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8  
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10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN JOSE DIVISION

14 **06**

**4269**

**RS**

15 PINCHUS BERLINER, in the Right of and  
for the Benefit of Applied Micro Circuit  
16 Corporation, Inc.

17 Plaintiff,

18 v.

19 DAVID M. RICKEY, JOEL O. HOLLIDAY,  
THOMAS TULLIE, ANIL BEDI, LASZLO  
20 GAL, WILLIAM E. BENDUSH, KENNETH  
L. CLARK, BRENT E. LITTLE, GREGORY  
21 A. WINNER, CESAR CESARATTO,  
KAMBIZ HOOSHMAND, MURRAY A.  
22 GOLDMAN, FRED SHLAPAK, ARTHUR  
B. STABENOW, JULIE H. SULLIVAN,  
23 HARVEY P. WHITE and DAVID B.  
WRIGHT,

24 Defendants.

25 and

26 APPLIED MICRO CIRCUITS  
27 CORPORATION,

28 Nominal Defendant

ORIGINAL  
FILED

E-Filed

JUL 11 2006

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

) Case No.

) VERIFIED SHAREHOLDER DERIVATIVE  
) COMPLAINT

) JURY TRIAL DEMANDED

1 Plaintiff, Pinchus Berliner, by and through his attorneys, derivatively on behalf of Applied  
2 Micro Circuits Corporation, alleges upon personal knowledge as to himself and his own acts, and  
3 upon information and belief as to all other matters, based upon, *inter alia*, the investigation  
4 conducted by and through his attorneys, which included, among other things, a review of  
5 Securities and Exchange Commission (“SEC”) filings, news reports, press releases, and other  
6 publicly available documents regarding the Company as follows:

7 **SUMMARY**

8 1. Plaintiff, derivatively on behalf of nominal defendant Applied Micro Circuits  
9 Corporation (“AMCC” or the “Company”), seeks relief for the damages sustained, and to be  
10 sustained by AMCC, against certain former and current top executives and its Board of Directors  
11 for violations of state and federal law, including their breaches of fiduciary duties, abuse of  
12 control, gross mismanagement, waste of corporate assets and unjust enrichment, and violations of  
13 Section 14(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”), which occurred  
14 between March 1, 1998 and the present (the “Relevant Period”).

15 2. AMCC’s senior management has engaged in certain transactions, including the  
16 exercise of improperly back-dated options, to reap millions of dollars in unlawful windfall profits  
17 at the expense of the Company.

18 3. A stock option granted to an employee of the Company allows the employee to  
19 purchase Company stock at a specified price – referred to as the “exercise price” – for a specified  
20 period of time. Stock options are granted as part of employees’ compensation packages to create  
21 incentives for them to boost profitability and the Company’s stock value. When an employee  
22 exercises an option, he or she purchases the stock from the Company at the exercise price,  
23 regardless of the stock’s price at the time the option is exercised.

24 4. The unlawful conduct occurred while defendants were directing the Company.  
25 These defendants authorized or failed to halt the back-dating of options in dereliction of their  
26 fiduciary duties to the Company as directors and/or officers, thus causing or allowing the  
27 Company to suffer millions of dollars in harm.

28 5. Options are required to be priced at the price of the Company stock on the day of

1 the grant. If an option is back-dated to a day on which a market price was lower than the price on  
2 the day the option is granted, then the employee pays less and the Company gets less money for  
3 the stock when the option is exercised. Furthermore, the purchaser of the option gets a greater  
4 compensation than that to which he or she is entitled. Such conduct is unlawful.

5 6. On May 31, 2006, the Company announced that the Audit Committee of AMCC's  
6 Board of Directors is reviewing the Company's historical stock options grant practices and related  
7 accounting.

8 7. On June 12, 2006, the Company announced that it had received an informal inquiry  
9 from the SEC requesting documents related to AMCC's stock option grants and practices. On  
10 June 27, 2006, AMCC announced that it received a subpoena from the U.S. Attorney for the  
11 Northern District of California requesting documents relating to the Company's historical stock  
12 option practices. The Company also announced that it was contacted by the Office of the U.S.  
13 Attorney for the Southern District of California, which has opened its own investigation into the  
14 Company's historical stock option practices.

15 8. On June 30, 2006, the Company announced that due to the delay in the filing of its  
16 Annual Report on SEC Form 10-K for the year ended March 31, 2006, AMCC received a letter  
17 from The Nasdaq Stock Market indicating that the Company's common stock is subject to  
18 delisting pursuant to Nasdaq Marketplace Rule 4310(c)(14). This Rule requires the Company to  
19 make on a timely basis all filings with the SEC, as required by the Securities and Exchange Act of  
20 1934 (the "Exchange Act").

21 9. Back-dating the options violated the Company's stock option plans. Back-dating  
22 the options also breached defendants' fiduciary duties of care, loyalty, and good faith to the  
23 Company.

24 10. Defendants' conduct has unjustly enriched AMCC's top executives, including the  
25 Management Defendants identified below, and has exposed the Company to great expense and  
26 liability, to the detriment of the Company and its shareholders.

27 **JURISDICTION AND VENUE**

28 11. This Court has jurisdiction over all claims asserted herein pursuant to 28 U.S.C.

1 §1331, because plaintiff's claims arise in part under the Constitution and the laws of the United  
2 States. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).  
3 Additionally, this Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(2) in that  
4 plaintiff and defendants are citizens of different states and the matter in controversy exceeds  
5 \$75,000, exclusive of interests and costs. This action is not a collusive action designed to confer  
6 jurisdiction on a court of the United States that it would not otherwise have.

7 12. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act  
8 and 28 U.S.C. §1391(a)(1) because one or more of defendants either resides or maintains  
9 executives offices in this Judicial District, and a substantial portion of the acts and transactions  
10 constituting the violations of law alleged in this Complaint occurred in substantial part in this  
11 Judicial District. Moreover, defendants have received substantial compensation in this Judicial  
12 District by doing business here and engaging in numerous activities that had an effect in this  
13 Judicial District.

## 14 **PARTIES**

### 15 **The Plaintiff**

16 13. Plaintiff Pinchus Berliner is a New York resident and has been a holder of the  
17 Company's common stock since June 2000.

18 14. As a current holder of AMCC common stock and a holder during the period of the  
19 wrongs alleged herein, and pursuant to Fed. R. Civ. P. 23.1, plaintiff has standing to assert these  
20 claims on behalf of the Company and will fairly and adequately protect the interests of the  
21 Company and its other stockholders.

### 22 **The Management Defendants**

23 15. Defendant David M. Rickey ("Rickey") is the former Chairman of the Board,  
24 President and Chief Executive Officer ("CEO") of the Company. Upon information and belief,  
25 defendant Rickey resides in California.

26 16. Defendant Joel O. Holliday ("Holliday") is the former Vice President, Finance and  
27 Chief Financial Officer of the Company. Upon information and belief, defendant Holliday resides  
28 in California.

1           17. Defendant Thomas Tullie (“Tullie”) joined AMCC in 1996 and is currently the  
2 Company’s Chief Operating Officer. Upon information and belief, defendant Tullie resides in  
3 California.

4           18. Defendant Anil Bedi (“Bedi”) is the former Vice President of Marketing. Upon  
5 information and belief, defendant Bedi resides in California.

6           19. Defendant Laszlo Gal (“Gal”) joined the Company in January of 1997 and served  
7 as Vice President of Engineering until April 1999. Upon information and belief, defendant Gal  
8 resides in California.

9           20. Defendant William E. Bendush (“Bendush”) was a Senior Vice President and Chief  
10 Financial Officer from 1999 through 2003. Upon information and belief, defendant Bendush  
11 resides in California.

12           21. Defendant Kenneth L. Clark (“Clark”) is the former Vice President, Operations of  
13 the Company. Upon information and belief, defendant Clark resides in California.

14           22. Defendant Brent E. Little (“Little”) joined the Company in 1991 and is currently a  
15 Senior Vice President/General Manager Storage of the Company. Upon information and belief,  
16 defendant Little resides in California.

17           23. Defendant Gregory A. Winner (“Winner”) is the Senior Vice President Engineering  
18 of the Company. He has been working at AMCC since 1999. Upon information and belief,  
19 defendant Winner resides in California.

20           24. Defendants Rickey, Holliday, Tullie, Bedi, Gal, Bendush, Clark, Little and Winner  
21 are sometimes hereinafter referred to as the “Management Defendants.”

22 **The Director Defendants**

23           25. Defendant Cesar Cesaratto (“Cesaratto”) is currently the Chairman of the Board  
24 and has been a director since April 2002. He became a member of the Compensation Committee  
25 in May of 2003 and is currently a member of the Committee. Upon information and belief,  
26 defendant Cesaratto resides in Europe.

1           26. Defendant Kambiz Hooshmand (“Hooshmand”) is currently the CEO, President  
2 and a Director of the Company. Defendant Hooshmand joined the Company in March 2005.  
3 Upon information and belief, defendant Hooshmand resides in California.

4           27. Defendant Dr. Murray A. Goldman (“Goldman”) is currently a member of the  
5 Board of Directors of the Company. He has been a member of the Compensation Committee  
6 since June 2005. Upon information and belief, defendant Goldman resides in Texas.

7           28. Defendant Fred Shlapak (“Shlapak”) is currently a member of the Board of  
8 Directors of the Company. Upon information and belief, defendant Shlapak resides in Texas.

9           29. Defendant Arthur B. Stabenow (“Stabenow”) has served as a director of the  
10 Company since July 1988. Defendant Stabenow has been a member of the Compensation  
11 Committee since 1998. Upon information and belief, defendant Stabenow resides in California.

12           30. Defendant Julie H. Sullivan (“Sullivan”) became a director of the Company in  
13 2005. Defendant Sullivan is a member of the Compensation Committee and resides in California.

14           31. Defendant Harvey P. White (“White”) has served as a Director of AMCC since  
15 April 1999. Defendant White was a member of the Compensation Committee from 2000-2003.  
16 Upon information and belief, defendant White resides in California.

17           32. Defendant David B. Wright (“Wright”) has been a member of the Board of  
18 Directors since November 2004. Defendant Wright joined the Compensation Committee in  
19 November 2004 and is currently a member of the Committee. Upon information and belief,  
20 defendant Wright resides in California.

21           33. Defendants Cesaratto, Hooshmand, Goldman, Shlapak, Stabenow, Sullivan, White  
22 and Wright, are sometimes collectively referred to as the “Director Defendants.”

23 **The Nominal Defendant**

24           34. Nominal defendant AMCC is a Delaware corporation with its executive offices and  
25 principal place of business at 215 Moffett Park Drive, Sunnyvale, California 94089. According to  
26 the Company’s website, AMCC provides the essential building blocks for the processing, moving  
27 and storing of information worldwide. AMCC is a global leader in network and embedded  
28 PowerPC processing, optical transport and storage solutions. The Company’s products enable the

1 development of converged IP-based networks offering high-speed secure data, high-definition  
2 video and high-quality voice for carrier, metropolitan, access and enterprise applications. AMCC  
3 provides networking equipment vendors with industry-leading network and communications  
4 processing, Ethernet, SONET and switch fabric solutions. AMCC is also the leading vendor of  
5 high-port count SATA RAID controllers enabling low-cost, high-performance, high-capacity  
6 storage.

### 7 **OBLIGATIONS AND DUTIES OF THE DEFENDANTS**

8 35. By reason of their positions as directors, officers, and/or fiduciaries of the  
9 Company and because of their ability to control the business, corporate and financial affairs of the  
10 Company, each of the defendants owed the Company and its shareholders the duty to exercise due  
11 care and diligence in the management and administration of the affairs of the Company and in the  
12 use and preservation of its property and assets; the duty of loyalty, to put the interests of the  
13 Company above their own financial interests; and the duty of candor, including full and candid  
14 disclosure of all material facts related thereto. Further, defendants owed a duty to the Company  
15 and its shareholders to ensure that the Company operated in compliance with all applicable federal  
16 and state laws, rules, and regulations, and that the Company not engage in any unsafe, unsound, or  
17 illegal business practices. The conduct of defendants complained of herein involves knowing  
18 violations of their duties as directors of the Company, and the absence of good faith on their part,  
19 which defendants were aware or should have been aware, posed a risk of serious injury to the  
20 Company.

21 To discharge these duties, defendants were required to exercise reasonable and prudent  
22 supervision over the management, policies, practices, controls, and financial and corporate affairs  
23 of the Company. By virtue of this obligation of ordinary care and diligence, defendants were  
24 required, among other things, to:

- 25 (a) manage, conduct, supervise, and direct the employees, businesses and affairs of the  
26 Company in accordance with laws, rules and regulations, and the charter and by-  
laws of the Company;
- 27 (b) neither violate nor knowingly or recklessly permit any officer, director or  
28 employee of the Company to violate applicable laws, rules and regulations, and to  
exercise reasonable control and supervision over such officers and employees;

1 ensure the prudence and soundness of policies and practices undertaken or  
2 proposed to be undertaken by the Company;

3 (c) remain informed as to how the Company was, in fact, operating, and upon  
4 receiving notice or information of unsafe, imprudent or unsound practices, to make  
5 reasonable investigation in connection therewith and to take steps to correct that  
6 condition or practice, including, but not limited to, maintaining and implementing  
7 an adequate system of financial controls to gather and report information internally,  
8 to allow defendants to perform their oversight function properly to prevent the use  
9 of non-public corporate information for personal profit;

10 (d) supervise the preparation, filing and/or dissemination of any SEC filing, press  
11 releases, audits, reports or other information disseminated by the Company, and to  
12 examine and evaluate any reports of examinations or investigations concerning the  
13 practices, products or conduct of officers of the Company, and to make full and  
14 accurate disclosure of all material facts, concerning *inter alia*, each of the subjects  
15 and duties set forth above; and

16 (e) preserve and enhance the Company's reputation as befits a public corporation and  
17 to maintain public trust and confidence in the Company as a prudently managed  
18 institution fully capable of meeting its duties and obligations.

19 36. Defendants breached their duties of loyalty, full disclosure, due care and/or good  
20 faith by back-dating options and/or allowing defendants to cause, or by themselves causing, the  
21 Company to misrepresent its financial results, as detailed herein, and/or by failing to prevent  
22 defendants from taking such illegal actions.

### 23 AMCC'S STOCK OPTION PLANS

24 37. During the Relevant Period the Company had three stock option plans:

25 a. The 1992 Stock Option Plan (the "1992 Plan") provides for the grant of  
26 stock options to employees, directors and consultants. Incentive stock options, however, under the  
27 1992 Plan, may only be granted to AMCC employees, including officers who are employees. The  
28 1992 Plan provides that "the exercise price for an option cannot be less than 100% of the fair  
market value of the common stock subject to the option on the date of grant."

b. The 1997 Directors' Stock Option Plan (the "1997 Plan") provides  
automatic and nondiscretionary grants to outside directors. The 1997 Plan provides that "the  
exercise price per share shall be 100% of the fair market value per share on the date of grant of the  
first option."



1 c. The 1998 Stock Incentive Plan (the “1998 Plan”) provides for the grant of  
2 nonstatutory stock options to employees and consultants. The Board, or a committee thereof, has  
3 the authority to issue stock options under the 1998 Plan. The 1998 Plan provides that “the  
4 exercise price of each share of common stock is set forth in the notice of grant and is not less than  
5 the fair market value per share of the common stock on the date of grant.”

### 6 **The Suspicious Stock Option Grants**

7 38. On March 27, 1998, the Company allegedly awarded defendants Rickey, Holliday,  
8 Tullie, Bedi and Gal stock option grants at an exercise price of \$23.63. About a month thereafter,  
9 on May 1, 1998, the stock rose to \$29.00.

10 39. The Company allegedly awarded stock option grants to defendants Rickey, Tullie,  
11 Clark and Little on April 23, 1999 at an exercise price of \$12.97 and to defendant Bendush on  
12 April 20, 1999 at an exercise price of \$12.06. Shortly thereafter, the stock price increased to  
13 \$19.40 on June 23, 1999.

14 40. On August 3, 1999, the Company purportedly awarded defendant Little stock  
15 option grants at an exercise price of \$20.37. Just a few weeks later, on September 17, 1999, the  
16 stock rose to a price of \$32.16.

17 41. Defendant Rickey allegedly received stock option grants on January 19, 2000 at an  
18 exercise price of \$71.97. Just a month thereafter, the stock price dramatically soared to \$112.03.

19 42. On December 21, 2000, AMCC awarded suspicious stock option grants to  
20 defendants Rickey, Tullie, Winner, Bendush and Little. Approximately a month thereafter, the  
21 stock price rose over thirty dollars from the exercise price of \$53.88 to \$86.50 on January 19,  
22 2001

### 23 **The Consequences**

24 43. As a result of the back-dating and other manipulation of options issued to the  
25 Management Defendants, they have been unjustly enriched in the amount of millions of dollars at  
26 the expense of the Company. The Company has received and will receive less money from the  
27 Management Defendants when they exercise their options at prices substantially lower than they  
28 would have if the options had not been back-dated.



1           48.     Contrary to the provisions in the Option Plans and public disclosures, as shown by  
2 the pattern of grant dates that were highly favorable to the Management Defendants, the stock  
3 options were not, in fact, priced on the date of the grant, but were in fact back-dated illegally  
4 and/or designed solely to benefit the Management Defendants.

5           49.     Director Defendants stood in a fiduciary relationship with the Company's  
6 shareholders and thereby owed them duties of due care and loyalty. These duties require the Board  
7 to act in good faith, with the care an ordinarily prudent person in a like position would exercise  
8 under similar circumstances, and in a manner he or she reasonably believes to be in the best  
9 interest of the Company and its shareholders.

10          50.     Director Defendants violated their fiduciary duties to the Company by failing to act  
11 with due care, loyalty and good faith when they either expressly authorized the practice of back-  
12 dating options, or in conscious abrogation of their fiduciary duties, permitted it to occur.

13          51.     Instead of properly disclosing these improper stock option grant backdating  
14 practices and the corresponding understatement of compensation costs, Director Defendants  
15 caused or allowed these practices to continue unabated throughout the Relevant Period.

16          52.     Director Defendants' breaches of their fiduciary duties have exposed the Company  
17 to a number of harms including: the expense of internal investigation; the expense of SEC  
18 investigations; the potential liability under tax laws and federal securities laws; the possibility of  
19 having to restate financial results; and liability to stock purchasers.

20                   **DERIVATIVE ACTION AND DEMAND FUTILITY ALLEGATIONS**

21          53.     Plaintiff brings this action derivatively in the right and for the benefit of the  
22 Company to redress the injuries suffered, and to be suffered, by the Company as a direct result of  
23 the breach of fiduciary duty, waste of corporate assets, and unjust enrichment, alleged herein. The  
24 Company is named as a nominal defendant solely in a derivative capacity.

25          54.     Plaintiff will adequately and fairly represent the interest of the Company in  
26 enforcing and prosecuting its rights.

27          55.     Plaintiff is and has continuously been an owner of the Company stock during the  
28 wrongful conduct alleged herein.

1           56. Plaintiff did not make demand on the Board of Directors of the Company to bring  
2 this action on behalf of the Company because such a demand would have been a futile, wasteful  
3 and useless act for the following reasons:

4           (a) All of the Director Defendants authorized, approved, ratified or have failed  
5 to rectify some or all of the back-dated stock option grants at issue here and are named as  
6 defendants herein.

7           (b) The Compensation Committee was at all relevant times responsible for  
8 overseeing the Company's stock option plans. The Compensation Committee was required to  
9 report back to the entire Board on all aspects of compensation prior to approving any one stock  
10 option grant. The members of the Compensation Committee, and the Board by its approval of  
11 their recommendations, enabled, or through conscious abdication of duty, permitted the Company  
12 to back-date stock options issued to the Management Defendants. By such actions, defendants  
13 breached their fiduciary duties to the Company. The back-dating of stock options was in direct  
14 violation of the stock option plans;

15           (c) The back-dating of options as alleged herein was unlawful and not within  
16 defendants' business judgment to acquire, authorize, ratify or facilitate;

17           (d) There was no basis or justification for back-dating the stock options. It was  
18 designed solely to benefit the Management Defendants in a manner that was inconsistent with the  
19 Company's stock option plans, and the Company's public disclosures, to the detriment of the  
20 Company. Hence, the transactions constituted a waste of corporate assets, and could not have  
21 been the product of the proper exercise of business judgment by the defendants;

22           (e) All of the defendants signed the Company's Annual Reports on Form 10-K  
23 between 1998 and 2000, which contained the Company's financial statements, which failed to  
24 account for the back-dated stock options as compensation and an expense of the Company. As a  
25 result, those financial statements of the Company may have overstated its profits and may need to  
26 be restated. Any suit by the defendants to remedy the wrongs complained of herein could also  
27 expose them to suit for securities fraud; thus, they are hopelessly conflicted in making any  
28

1 supposedly independent determination of a demand that they cause the Company to bring this  
2 action;

3 (f) All of the defendants participated in, approved, or through abdication of  
4 duty, permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or  
5 disguise those wrongs from the Company stockholders and/or acting with negligence and gross  
6 negligence disregarded the wrongs complained of herein, and therefore are not disinterested  
7 parties;

8 (g) On information and belief, defendants are protected against liability for  
9 breaches of fiduciary duty alleged in the Complaint by directors' and officers' liability insurance  
10 policies. However, under those policies, if defendants were to cause the Company to sue itself or  
11 certain officers of AMCC, there would be no directors' and officers' insurance protection. This is  
12 yet another reason why defendants are hopelessly conflicted in making any independent  
13 determination that would cause the Company to bring this action.

14 (h) Despite defendants' breaches of duty, the Board of Directors has not  
15 recommended that any defendant be relieved of his or her duties as director. By maintaining the  
16 *status quo* in light of these breaches of duty, the entire Board failed to exercise proper business  
17 judgment and therefore lacks independence.

18 (i) Most egregiously, the Board of Directors did not require that the  
19 Management Defendants immediately disgorge all of their ill-gotten gains from their improper  
20 manipulation of their stock option grants, did not require them to return all unexecuted stock  
21 options to the Company, and did not require them to disgorge their bonuses and equity-based  
22 compensation to the Company, despite their indisputable breaches of fiduciary duties, which  
23 worked a direct harm to the Company. Nor did they take any other action, including commencing  
24 legal proceedings, to protect the interests of the Company.

### 25 **COUNT I**

#### 26 **Against All Defendants For Violations of Section 14(a) of the Exchange Act**

27 57. Plaintiff incorporates by reference and realleges each and every allegation set forth  
28 above, as if set forth herein.





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**COUNT V**

**Against The Management Defendants for Unjust Enrichment  
and Breach of the Duty of Loyalty**

73. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

74. As a result of the back-dating of the options granted to them, the Management Defendants have been and will continue to be unjustly enriched at the expense of and to the detriment of the Company.

75. Accordingly, this Court should order the Management Defendants to disgorge all profits, benefits and other compensation obtained by the Management Defendants, and each of them, from their wrongful conduct and fiduciary breaches described herein, and should order the options held by the Management Defendants, which have not yet been exercised, to be repriced at the market price of the Company's stock on the dates the Court finds that those options were actually, in fact, granted.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff demands judgment as follows:

A. Against all of the defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the defendants' breaches of fiduciary duties, gross mismanagement, waste of corporate assets and unjust enrichment;

B. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and state statutory provisions sued hereunder, including declaring the improper compensation awards complained of herein to be null and void; and attaching, impounding, imposing a constructive trust on or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that plaintiff on behalf of the Company has an effective remedy;

C. Awarding to the Company restitution from the Management Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the Management Defendants as a result of the conduct alleged herein;

D. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and



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E. Granting such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all claims so triable.

Dated: July 11, 2006

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