

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
(ATLANTA DIVISION)

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

MAY 15 2008

JAMES M. HATTEN, Clerk
By: [Signature] Deputy Clerk

[Redacted], Individually
and On Behalf of All Others
Similarly Situated,

No.

1:08-CV-1666

JURY TRIAL DEMANDED

-CC-

Plaintiff,

v.

CBEYOND, INC. and JAMES F.
GEIGER,

Defendants.

CLASS ACTION COMPLAINT

Plaintiff [Redacted] on behalf of himself and others similarly situated, by his attorneys, hereby alleges the following based upon information and belief, and upon the investigation by Plaintiff's counsel, which included, among other things, a review of the facts and circumstances alleged herein, including, without limitation: (a) review and analysis of certain filings made by Cbeyond with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of certain press releases, public statements, news articles, and other

publications disseminated by or concerning Defendants herein and related parties; (c) review and analysis of certain Cbeyond press conferences, analyst conference calls and conferences, and the corporate website of Cbeyond; (d) review and analysis of securities analyst reports concerning Cbeyond and its operations; and (e) review and analysis of certain other information, documents, and materials concerning Cbeyond and the other Defendants named herein.

Plaintiff believes that further substantial evidentiary support will exist for the allegations in this Class Action Complaint (the "Complaint") after a reasonable opportunity for discovery. Many of the facts supporting the allegations contained herein are known only to Defendants or are exclusively within their custody and/or control.

NATURE OF THE ACTION

1. This is a securities fraud class action against Cbeyond, Inc. ("Cbeyond" or the "Company") Cbeyond and its founder, Chairman and Chief Executive Officer, James F. Geiger ("Geiger"). Plaintiff brings this class action on behalf of all persons and entities who purchased or otherwise acquired securities issued by Cbeyond between and including November 1, 2007 through February 21, 2008 (the "Class Period").

2. Defendants defrauded Plaintiff and the other members of the Class by making fraudulent material misrepresentations and omissions regarding Cbeyond's business and operations. Specifically, Cbeyond maintained an artificially low churn rate to demonstrate its ability to keep growing and drive the Company's inflated share price, so that insiders could sell their own personal holdings. However, once the true facts were revealed that the Company's churn rate was substantially higher than previously estimated and would remain elevated for at least the following quarter, the stock price plummeted, to the harm of Plaintiff and the Class.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action because certain of the claims asserted herein arise under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§78j(b) and 78t(a), and the rules and regulations promulgated thereunder, including Rule 10b-5, 17 C.F.R. §240.10b-5.

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, because this is a civil action arising under the laws of the United States.

5 The Court has personal jurisdiction over Defendants. In connection with the acts and omissions alleged in this Complaint, Defendants, directly and/or indirectly, used the means and instrumentalities of interstate commerce, including, without limitation, interstate telephone communications, the mails, and the facilities of the national securities exchanges.

6. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa. Many of the acts and transactions constituting the violations of law complained of herein, including the dissemination to the public of materially false and misleading statements, occurred in this District.

7. Venue is also proper in this District under 28 U.S.C. §1391 because Defendants engaged in substantial conduct relevant to Plaintiff's claims within this District.

THE PARTIES

8 Plaintiff [REDACTED] purchased publicly traded securities of Cbeyond at artificially inflated prices during the Class Period as set forth in the accompanying certification (incorporated by reference herein).

9. Defendant Cbeyond is a Delaware corporation with principal executive offices located at 320 Interstate North Parkway, Atlanta, Georgia 30339. Cbeyond provides telecommunications services to small businesses, including

local and long distance telephone services, T-1 Internet access and Internet-based applications. As of April 21, 2008, the Company had approximately 28.7 million shares outstanding that traded on the Nasdaq under the symbol "CBEY."

10. Defendant Geiger is the founder, Chairman and Chief Executive Officer of Cbeyond. Prior to founding Cbeyond, Geiger was Senior Vice President and Chief Marketing Officer of Intermedia Communications, an integrated communications provider. He joined Intermedia after it acquired FiberNet, a metropolitan area network provider that he co-founded in 1993. While at Intermedia, he was also in charge of Digex, the company's complex web-hosting business division, until just prior to its carve-out IPO.

11. As an officer, director, and controlling person of a publicly-held company that is registered with the SEC, and whose common stock trades on the Nasdaq, and that is governed by the provisions of the federal securities laws, Geiger had a duty to promptly disseminate accurate and truthful information with respect to the financial reporting and the publicly-reported quarterly and annual results of operations of Cbeyond, so that the market price of the Company's publicly-traded securities would be based upon truthful, accurate and complete information.

12. By virtue of his high-level position at Cbeyond, Geiger directly participated in the management of the Company, was directly involved with the day-to-day operations of the Company, and was privy to confidential non-public information concerning the operations of Cbeyond, as alleged herein. Geiger was involved in drafting, reviewing and/or disseminating the false and misleading financial statements that were issued by Cbeyond, approved or ratified these statements, and therefore, adopted them as his own.

13. Geiger participated in preparing and/or approving the public reports and other statements and communications described above and discussed more fully herein. Geiger knew or recklessly disregarded the fact that the false and misleading statements and omissions complained of herein would adversely affect the integrity of the market for Cbeyond's stock, and would cause the price of Cbeyond's common stock to become artificially inflated. Geiger acted knowingly or in such a reckless manner so as to constitute a fraud and deceit upon Plaintiff and the Class.

**CLASS PERIOD EVENTS AND DEFENDANTS'
FALSE AND MISLEADING STATEMENTS**

14 An important financial metric to Cbeyond, and investors and analysts who follow the Company, is the churn rate. Churn is the percentage of subscribers to a service that discontinue their subscription to that service in a given time

period. In order for a company to expand its clientele, its growth rate (*i.e.*, its number of new customers) must exceed its churn rate. Churn rate is an important consideration in the telephone and cell phone services industry. In many geographical areas, several companies are competing for customers, making it easy for people to transfer from one provider to another.

15. On November 1, 2007 (the first day of the Class Period), Cbeyond announced third quarter earnings. Despite announcing record earnings and net additions and impressive year-over-year revenue growth, the Company disclosed that its monthly churn rate was 1.1%, whereas the Company had previously achieved a churn rate of 1.0% or less for 17 straight quarters.

16. In its corresponding conference call with investors, management acknowledged the importance of the churn rate and churn rate trends and sought to allay fears regarding the third quarter churn rate:

But, my suspicion is that the one metric you are more focused on is customer churn. Unfortunately, we broke our 17-quarter streak of 1% or less churn. This is a very important metric to us and you've all heard me highlighted in the past, monthly churn for the third quarter was 1.1%, up from the 1.0 or less monthly churn experience for each of the last 17 quarters.

* * *

This additional churn was broad based among our verticals and was solely related to an increase in what we call our uncontrollable churn.

* * *

Based on what we are seeing so far in Q4, *it appears that the churn level will likely to be flat to down in Q4.*

* * *

I trust it is as evident from my comments we manage our metrics closely and make a point of understanding our business in detail. And my final word to you on this subject is that we will maintain our fact-based approach to analyzing the key metrics of the business and continue to provide the level of transparency into our business that you've come to expect from Cbeyond.

17. Further highlighting the point that churn was critically important to investors, the very first question by an analyst on the conference call was regarding churn. The analyst stated that he hates to focus on the negative, but he knew investors would be concerned about churn and wanted to know if this was the beginning of a trend. Geiger responded that:

[W]e don't really anticipate that this is a wedge, the sharp end of a wedge here, Jonathan, *we really think that this is going to be something that we can sustain at this level.*

18 One month after estimating its churn rate would be flat to lower and already two months into its fourth quarter, certain Cbeyond insiders sold a significant portion of their personal shareholdings. From November 30, 2007 through December 11, 2007, insiders sold 1,061,097 shares of Cbeyond stock for proceeds of over \$39.3 million, at an average price of \$37.04 per share.

19. One million of those shares were sold by Madison Dearborn Partners (“Madison”), who have two directors on the Company’s board and are large shareholders of the Company. Madison owned approximately 30% of the Company prior to its IPO in October 2005. This most recent sale dropped Madison’s ownership down to 8%.

20. Then, on February 5, 2008, Cbeyond’s stock price fell significantly after the Company raised concerns that it may have difficulty retaining customers. At a conference hosted by Thomas Weisel Partners the day before, Geiger said that the slowing economy has caused some customers to seek bankruptcy protection and drop its services and that this “broad weakness” across all types of customers will persist.

21. In reaction to these concerns, Cbeyond’s stock price experienced a sharp stock price drop in the trading days following the conference. On February 5, 2008, Cbeyond’s stock price decline \$4.58 per share or 14% from \$33.34 per share on February 4, 2008 to \$28.76 per share at the close. The stock price continued to decline over the next two days dropping an additional \$1.75 per share on February 6, 2008 and \$1.41 per share on February 7, 2008 to close at \$25.60 per share. In total, over the three trading days following the conference, Cbeyond’s stock price dropped \$7.74 per share or 23%.

22. Then, on February 21, 2008, after the close of the bell, Cbeyond reported fourth quarter and full year results. The Company announced record gross customer additions, but stated that the deteriorating economic environment had increased the number of its existing customers who were unable to pay. The Company asserted that in order to limit the growth of receivables, it tightened its credit policies which led to it disconnecting approximately 300 more customers for non-payment in the fourth quarter than it typically sees and caused an increase in monthly churn to 1.4 percent during the quarter. The Company indicated that it expected churn to continue at this level through the first quarter of 2008 and it viewed these quarters as a transitory period of adjustment needed to filter out its weakest credit, non-paying customers and “not reflective of further results.”

23. In response to this surprising news, Citigroup immediately downgraded the stock from “Buy” to “Hold.” A February 22, 2008 research report entitled “Churn Spike Derails Subscriber Momentum Story; Reduce to Hold,” stated in part that:

We are downgrading shares of Cbeyond from Buy (1S) to Hold (2S), as we believe the higher churn from non-pay disconnects relating to a softening economy should continue to weigh on the stock and should result in downwards revisions to consensus revenue and subscriber estimates for 2008.

Following management’s presentation at our conference in early January, we had thought that the churn rate would remain at its

slightly elevated 1.1% sequentially, as the company's diversified customer base would provide stability to its recurring revenue. We did not expect management to change its credit and receivable policies, however, which resulted in roughly 30bps of the increase in churn during the fourth quarter.

24. In reaction to the shockingly higher than anticipated churn rate and the negative analyst research report, Cbeyond's stock price dropped \$4.74 per share from \$23.50 per share on February 21, 2008 to \$18.76 on February 22, 2008 – a one-day drop of 20% on extremely heavy volume of over 12.7 million shares versus normal average daily volume of less than 500,000 shares. Intraday, Cbeyond's stock price fell to as low as \$15.58 per share for a decline of 34%; setting a new 52-week low.

25. Since closing at \$18.76 per share on February 22, 2008, Cbeyond's stock price has continued to drift lower and is currently trading at approximately under \$17.00 per share, significantly below the \$37.04 per share average price that insiders received on their share sales.

26 Geiger knew or recklessly disregarded the materially false and misleading nature of the information that he caused to be disseminated to the investing public. Geiger acted knowingly or in such a reckless manner so as to constitute a fraud and deceit upon Plaintiff and the Class.

27. As a result of having reviewed or having access to inside information, Defendants engaged in a pattern of deceit by failing to disclose such material adverse information. Accordingly, Defendants engaged in a scheme to defraud and engaged in a practice that operated as a fraud on Plaintiff and the Class.

28. Defendants' scienter is evidenced by the intentional concealment of Cbeyond's higher churn rate.

29. Geiger directed, knew about, or recklessly disregarded the fraudulent practices implemented under their watch. As the top officer of the Company, Geiger knew, through direct knowledge or knowledge learned through the supervisory nature of their positions, or recklessly disregarded, and failed to disclose, material adverse information, was involved in the decisions concerning disclosures (or non-disclosures) concerning Cbeyond's churn rate made at the Company, and made false and misleading statements of material fact.

30. At Cbeyond, all the top management had knowledge of the lack of disclosure of material adverse information concerning Cbeyond's churn rate.

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

31. At all relevant times, the market for Cbeyond's common stock was efficient for the following reasons, among others:

a. Cbeyond's common stock met the requirements for listing, and was listed and actively traded on the Nasdaq, a highly efficient and automated market;

b. As a regulated issuer, Cbeyond filed regular reports with the SEC;

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

d. Cbeyond was regularly followed by numerous securities analysts employed by major brokerage firms headquartered in the United States and overseas who wrote reports that were distributed to the sales forces and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace;

e. The material misrepresentations and omissions alleged herein would tend to induce a reasonable investor to misjudge the value of Cbeyond's securities; and

f. Without knowledge of the misrepresented or omitted facts, Plaintiff purchased or otherwise acquired Cbeyond's common stock between the time that Defendants made the material misrepresentations and omissions and the time that the truth was revealed, during which time the price of Cbeyond's common stock was artificially inflated by Defendants' misrepresentations and omissions.

32. As a result of the foregoing, the market for Cbeyond's common stock promptly reacted to current information regarding Cbeyond from publicly available sources, and reflected such information in the trading price of Cbeyond's common stock. Under these circumstances, a presumption of reliance applies.

NO SAFE HARBOR

33. As alleged herein, Defendants acted with scienter because at the time that they issued public documents and other statements in Cbeyond's name, they knew or recklessly disregarded the fact that such statements were materially false and misleading, or omitted to disclose material facts. Moreover, Defendants knew such documents and statements would be issued or disseminated to the investing public, knew that persons were likely to rely upon those misrepresentations and omissions, and knowingly and recklessly participated in the issuance and

dissemination of such statements and documents as primary violators of the federal securities laws.

34. As set forth in detail throughout the Complaint, Defendants, by virtue of their control over, and/or receipt of Cbeyond's materially misleading statements, and their positions with the Company which made them privy to confidential proprietary information concerning Cbeyond's churn rate, and used such information to artificially inflate Cbeyond's financial results. Defendants created, were informed of, participated in, and knew of, the scheme alleged herein to distort and suppress material information pertaining to Cbeyond's churn rate. With respect to non-forward looking statements and omissions, Defendants knew and recklessly disregarded the falsity and misleading nature of that information, which they caused to be disseminated to the investing public.

35. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the false statements pleaded in this Complaint. None of the statements pleaded herein are "forward-looking" statements and no such statement was identified as a "forward-looking statement" when made. Rather, the statements alleged herein to be false and misleading by affirmative misstatement and/or omissions of material fact all relate to facts and conditions existing at the time the statements were made. Moreover, cautionary

statements, if any, did not identify important factors that could cause actual results to differ materially from those in any putative forward-looking statements.

36 In the alternative, to the extent that the statutory safe harbor does apply to any statement pleaded herein which is deemed to be forward-looking, Defendants are liable for such false forward-looking statements because at the time each such statement was made, the speaker actually knew and/or recklessly disregarded the fact that such forward-looking statements were materially false or misleading and/or omitted facts necessary to make statements previously made not materially false and misleading, and/or that each such statement was authorized and/or approved by a director and/or executive officer of Cbeyond who actually knew or recklessly disregarded the fact that each such statement was false and/or misleading when made. None of the historic or present tense statements made by Defendants was an assumption underlying or relating to any plan, projection, or statement of future economic performance, as they were not stated to be such an assumption underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by Defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

LOSS CAUSATION

37. Throughout the Class Period, the prices of the Company's securities were artificially inflated as a direct result of Defendants' fraudulent misrepresentations regarding the Company's business and operations.

38. Cbeyond's stock price performed well throughout 2006 and 2007, as the Company was able to report consistently low and stable churn rates of 1.0% or less throughout that time period. That trend changed for the first time in the third quarter of 2007 when the Company reported that its churn rate increased to over 1.0% for the first time in years. Cbeyond's stock price stayed high during this time period as management assured investors that they did not see this as a sign of a negative trend and they expected churn rates to be flat to down in future quarters.

39. The Company's churn rate was material to Plaintiff and the other members of the Class. Had the truth been disclosed to the market at or before the end of the Class Period, Plaintiff and the other Class members would not have purchased Cbeyond securities at all, or would have done so only at substantially lower prices than the artificially inflated prices which they actually paid.

40. When the truth about the Company was revealed, the inflation that had been caused by Defendants' misrepresentations and omissions was swiftly

eliminated from the price of the Company's securities, causing significant losses to Plaintiff and the other members of the Class.

41. The decline in the Company's securities price following the revelations of the Company's fraudulent practices, and the resulting losses suffered by Plaintiff and the other members of the Class, are directly attributable to the market's reaction to the disclosure of information that had previously been misrepresented or concealed by Defendants, and to the market's adjustment of the Company's securities price to reflect the newly emerging truth about the Company.

42. Defendants' fraudulent conduct, as alleged herein, proximately caused foreseeable losses to Plaintiff and the other members of the Class.

CLASS ACTION ALLEGATIONS

43 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 all persons and entities who purchased Cbeyond's common stock during the Class Period and who suffered damages as a result of their purchases (the "Class"). Excluded from the Class are: (1) the Company and Geiger; (2) members of the immediate family of each of Geiger; (3) the subsidiaries or affiliates of the Company or any of Defendants; (4) any person or entity who is, or was during the Class Period, a partner, officer, director, employee or controlling person of the Company or any of

Defendants; (5) any entity in which any of Defendants has a controlling interest; (6) the legal representatives, heirs, successors or assigns of any of the excluded persons or entities specified in this paragraph; and (7) the insurance carriers, or their affiliates who insure Defendants.

44 The members of the Class are so numerous that joinder of all members is impracticable. As of April 21, 2008, there were approximately 28.6 million shares of Cbeyond's common stock outstanding. While Plaintiff does not know the exact number of Class Members, Plaintiff believes that there are, at minimum, thousands of members of the Class who purchased Cbeyond's common stock during the Class Period.

45. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

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

a. Whether the federal securities laws were violated by Defendants' acts as alleged herein;

b. Whether the Company's SEC filings, and other public statements published and disseminated to the investing public and to purchasers of the Company's common stock during the Class Period omitted and/or misrepresented material facts about the business affairs, financial condition and present and future prospects of the Company;

c. Whether Defendants omitted to state and/or misrepresented material facts about the financial condition, profitability and present and future prospects of the Company;

d. With respect to Plaintiff's claims under the Exchange Act, whether Defendants acted willfully or recklessly in omitting to state and/or misrepresenting material facts about the financial condition, profitability and present and future prospects of the Company;

e. Whether the market price of Cbeyond's common stock during the Class Period was artificially inflated due to the non-disclosures and/or misrepresentations complained of herein; and

f. Whether the members of the Class have sustained damages, and if so, the proper measure thereof.

47 Plaintiff's claims are typical of the claims of the members of the Class. 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 that are adverse or antagonistic to the Class.

48 A class action is superior to other available methods for fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, the expense and burden of individual litigation make it impossible for the Class members individually to redress Defendants' wrongful conduct. Furthermore, Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action.

COUNT I

VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5(b) PROMULGATED THEREUNDER

49. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs of this Complaint as if fully set forth herein. This claim is asserted against all of the Defendants.

50. During the Class Period, Defendants: (a) deceived the investing public, including Plaintiff, as alleged herein; (b) artificially inflated and maintained the market prices of Cbeyond's securities; and (c) caused Plaintiff to purchase or otherwise acquire Cbeyond's common stock at artificially inflated prices.

51. Defendants made untrue statements of material fact and/or omitted to state material facts necessary to make the statements made not misleading, and/or substantially participated in the creation of the alleged misrepresentations, which operated as a fraud and deceit upon Plaintiff and the Class, in an effort to maintain artificially high market prices for Cbeyond securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b). Defendants made materially false and misleading statements and omitted to state material facts regarding Cbeyond's churn rate.

52. As a result of their making and/or their substantial participation in the creation of affirmative statements and reports to the investing public, Defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-K (17 C.F.R. §229.10, *et seq.*) and other SEC regulations, including accurate and truthful information with respect to the Company's operations and performance so that the market prices of the Company's publicly traded securities would be based on truthful, complete and accurate information. With regard to Cbeyond's churn rate, Defendants consistently failed to perform this duty.

53. Defendants, directly and indirectly, by use of the means and instrumentalities of interstate commerce and/or the mails, made, or substantially participated in the creation of, untrue statements of material facts and/or omitted to state material facts necessary in order to make the statements made about the Company and/or Cbeyond's churn rate in light of the circumstances under which they were made, not misleading, as set forth herein.

54. Defendants had actual knowledge of the misrepresentations and/or omissions of material fact set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them.

55. The facts alleged herein give rise to a cogent and compelling inference that Defendants acted with scienter. Defendants' own internal information concerning Cbeyond's churn rate provided Defendants with information showing that Cbeyond's churn rate was consistently threatened during the Class Period. Defendants knew or recklessly disregarded that the financial results publicly disseminated to investors during the Class Period were significantly driven by a false churn rate, a material indicator of the Company's health.

56. As a result of the dissemination of the materially false and misleading information and the failure to disclose material facts, as set forth above, the market price of Cbeyond's common stock was artificially inflated throughout the Class Period. Unaware that the market price of Cbeyond's common stock was artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which Cbeyond's common stock traded, and the truth of any representations made to appropriate agencies and to the investing public, at the times at which any statements were made, and/or in the absence of material adverse information that was known or with deliberate recklessness disregarded by Defendants but not disclosed in public statements by Defendants, Plaintiff purchased or acquired Cbeyond's common stock at artificially high prices and was damaged when the truth was revealed.

57. At the time of said misrepresentations and omissions, Plaintiff was ignorant of their falsity, and believed the false statements to be true. Had Plaintiff known the truth about Cbeyond's churn rate, facts which were misrepresented and/or not disclosed by Defendants, Plaintiff would not have purchased Cbeyond's common stock at all, or would not have done so at the artificially inflated prices paid for such common stock.

58. Defendants' materially false and misleading statements and omissions of material fact caused Plaintiff and the Class to suffer losses in connection with their investments in Cbeyond's common stock. Cbeyond's stock price collapsed when the truth was revealed concerning Cbeyond's churn rate. In reaction to the shockingly higher than anticipated churn rate, Cbeyond's stock price dropped \$4.74 per share from \$23.50 per share on February 21, 2008 to \$18.76 on February 22, 2008 – a one-day drop of 20% on extremely heavy volume of over 12.7 million shares versus normal average daily volume of less than 500K shares. Intraday, Cbeyond's stock price fell to as low as \$15.58 per share for a decline of 34%; setting a new 52-week low.

59. By reason of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder, and are liable to Plaintiff and the Class for damages suffered in connection with their purchases of Cbeyond's securities during the Class Period.

COUNT II

VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5(a) AND (c) PROMULGATED THEREUNDER

60. Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs of this Complaint as if fully set forth herein. This claim is asserted against all of the Defendants.

61. This Count is brought solely and exclusively under the provisions of Rule 10b-5(a) and (c). Accordingly, Plaintiff need not allege in this Count nor prove in this case that any of Defendants made any misrepresentations or omissions of material fact for which they may also be liable under Rule 10b-5(b) and/or any other provisions of law.

62. During the Class Period, Defendants carried out a common plan, scheme, and unlawful course of conduct that was intended to, and did: (i) deceive the investing public, including Plaintiff; (ii) artificially inflate the market price of Cbeyond's common stock; and (iii) cause Plaintiff to purchase Cbeyond's common stock at artificially inflated prices.

63. In furtherance of this unlawful plan, scheme and course of conduct, Defendants employed devices, schemes and artifices to defraud, and knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business that operated as a fraud and deceit upon Plaintiff and the Class in connection with their purchases of Cbeyond's common stock, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) promulgated thereunder.

64. Defendants' fraudulent devices, schemes, artifices and deceptive acts, practices, and course of business included the knowing and/or reckless suppression and concealment of information regarding Cbeyond's churn rate during the Class

Period. Defendants knowingly suppressed and concealed such information to distort the balance of facts available to Cbeyond's investors that would be included in the Company's financial statements disseminated to investors during the Class Period.

65. Plaintiff and the Class reasonably relied upon the integrity of the market in which Cbeyond's securities traded.

66. During the Class Period, Plaintiff and the Class were unaware of Defendants' fraudulent scheme and unlawful course of conduct. Had Plaintiff and the Class known of Defendants' unlawful scheme and unlawful course of conduct, they would not have purchased Cbeyond's securities, or if they had, would not have done so at the artificially inflated prices paid for such securities.

67. As a direct and proximate result of Defendants' scheme to defraud and such unlawful course of conduct, Plaintiff and the Class suffered damages in connection with their purchases of Cbeyond's common stock during the Class Period.

68. By reason of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) promulgated thereunder and are liable to Plaintiff and the Class for damages suffered in connection with their purchases of Cbeyond's securities during the Class Period.

COUNT III

VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT

69. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs of this Complaint as if fully set forth herein. This claim is asserted against Geiger.

70. Geiger acted as a controlling person of Cbeyond within the meaning of Section 20(a) of the Exchange Act, as alleged herein. By virtue of his high-level position and active participation in and/or awareness of the day-to-day operations at Cbeyond, Geiger had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various public statements and SEC filings that Plaintiff alleges were false and misleading. Geiger was provided with, or had unlimited access to, copies of reports, studies, press releases, public filings and other statements alleged herein to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

71. In particular, Geiger had direct and supervisory involvement in the day-to-day operations of the Company and had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein.

72. As set forth above, Cbeyond and Geiger violated Section 10(b) of the Exchange Act and Rules 10b-5(a), 10b-5(b), and 10b-5(c) promulgated thereunder.

73. By virtue of his position as a controlling person of Cbeyond, Geiger is liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of his wrongful conduct, Plaintiff and the Class suffered damages in connection with their purchases of Cbeyond's securities during the Class Period.

PRAYER FOR RELIEF

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

- A. Declaring this action to be a proper Class action pursuant to Fed. R. Civ. P. 23;
- B. Awarding compensatory damages against all Defendants, jointly and severally, in favor of Plaintiff and the Class, for all losses and damages suffered as a result of Defendants' wrongdoing alleged herein, in an amount to be determined at trial, together with interest thereon;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including a reasonable allowance of fees for Plaintiff's attorneys and experts; and
- D. Awarding Plaintiff and the Class such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: May 6, 2008