omissions, as alleged herein; (b) artificially inflate and maintain the market price and trading volume of the Issuer's ordinary shares; and (c) induce Plaintiff and other members of the Class to purchase or otherwise acquire the Issuer's ordinary shares at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, the Underwriter Defendants took the actions set forth herein.

61. The Underwriter Defendants employed devices, schemes, and artifices to defraud and/or engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Plaintiff and other members of the Class in an effort to inflate and artificially maintain high market prices for the Issuer's ordinary shares in violation of Section 10(b) of the Exchange Act and Rule 10b-5. The Underwriter Defendants are sued as primary participants in the unlawful conduct charged herein.

62. The Underwriter Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal their unlawful practices and course of business which operated as a fraud and deceit upon Plaintiff and other members of the Class.

63. The Underwriter Defendants had actual knowledge of or recklessly disregarded the existence of the Tie-in Agreements, the requirement that customers pay Undisclosed Compensation and the manipulations alleged herein.

64. Each of the Underwriter Defendants held itself out as an NASD member and was required to observe high standards of commercial honor and just and equitable principles of trade (NASD Conduct Rule 2110). The Underwriter Defendants owed to Plaintiff and other members of the Class the duty to conduct the IPO and the trading of the Issuer's common stock in a fair, efficient and unmanipulated manner.

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

66. As a result of the manipulative conduct set forth herein, Plaintiff and other members of the Class purchased or otherwise acquired the Issuer's common stock during the Class Period at artificially inflated prices and were damaged thereby.

SECOND CLAIM

**(FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5
THEREUNDER AGAINST THE UNDERWRITER DEFENDANTS BASED UPON
MATERIALLY FALSE AND MISLEADING STATEMENTS
AND OMISSIONS OF MATERIAL FACTS)**

67. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein at length.

68. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiff and other members of the Class against the Underwriter Defendants. This Claim is based upon materially false and misleading statements and omissions of material facts made by the Underwriter Defendants.

69. The Underwriter Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Plaintiff and other members of the Class in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

70. During the Class Period, the Underwriter Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiff and other members of the Class, as alleged herein; (b) artificially inflate and maintain the market price of and demand for the Issuer's ordinary shares;

and (c) induce Plaintiff and other members of the Class to purchase or otherwise acquire the Issuer's common stock at artificially inflated prices. In furtherance of this unlawful course of conduct, the Underwriter Defendants took the actions set forth herein.

71. The Underwriter Defendants, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal material information 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 Plaintiffs and other members of the Class.

72. The Underwriter Defendants, either directly or through their designated representatives, prepared and reviewed the Registration Statement/Prospectus. In addition, the Underwriter Defendants had access to drafts of the Registration Statement/Prospectus prior to the filing of said document with the SEC and the dissemination to the public.

73. The material misrepresentations and/or omissions were made knowingly or recklessly and for the purpose and effect of *inter alia*: (a) securing and concealing the Tie-in Agreements; (b) securing and concealing the Undisclosed Compensation; and/or (c) concealing that certain of the Underwriter Defendants and their analysts who reported on the Issuer's shares had material conflicts of interest.

74. As a result of making affirmative statements in the Registration Statement/Prospectus, or otherwise, or participating in the making of such affirmative statements, the Underwriter Defendants had a duty to speak fully and truthfully regarding such representations and to promptly disseminate any other information necessary to make the statements made, in the light of the circumstances in which they were made, not misleading.

75. The Underwriter Defendants also had a duty to disclose the material, non-public information complained of herein or to abstain from selling the Issuer's shares in the IPO, and/or trading or recommending the Issuer's shares while in possession of such information.

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

77. As a result of the dissemination of materially false and misleading information described above, Plaintiff and other members of the Class purchased or otherwise acquired the Issuer's ordinary shares during the Class Period without knowledge of the fraud alleged herein at artificially inflated prices and were damaged thereby.

PRAYER FOR RELIEF

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

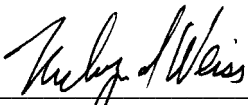
- A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and certifying Plaintiff as class representative of the Class and counsel as class counsel;
- B. Awarding damages to Plaintiff and of the Class;
- C. Awarding Plaintiff and of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;
- D. Awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: April 19, 2002


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