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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

██████████ Individually And
On Behalf Of All Others Similarly
Situating,

Plaintiff,

vs.

THE COOPER COMPANIES, INC., A.
THOMAS BENDER, ROBERT S.
WEISS, and JOHN D. FRUTH,

Defendants.

) Case No.
)
) CLASS ACTION
)
) CLASS ACTION COMPLAINT FOR
) VIOLATIONS OF FEDERAL
) SECURITIES LAWS
)
) JURY TRIAL DEMANDED

1 Plaintiff alleges the following based upon the investigation of plaintiff's
2 counsel, which included a review of regulatory filings and reports, securities
3 analyst reports and advisories about The Cooper Companies, Inc. ("Cooper" or the
4 "Company"), press releases and other public statements issued by the Company,
5 and media reports about the Company.

6
7 **NATURE OF THE ACTION AND SUMMARY OF ALLEGATIONS**

8 1. This is a federal class action on behalf of persons who purchased, or
9 otherwise acquired, the securities of Cooper between July 29, 2004 to November
10 21, 2005, inclusive (the "Class Period"), including persons who received Cooper
11 shares in exchange for tendering shares of Ocular Sciences in the January 2005
12 merger between Cooper and Ocular Sciences, Inc., and who were damaged
13 thereby, seeking to pursue remedies under the Securities Exchange Act of 1934
14 (the "Exchange Act").

15 2. Cooper is a healthcare product company, with two business units,
16 CooperVision, which manufactures and sells contact lenses worldwide, and
17 CooperSurgical, which designs and sells surgical and other medical equipment.
18 CooperVision is the larger of the two units, accounting for approximately 75% of
19 Cooper sales overall.

20 3. On July 28, 2004, Cooper announced that it had entered into an
21 agreement to acquire rival Ocular Sciences, Inc. in a cash and stock deal valued at
22 approximately \$1.2 billion. The acquisition was strategically important to the
23 Company. It would nearly double its size and allow it to better compete against
24 larger players in the contact lens industry, namely, Johnson & Johnson, Ciba
25 Vision, and Bausch & Lomb.

26 4. In order to drum-up support for the merger, which required
27 shareholder approval, defendants engaged in accounting manipulation, as detailed
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1 below, and represented that the revenues of the combined company would grow to
2 \$930 million to \$937 million, as a result of strong growth and immediately realized
3 merger synergies, and equally positive earnings figures. However, these revenue
4 figures, and the additional representations set forth below, were lacking in any
5 reasonable basis when made and were disseminated to ensure that the merger
6 would receive the requisite shareholder approval and to inflate Cooper's stock
7 price so that Cooper insiders could sell their Cooper shares at artificially inflated
8 prices. Shortly after the merger closed in January 2005, Cooper insiders, including
9 defendant A. Thomas Bender, Cooper's CEO, and Robert Weiss, its CFO, began
10 unloading Cooper shares. Before the value of Cooper securities collapsed, insiders
11 sold a total of **1,970,233** shares of common stock for proceeds of **\$141,492,613**.

12 5. As detailed below, defendants' Class Period representations were
13 materially false and misleading because they failed to disclose that:

14 (a) the Company improperly accounted for assets acquired in the
15 Ocular Sciences merger, as reported in the Proxy Statement, by misclassifying
16 intangible assets as tangible ones, which had the effect of lowering amortization
17 expense;

18 (b) the Company's aggressive earnings guidance reflected the
19 improper accounting for intangible assets and was inflated by (among other things)
20 the amount of the understated amortization expense;

21 (c) the merger synergies touted by defendants were unrealistic and
22 were lacking in any reasonable basis;

23 (d) Ocular Sciences had stuffed the channel with its Biomedics
24 products, such that inventories would have to be whittled down before a material
25 amount of new sales could reasonably be expected, which would have a materially
26 negative impact on Cooper's revenues;

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1 (e) the Company's silicone hydrogel products would not contribute
2 materially to Cooper's 2005 results and, the Company's lack of a two-week
3 silicone hydrogel product would prevent it from meeting its aggressive growth
4 targets for 2005 and beyond, contrary to defendants' repeated representations that
5 the Company's Proclear product was competing favorably against the silicone
6 hydrogel products;

7 (f) Cooper and Ocular in fact competed in the two-week lens
8 market, which negatively impacted Cooper's ability to realize the much-hyped
9 synergies from the Ocular Sciences acquisition, contrary to defendants'
10 representations about the complementariness of Cooper's and Ocular's product
11 lines;

12 (g) the aggressive revenue and earnings growth targets released by
13 defendants were lacking in any reasonable basis when made and did not reflect
14 realistically achievable results for the combined Company.

15 6. When the truth was disclosed at the end of the Class Period, on
16 November 21, 2005 and November 22, 2005, the price of Cooper common stock
17 collapsed, falling by \$21 per share, or 29%, to close at \$51.47 per share on
18 November 22, 2005.

19 7. The mean price at which insiders sold their personally held Cooper
20 shares during the Class Period was \$71.82 per share, \$20.35 more than the price
21 fell to when the truth was disclosed. Insiders sold 1,970,233 shares during the
22 Class Period, saving themselves a total of \$40,094,241.

23 **JURISDICTION AND VENUE**

24 8. The claims asserted herein arise under and pursuant to Sections 10(b)
25 and 20(a) of the Exchange Act [15 U.S.C. §§ 78j (b) and 78t (a)] and Rule 10b-5
26 promulgated thereunder by the SEC [17 C.F.R. § 240.10b-5].
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1 15. Defendant Robert S. Weiss (“Weiss”) served as Cooper’s Chief
2 Financial Officer during the Class Period. Weiss sold 84,000 shares of Cooper
3 common stock during the Class Period, for gross proceeds of \$5,964,183.

4 16. Defendant John D. Fruth (“Fruth”) was the founder and Chief
5 Executive Officer of Ocular Sciences. Following the merger between Ocular
6 Sciences and Cooper, Fruth served as a director on Cooper’s board. Fruth sold
7 1,012,787 shares of Cooper common stock during the Class Period, for gross
8 proceeds of \$71,617,292.

9 17. Defendants Bender, Weiss and Fruth are referred to herein as the
10 “Individual Defendants.”

11 18. During the Class Period, the Individual Defendants, as senior
12 executive officers and/or directors of Cooper, were privy to confidential and
13 proprietary information concerning Cooper, its operations, finances, financial
14 condition, present and future business prospects. The Individual Defendants also
15 had access to material adverse non-public information concerning Cooper, as
16 discussed in detail below. Because of their positions with Cooper, the Individual
17 Defendants had access to non-public information about its business, finances,
18 products, markets and present and future business prospects *via* access to internal
19 corporate documents, conversations and connections with other corporate officers
20 and employees, attendance at management and board of directors meetings and
21 committees thereof and *via* reports and other information provided to them in
22 connection therewith. Because of their possession of such information, the
23 Individual Defendants knew or recklessly disregarded that the adverse facts
24 specified herein had not been disclosed to, and were being concealed from, the
25 investing public.

26 19. The Individual Defendants are liable as direct participants in, and as
27 co-conspirators, with respect to the wrongs complained of herein. In addition, the
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1 Individual Defendants, by reason of their status as senior executive officers and/or
2 directors were “controlling persons” within the meaning of Section 20 of the
3 Exchange Act and had the power and influence to cause the Company to engage in
4 the unlawful conduct complained of herein. Because of their positions of control,
5 the Individual Defendants were able to and did, directly or indirectly, control the
6 conduct of Cooper’s business.

7 20. The Individual Defendants, because of their positions with the
8 Company, controlled and/or possessed the authority to control the contents of its
9 reports, press releases and presentations to securities analysts and through them, to
10 the investing public. The Individual Defendants were provided with copies of the
11 Company’s reports and press releases alleged herein to be misleading, prior to or
12 shortly after their issuance and had the ability and opportunity to prevent their
13 issuance or cause them to be corrected. Thus, the Individual Defendants had the
14 opportunity to commit the fraudulent acts alleged herein.

15 21. As senior executive officers and/or directors and as controlling
16 persons of a publicly-traded company whose common stock was, and is, registered
17 with the Securities and Exchange Commission (the “SEC”) pursuant to the
18 Exchange Act, and was traded on the New York Stock Exchange (“NYSE”) and
19 governed by the federal securities laws, the Individual Defendants had a duty to
20 disseminate promptly accurate and truthful information with respect to Cooper’s
21 financial condition and performance, growth, operations, financial statements,
22 business, products, markets, management, earnings and present and future business
23 prospects, to correct any previously issued statements that had become materially
24 misleading or untrue, so that the market price of Cooper’s common stock would be
25 based upon truthful and accurate information. The Individual Defendants’
26 misrepresentations and omissions during the Class Period violated these specific
27 requirements and obligations.

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1 by mail, using the form of notice similar to that customarily used in securities class
2 actions.

3 25. Plaintiff's claims are typical of the claims of the members of the Class
4 as all members of the Class are similarly affected by defendants' wrongful conduct
5 in violation of federal law that is complained of herein.

6 26. Plaintiff will fairly and adequately protect the interests of the
7 members of the Class and has retained counsel competent and experienced in class
8 and securities litigation.

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

12 (a) whether the federal securities laws were violated by defendants'
13 acts as alleged herein;

14 (b) whether statements made by defendants to the investing public
15 during the Class Period misrepresented material facts about the business and
16 operations of Cooper; and

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

19 28. A class action is superior to all other available methods for the fair
20 and efficient adjudication of this controversy since joinder of all members is
21 impracticable. Furthermore, as the damages suffered by individual Class members
22 may be relatively small, the expense and burden of individual litigation make it
23 impossible for members of the Class to individually redress the wrongs done to
24 them. There will be no difficulty in the management of this action as a class
25 action.

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1 dramatically, because -- and, by the way, to explain that a little bit is
2 the -- we're not going to be going too awfully fast. We're not going to
3 do anything that will compromise either Ocular's or Cooper's business
4 during this integration process. And you see the payoff, really, is in
5 2006 going into 2007 when you look at the earnings going from
6 between \$3.25 and \$3.35 in '05 to \$4.20 to \$4.30, almost a 30%
7 growth in '06, and then going to \$5 to \$5.10 in '07. We're using an
8 effective tax rate of 21%, which we have already given you guidance
9 on for '05 and going to 20% in '06 and '07.

10 31. Later during the conference call, Fruth, Ocular's CEO and founder,
11 who would serve as a director in the combined company, stated that Cooper would
12 introduce silicone hydrogel lenses in 2005. Silicone hydrogel contact lenses were
13 introduced to the market in 1999 by Cooper competitors Bausch & Lomb and
14 CIBA Vision. Silicone hydrogel contact lenses purportedly allow more oxygen to
15 reach the eye and can be worn longer more comfortably than other lenses. The
16 silicone hydrogel market was a fast growing market segment in which neither
17 Cooper nor Ocular had a foothold. During the conference call, Fruth represented as
18 follows in response to an analyst's question regarding the introduction of silicone
19 hydrogel:
20

21 JEFF JOHNSON: Well, this will accelerate it. A couple of high-level
22 questions, if I could. Pipeline-wise, I'm sure this doesn't change things a
23 whole lot, but Ocular has been talking about bringing a continuous-wear lens
24 into the market potentially by mid-'05. You guys have been talking maybe
25 later '05. Would that still stay in play and, at the same time, could Ocular at
26 all help you accelerate any product introduction into the Asian market,
27 especially Japan?
28

1 TOM BENDER: Well, I think there's a yes to both, and maybe I should turn
2 this over to John a little bit about the silicone.

3

4 JOHN FRUTH: This is John Fruth.

5

6 JEFF JOHNSON: Hey, John.

7

8 JOHN FRUTH: I don't see the schedule changing on the silicone hydrogel.
9 We're still on track to that, and we think that's an important new category
10 that's developing.

11 32. Fruth reiterated that silicone hydrogel lenses would be offered in 2005
12 and would contribute to Cooper's growth:

13

14 JOHN FRUTH: Well, I think that if you look at where Ocular is today,
15 we've got a pipeline of products that are just coming. We mentioned some of
16 them in Japan. We just launched the Aspheric weekly disposable in the U.S.
17 It's getting great reception. A multifocal coming, as well as another two-
18 week disposable product; the U.S., we are just starting to launch daily
19 disposables; and we got the silicone hydrogel coming next year. So the
20 growth side of it is coming from a new product pipeline that gives us a real
21 opportunity to participate in new markets as well.

22

23 33. On October 12, 2004, Cooper filed with the SEC a joint proxy
24 statement and prospectus for the merger, on Form S-4/A (the "Proxy Statement").
25 The Proxy Statement was signed by defendants Bender and Weiss, and represented
26 as follows regarding the allocation of purchase price to fair value of assets:

27

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1 The preliminary allocation of the purchase price to the fair value of assets
2 acquired and liabilities assumed, net of deferred taxes, was estimated as
3 follows, in thousands, for the purpose of preparing the pro forma financial
4 statements as if the merger had been completed on July 31, 2004:

5			
6	Tangible assets at fair value	\$	302,431
7	Identifiable intangible assets		30,000
8	Goodwill		920,283
9	Other assets		12,991
10	Liabilities assumed		(130,854)
11			
12			
13	Total purchase price	\$	1,134,851

14 34. On November 16, 2004, the Company announced that Cooper and
15 Ocular had obtained the requisite shareholder votes for the merger to proceed.
16 Ocular stockholders would receive 0.3879 of a share of Cooper common stock and
17 \$22.00 in cash for each share of Ocular common stock that they own.

18 35. On December 13, 2004, Cooper, whose fiscal year ends on October
19 31, announced its 2004 results. In a press release, Cooper reported 2004 revenue
20 of \$490 million, 19% above 2003 revenue, and earnings per share of \$2.61, 24%
21 more than its reported 2003 earnings. The Company also gave the following
22 guidance, which was lower than the guidance announced in July because,
23 according to defendants, the prior guidance assumed the transaction would close
24 November 1, 2004, while the current guidance assumed the transaction would
25 close December 31, 2004:

1 The table below shows Cooper's estimates of the revenue and earnings of the
 2 combined company for the fiscal years 2005 through 2007 assuming no
 3 major change in exchange rates. They exclude nonrecurring charges for
 4 acquisition accounting and restructuring. They assume, for the purpose of
 5 these projections, that the transaction closes December 31, 2004, not
 6 November 1, 2004, as used in previous guidance. Earnings per share
 7 estimates have been revised to reflect the impact of applying the if-converted
 8 method for calculating earnings per share discussed above.

----- Cooper Revenue And Earning Per Share Guidance Fiscal 2005-2007 -----			
	2005	2006	2007

Total Revenue	\$870-\$883 million	\$1042-\$1050 million	\$1165-\$1180 million

CooperVision	\$755-\$765 million	\$915-\$920 million	\$1025-\$1035 million

CooperSurgical	\$115-\$118 million	\$127-\$130 million	\$140-\$145 million

Revised Earnings Per Share	\$3.05-\$3.15	\$4.00-\$4.10	\$4.75-\$4.85

Previous Earnings Per Share	\$3.25-\$3.35	\$4.20-\$4.30	\$5.00-\$5.10

21 36. The merger received Federal Trade Commission clearance on January
 22 5, 2005, and was completed on January 6, 2005. In the press release announcing
 23 the completion of the merger, Cooper reiterated the guidance it disseminated on
 24 December 13, 2004.

25 37. The day following the closing of the merger and reiteration of
 26 guidance representing strong growth, while Cooper stock was trading in the range
 27 of \$70 to \$71 per share, Bender began to unload his personally held Cooper stock.
 28

1 38. Defendants' representations, reproduced in paragraphs 29-33, 35
2 above, were materially false and misleading when made because they failed to
3 disclose that:

4 (a) the Company improperly accounted for assets acquired in the
5 Ocular Sciences merger, as set forth in the Proxy Statement, by misclassifying
6 intangible assets as tangible ones, which had the effect of lowering amortization
7 expense;

8 (b) the Company's aggressive earnings guidance reflected the
9 improper accounting for intangible assets and was inflated by (among other things)
10 the amount of the understated amortization expense;

11 (c) the merger synergies touted by defendants were unrealistic and
12 were lacking in any reasonable basis;

13 (d) Ocular Sciences had stuffed the channel with its Biomedics
14 products, such that inventories would have to be whittled down before a material
15 amount of new sales could reasonably be expected, which would have a materially
16 negative impact on Cooper's revenues;

17 (e) the Company's silicone hydrogel products would not contribute
18 materially to Cooper's 2005 results and, the Company's lack of a two-week
19 silicone hydrogel product would prevent it from meeting its aggressive growth
20 targets for 2005 and beyond;

21 (f) Cooper and Ocular in fact competed in the two-week lens
22 market, which negatively impacted Cooper's ability to realize the much-hyped
23 synergies from the ocular acquisition, contrary to defendants' representations about
24 the complementariness of Cooper's and Ocular's product lines; and

25 (g) the aggressive revenue and earnings growth targets released by
26 defendants were lacking in any reasonable basis when made and did not reflect
27 realistically achievable results for the Company.

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1 39. On January 26, 2005, Cooper issued a press release reiterating the
2 guidance disseminated on December 13, 2005, as set forth in paragraph 35.

3 40. On March 9, 2005, Cooper issued a press release announcing results
4 for its first fiscal quarter, ended January 31, 2005, highlighting the following
5 results:

6 -- Reported revenue \$147.9 million, 35% above the first quarter of
7 2004, 31% in constant currency. Including Ocular's sales for the first
8 week in January 2005, first quarter revenue would have been \$151.2
9 million.

10 -- Operating income, before nonrecurring acquisition and
11 restructuring expenses, \$30.8 million, 24% above the first quarter of
12 2004; with one-time charges included, \$27.7 million or 11% above
13 last year's first quarter.

14 -- EPS 58 cents before nonrecurring acquisition and restructuring
15 costs; reported EPS 48 cents.

16 -- Cash flow (pretax income from continuing operations plus
17 depreciation and amortization before nonrecurring acquisition and
18 restructuring costs) per share 90 cents, up from 76 cents in the first
19 quarter of 2004; trailing twelve months \$3.64.

20
21 41. In the release, defendants also issued the following guidance for 2005,
22 which was slightly lower than previous guidance because, according to the release,
23 the current estimate reflected included Ocular results from January 6, 2005,
24 whereas the previous estimate assumed a January 1, 2005 merger completion date:

25
26 Cooper expects fiscal 2005 revenue of \$867 million to \$879 million,
27 assuming no major changes in exchange rates, and earnings per share
28

1 of \$3.08 to \$3.18, before nonrecurring costs for merger related
2 accounting and restructuring charges, and assuming an effective tax
3 rate of 21%. This revenue guidance is \$3 million below the mid point
4 of the Company's projections issued in January 2005 because revenue
5 from the acquired Ocular business is only included from January 6,
6 2005, not from January 1 as the earlier guidance assumed. EPS
7 guidance for the remaining three quarters of 2005 is unchanged.

8 42. On March 9, 2005, Cooper hosted a conference call with analysts and
9 investors to discuss the first quarter 2005 results. During the call, defendant Bender
10 represented that “there is nothing that has occurred [] this far that leaves us feeling
11 at all uneasy about the guidance we have given going forward.” In response to the
12 question of whether the Company had experienced any post-merger surprises,
13 defendant Bender represented that he “can’t think of any negatives” and that the
14 only surprises were positive ones: “Yes, I think if anything, things are going along
15 a lot better than we thought.”

16 43. In addition, defendant Bender aggressively denied that Cooper’s lack
17 of a silicone hydrogel product was negatively impacting the Company, by
18 marginalizing the popularity of the product and its advantages over Cooper’s
19 “Proclear” product, which was supposedly competing very sucesfully against
20 silicone hydrogel lenses. According to Bender, silicone hydrogel lenses offered no
21 real advantages to the patient and was a “niche” product:

22
23 And, of course, I think all of you know Proclear competes head-to-head with
24 the latest hype on the silicone hydrogel [PHONETIC] products. So we're not
25 only holding our own, but we think we're doing very, very well against the
26 silicon hydrogel products that are being marketed for daily wear.

27 * * *

1 So it's good strategy for [Johnson & Johnson]. Is it a real competitor to
2 Proclear? -- Does it really -- does it have an advantage over Proclear -- the
3 Proclear material as a daily wear lens? And I'm going to tell you no. I'm not
4 so sure it has any advantage over some of the older materials --
5 [INAUDIBLE] on the market. I can't see it, because DKk, from a standpoint
6 of DKk, it's the safety wearing of lenses, which means no edema, it doesn't
7 have any advantage for daily wear. It has an advantage only with continuous
8 wear. So to really answer your question, we're going to continue with our
9 development and marketing of our continuous wear, silicon hydrogel lens
10 because we do believe higher DKDk is the right place to go for those
11 patients that doctors want to place on continuous wear. But for daily wear,
12 I'm sorry. I don't -- I see the advantage here as one for the companies and for
13 practitioners, quite frankly, to trade up in value to patients, but I'm not so
14 sure from a wearing standpoint it offers any advantages.

15
16 DAN PURUE: I [do] get it;. I just wanted to really summarize, we should be
17 thinking of this as grounding out the product offering, not as a gaping hole in
18 the product offering.

19 TOM BENDER: That's right. It is a niche . . .

20
21 44. On May 5, 2005, Cooper issued a press release confirming earnings
22 per share guidance for 2005 and lowering revenue guidance slightly, the latter
23 attributed to short-term integration issues such as sales force integration, territory
24 realignment and training disruptions. High inventory levels at an Ocular Science
25 division was also blamed:

26 For second quarter of 2005, revenue guidance has been reduced from
27 the Company's guidance originally issued on March 8, 2005 from a
28

1 range of \$222 million to \$226 million to a range of \$212 million to
2 \$215 million. Earnings per share for the second quarter, excluding
3 nonrecurring acquisition and restructuring charges remain the same
4 with a range of 72 cents per share to 75 cents per share.

5 CooperVision revenue estimates for the second quarter have been
6 reduced from a range of \$195 million to \$198 million to a range of
7 \$186 million to \$188 million. The reduction results primarily from
8 continuing sales force integration, territory realignment and training
9 disruptions following the January 2005 acquisition of Ocular
10 Sciences, Inc. and from continuing high inventory levels of Ocular
11 Science's spherical contact lenses in trade channels in the United
12 States that developed during the nine months prior to the close of the
13 acquisition.

14
15 45. Defendant Bender noted that the primary reason for the downward
16 revision was excess inventory, rather than to weakness in end user demand or
17 competition from silicone hydrogel lenses:

18 Commenting on the revised CooperVision second quarter revenue
19 guidance, A. Thomas Bender, Cooper's chairman and chief executive
20 officer noted, "The first quarter contact lens industry market research
21 data that measures patient visits to contact lens fitters, shows that
22 following the acquisition, combined CooperVision/Ocular Sciences
23 product lines actually gained market share in the disposable sphere
24 category from the fourth quarter of 2004. This is the same category
25 that the new silicone hydrogel lenses have entered over the past 12 to
26 15 months.

1 "This supports the case for the drag of high trade inventories on
2 revenue rather than a slow down in the prescribing of our lenses, and
3 also indicates that silicone hydrogel lenses are competing largely
4 among themselves for market share in this category.
5

6 "I expect it will be at least six more months before this excess trade
7 inventory of Ocular Sciences' spherical products returns to normal
8 levels in the U.S. market."

9 46. In the press release, defendants issued the following guidance for
10 2005:

11 Revenue guidance for the full year of 2005 has been reduced from the
12 previous range of \$867 million to \$879 million to a range of \$840
13 million to \$850 million to reflect the lower second quarter revenue
14 guidance and revenue growth going forward in the third and fourth
15 quarters off the lower base. CooperVision revenue estimates have
16 been reduced from a range of \$752 million to \$761 million to a range
17 of \$732 million to \$739 million. Earnings per share for the fiscal
18 2005, excluding nonrecurring acquisition and restructuring charges,
19 remain unchanged in the range of \$3.08 to \$3.18 reflecting
20 management's continued confidence in its ability to generate its
21 projected \$50 million in operational synergies from the
22 CooperVision/Ocular Science combination earlier than previously
23 planned.
24

25 47. The release further represented that "long term outlook for Ocular
26 Sciences' integration and [earnings per share] remain favorable" and that silicone
27 hydrogel lenses would be launched on schedule.
28

1 48. Defendants' representations, reproduced in paragraphs 39-47 above,
2 were materially false and misleading when made because they failed to disclose
3 that:

4 (a) the Company improperly accounted for assets acquired in the
5 Ocular Sciences merger, as reported in the Proxy Statement, by misclassifying
6 intangible assets as tangible ones, which had the effect of lowering amortization
7 expense;

8 (b) the Company's aggressive earnings guidance reflected the
9 improper accounting for intangible assets and was inflated by (among other things)
10 the amount of the understated amortization expense;

11 (c) the merger synergies touted by defendants continued to be
12 unrealistic and were lacking in any reasonable basis;

13 (d) Ocular Sciences had stuffed the channel with its Biomedics
14 products, such that inventories would have to be whittled down before a material
15 amount of new sales could reasonably be expected, which would have a materially
16 negative impact on Cooper's revenues;

17 (e) the Company's silicone hydrogel products would not contribute
18 materially to Cooper's 2005 results and, the Company's lack of a two-week
19 silicone hydrogel product would prevent it from meeting its aggressive growth
20 targets for 2005 and beyond;

21 (f) Cooper and Ocular in fact competed in the two-week lens
22 market, which negatively impacted Cooper's ability to realize the much-hyped
23 synergies from the ocular acquisition, contrary to defendants' representations about
24 the complementariness of Cooper's and Ocular's product lines; and

25 (g) the aggressive revenue and earnings growth targets released by
26 defendants were lacking in any reasonable basis when made and did not reflect
27 realistically achievable results for the combined Company .
28

1 49. On June 7, 2005, the Company reported its results for the second
2 quarter of 2005, ended April 30, 2005, highlighting the following results:

3 -- Revenue \$215.8 million, 79% above the second quarter of 2004,
4 75% in constant currency.

5 -- Operating income, before nonrecurring acquisition and restructuring
6 expenses, \$53.4 million, 92% above the second quarter of 2004; with
7 the nonrecurring expenses included, \$43 million or 54% above last
8 year's second quarter.

9 -- EPS 81 cents before nonrecurring acquisition and restructuring
10 expenses, reported EPS 62 cents; year-to-date EPS \$1.40 before
11 nonrecurring expenses, reported year-to-date EPS \$1.11; trailing
12 twelve months EPS \$2.86 before nonrecurring expenses, \$2.57 with
13 nonrecurring expenses included.

14 -- Cash flow (pretax income from continuing operations plus
15 depreciation and amortization before nonrecurring acquisition and
16 restructuring expenses) per share \$1.22, up from 86 cents in the
17 second quarter of 2004; trailing twelve months \$4.02. During the
18 quarter, Cooper generated \$43 million in operating cash flow, a record
19 for any quarter in the Company's history.

20 50. In the release, Cooper announced that it was lowering 2005 guidance,
21 as follows:

22 -- For fiscal year 2005, Cooper now expects 2005 revenue of \$828
23 million to \$837 million and earnings per share, before nonrecurring
24 acquisition and restructuring expenses, of \$3.18 to \$3.24, assuming an
25 effective tax rate or ETR (provision for taxes divided by income
26 before taxes) of 20%. Previous guidance issued on May 5, 2005 was
27
28

1 revenue of \$840 million to \$850 million and earnings per share before
2 nonrecurring expenses of \$3.08 to \$3.18.

3 51. Later that day, June 7, 2005, defendants hosted a conference call for
4 analysts and investors. During the call, defendant Bender represented that “we are
5 well ahead of where we thought we would be at this time” with the Ocular
6 Sciences integration. Bender further represented that the Company did not lose
7 market share to silicone hydrogel lenses: “At this point, I must tell you, I don't see
8 any impact of the silicone products on our core product in this category which is,
9 of course, our ProClear product.” In responding to an analyst’s question, defendant
10 Bender admitted that the inventory issue was known to him and Company insiders,
11 and that, contrary to repeated representations of the complementary nature of
12 Cooper and Ocular’s product lines, Cooper and Ocular had been taking market
13 share away from each other:

14 CHRIS COOLEY: Just a couple of questions if I may. One, go back to the
15 inventory item, yet once again. Could you help me better understand how --
16 I guess, the question would be simply this. Have you changed your thought
17 process in terms of what level of inventory needs to be maintained in the
18 respective channels both within the independent practitioners, distributors,
19 and chains? Has that affected your forecast as you are looking out going
20 forward at all, or is this inventory that you -- as you alluded to earlier just
21 was excessive after you were able to determine that it was excessive. I'm just
22 trying to get a feel if anything's changed in terms of how you may advance
23 the business.

24 TOM BENDER: Well, let me answer this another way because I -- I mean,
25 we knew we had a problem with sales, with the Ocular's Biomedics. We
26 knew we had that problem. Trying to identify where the (Expletive) problem
27 was, was a problem. The only way I could figure it out was my God we've
28

1 got one source of data. We all use in the industry to try to figure out do we
2 really have a problem here? If silicone hydrogels, as some people might
3 want to think, hurrying that product line, or, in fact do we have another
4 problem? And when I looked, -- we went back and looked, my God two,
5 year's worth of data. Of looking at both Ocular and Cooper's participation in
6 the two-week disposable Sphere market. That's about 52, 53% of all office
7 visits in this country, are for that product, we saw we didn't have a problem.
8 We weren't losing market share. So what the (Expletive) else could it be?

9 And when I looked at that, the only thing I could come up with is we've got
10 something else funny going on here. Which made us go back and look very
11 deeply into some of the sales history of Ocular Sciences' two week
12 disposable product by trade class, Chris. By trade class. And by doing that
13 we have identified, my, gosh, this looks like there's something going on
14 here. And in the meantime, if you recall, and I think you were following
15 Ocular at the time, they were trying to manage their inventory of Biomedic
16 Spheres down, because they wanted to introduce Biomedics Premier and
17 move without having a lot of returns coming back. They wanted to manage
18 that as much as they could.

19 I'm going to tell you apparently it wasn't executed too well and by the way
20 that could be a problem . . . But the point is it's hard to put those together,
21 especially when you are trying to stock product in the doctor's office. So
22 after doing all of that, *we thought we had a pretty good handle on how*
23 *much excess inventory we had, and we started to mess around with our*
24 *guidance*. Because when you looked at the sales, *we knew that the sales*
25 *weren't going to come in* but we knew exactly where it was. We knew it
26 exactly was the two-week products from Ocular Science and we knew it was
27 in the U.S. and it sure in the (Expletive) wasn't our other products. They
28

1 were doing very well and I think you can see it in the way we have reported
2 it.

3 So after doing all of this I have looked at it and I said, you know, I think we
4 -- we being at CooperVision, during 2004, were doing a pretty good job and
5 the good old folks at Ocular because that's where we, *at CooperVision were*
6 *taking market share. We were taking market share away from the*
7 *Company we bought.* But if you put the two together, there's no doubt, there
8 was no impact coming from any one of the other three players in the market
9 in that market segment, when you looked at Cooper and Ocular put together.
10 So that is very clear, so by doing that -- there's been a couple of questions
11 here and how comfortable I am, how confident I am. We are more confident.
12 I hope to God it isn't any worse than this. Because the rest of our business is
13 going to grow. We are going to get through this. We are going to get through
14 this because we are not going to give up market share in the disposable
15 Spherical market in the U.S. You better understand that.

16 ProClear is doing very well, good neighbors. Believe me it's doing well and
17 we've got clinical data that our salespeople use comparing ProClear against
18 the two silicone products and we do perform extremely well in the area that
19 is most important for contact lens wearers, as well as practitioners and that's
20 visual acuity and coverage. That's what's important. So saying all of that, I
21 hope that helps clear up exactly what we're up against and what we are
22 trying to get our arms around. We think we finally have it. I wish to God I
23 had it for Peter, for everybody else the 1st, of May. Apparently I didn't have
24 it, but we think we have it now. I'm not shouting too much, Chris. Are you
25 there. [Emphasis added].

26 52. In response to the press release and conference call, the price of
27 Cooper common stock declined, falling to \$61.08 on June 8, 2005, from \$64.37 per
28

1 share on June 7, 2005, a drop of 5.5%. The price of Cooper securities continued to
2 be artificially inflated however, and defendants' statements as set forth in
3 paragraphs 49-51 were materially false and misleading, because the Company had
4 still not disclosed the following facts:

5 (a) the Company improperly accounted for assets acquired in the
6 Ocular Sciences merger, as set forth in the Proxy Statement, by misclassifying
7 intangible assets as tangible ones, which had the effect of lowering amortization
8 expense;

9 (b) the Company's aggressive earnings guidance reflected the
10 improper accounting for intangible assets and was inflated by (among other things)
11 the amount of the understated amortization expense;

12 (c) the Company's lack of a two-week silicone hydrogel product
13 would prevent it from meeting its still-aggressive guidance for 2005 and beyond;
14 and

15 (d) the aggressive revenue and earnings growth targets
16 disseminated by defendants were still lacking in any reasonable basis and still did
17 not reflect realistically achievable results.

18 53. On September 7, 2005, Cooper issued a press release announcing its
19 results for the third quarter of 2005, ended July 31, 2005, highlighting the
20 following results:

21 -- Revenue \$222.1 million, 72% above the third quarter of 2004, 71%
22 in constant currency.

23 -- Operating income, before nonrecurring acquisition and restructuring
24 expenses, \$56.9 million, 80% above the third quarter of 2004; with
25 nonrecurring acquisition and restructuring expenses included, \$45.7
26 million or 44% above last year's third quarter.
27
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1 -- EPS \$1.03 before nonrecurring acquisition and restructuring
2 expenses; reported EPS 79 cents. Year-to-date EPS \$2.45 before
3 nonrecurring acquisition and restructuring expenses, reported year-to-
4 date EPS \$1.92; trailing twelve months EPS \$3.24 before
5 nonrecurring acquisition and restructuring expenses, \$2.71 with
6 nonrecurring acquisition and restructuring expenses included.

7 -- Cash flow (pretax income from continuing operations plus
8 depreciation and amortization before nonrecurring acquisition and
9 restructuring costs) per share \$1.25, up from 92 cents in the third
10 quarter of 2004; trailing twelve months \$4.35.

11 54. In the release, defendants gave the following, lowered revenue
12 guidance for 2005 and raised the earnings guidance:

13
14 Cooper has updated revenue and EPS guidance for 2005 effective
15 today to include third quarter actual results. Revenue and EPS
16 guidance excluding nonrecurring acquisition and restructuring
17 expenses for the fourth quarter of 2005 and for fiscal years 2006 and
18 2007 remains unchanged. Forward revenue guidance assumes no
19 major changes in foreign currency exchange rates versus 2005 rates.

20 -- For fiscal 2005 Cooper now expects 2005 revenue of \$824 million
21 to \$828 million, and EPS of \$3.38 to \$3.41. Previous 2005 revenue
22 guidance was \$828 million to \$837 million and EPS of \$3.18 to \$3.24.

23 55. Later that day, September 7, 2005, defendants hosted a conference
24 call for analysts and investors. On the call, defendant Bender represented that the
25 inventory issues discussed the prior quarter was behind the Company:

1 Third, I think the third indicator that we believe makes us feel
2 comfortable that this inventory issue is behind us is the late stage BR
3 data. Which clearly indicates that from a market transition standpoint
4 we have not had any erosion of our market share in the disposable
5 sphere category. In fact if anything we've actually gained a little bit.
6 Saying all of this, I think we now feel very comfortable in making the
7 comment that we expect, in constant currency and organic growth,
8 we're looking at double digit growth for CooperVision's business
9 going forward. Certainly in '06 and '07 and we feel pretty comfortable
10 about that, in '06, too.

11 If you look at the revenues of - - we believe the revenues going
12 forward of our disposable spheres will now truly reflect the real
13 demand that we see, certainly in the U.S. data that we purchased. And
14 that is from Health Products Research. We think that the pipeline fill
15 from the old Biometrics products in 2004, we believe is basically all
16 washed out. Secondly, I think the other reasons that we feel confident
17 and optimistic about '06 and '07 is number one - - I mean number two,
18 would be the new product flow that would begin earlier - - I should
19 say later this year, starting in really in October. And I think all of this
20 is going to have a serious impact on CooperVision's business in 2006
21 and 2007.

22
23 56. Defendant Bender also noted that the introduction date of the two-
24 week silicone hydrogel product was moved up and that Cooper would be
25 introducing new products in Japan, a large and growing market:
26
27
28

1 If you take another look at this, you will see that there are two
2 changes from the last quarter. Number one, we have accelerated the
3 introduction of the silicone hydrogel sphere in the U.S. from the end
4 of calendar 2006 now to the middle of 2006. The second change you
5 will see is we've added a new product. And that has a lot to do with
6 our added capacity, with single use products. And that is now we're
7 going to be introducing in the middle of 2006 a single use toric lens
8 for the Japanese market. I think most of that more than half the world
9 market for single use products is in Japan. It is a huge opportunity.
10 And we believe with our leading position, global leading position in
11 toric lenses around the world, this is a superb opportunity for us. And
12 now, we have the capacity to be able to take advantage of that
13 opportunity.

14 57. Defendant Bender also expressed confidence in the Company's ability
15 to meet its guidance for the year, citing a number of factors:

16 TOM BENDER: Let me tackle two or three ways. Number one on
17 Friday, I addressed some of that in the earlier discussion. But the one
18 thing is we truly believe that the pipeline issue or I would say the
19 inventory issue with the Biometrics product line is history. Too many
20 solid indicators of that. And one is sequential. Don't take that lightly.
21 When you throw a product line, or your complete two-week product
22 line, 17% sequentially from quarter to quarter, there is something
23 going on. And we certainly have historical data on the sales of that
24 product line over the last 18 months that would indicate that that's
25 behind us.

26 Secondly, you should know that two months - - the last two months of
27 the quarter were very strong. Strong enough to make us believe that
28

1 U.S. issue is behind us. Because this has been a U.S. issue. Let's not
2 make any light of this. This has been a disposable sphere issue in the
3 U.S. You look at our toric performance, you look at multifocal
4 performance, look at Proclear performance for God's sake, look at our
5 single use performance, this is the future of this Company. That's
6 where the products are going to come from. And they're performing
7 very well.

8 But this has been a serious issue we have had to deal with over the last
9 six to nine months. We do think it is behind us. And because of that,
10 we feel pretty confident.

11 58. In response to these positive representations that the Company has
12 resolved its inventory issues and the confidence expressed by defendant Bender
13 regarding the remainder of the year, the price of Cooper common stock rose, from
14 \$69.55 per share on September 7, 2005, to \$73.60 per share on September 8, 2005,
15 an increase of 5.8%.

16 59. Defendants' representations, reproduced in paragraphs 53-57 above,
17 were materially false and misleading when made because they failed to disclose
18 that:

19 (a) the Company improperly accounted for assets acquired in the
20 Ocular Sciences merger, as set forth in the Proxy Statement, by misclassifying
21 intangible assets as tangible ones, which had the effect of lowering amortization
22 expense;

23 (b) the Company's aggressive earnings guidance reflected the
24 improper accounting for intangible assets and was inflated by (among other things)
25 the amount of the understated amortization expense;

26 (c) the Company's lack of a two-week silicone hydrogel product
27 would prevent it from meeting its still-aggressive guidance for 2005;

1 (d) the aggressive revenue and earnings growth targets
2 disseminated by defendants were still lacking in any reasonable basis and still did
3 not reflect realistically achievable results.

4 60. Defendants Bender, Fruth and Weiss, who began unloading their
5 personally held Cooper stock almost immediately following the merger, stopped
6 selling after September 2005. Among the Individual Defendants, the last tranche of
7 sales were by defendant Bender on September 20, 2005.

8 **THE TRUTH EMERGES**
9

10 61. On November 21, 2005, after the close of ordinary trading, Cooper
11 issued a terse press release announcing that the Company would not meet revenue
12 and earnings guidance, and lowered its guidance for 2005, 2006 and 2007:
13

14 LAKE FOREST, Calif., Nov. 21, 2005 (PRIMEZONE) -- The Cooper
15 Companies, Inc. (NYSE:COO) today lowered revenue and earnings
16 per share estimates for the fourth fiscal quarter of 2005 and for the full
17 fiscal years 2005, 2006 and 2007; confirmed that it will introduce its
18 second generation silicone hydrogel contact lenses in Europe in
19 December and said that its Biomedics XC two-week disposable lens, a
20 unique, more comfortable lens design using biocompatible
21 phosphorylcholine technology that competes favorably with the two-
22 week silicone hydrogel products, will be introduced in the United
23 States in January, two months ahead of schedule. The company also
24 announced that it has advanced the anticipated U.S. launch date for its
25 silicone hydrogel toric lens from the third calendar quarter of 2007 to
26 the first calendar quarter of 2007.

27 * * *
28

1 Revenue estimates for fiscal 2005 have been reduced from a range of
2 \$824 million to \$828 million to a range of \$805 million to \$808
3 million and earnings per share have been lowered from a range of
4 \$3.38 to \$3.41 to a range of \$3.28 to \$3.32.

5 62. News that the Company would issue a negative release had leaked
6 into the market and, as a result, the price of Cooper common stock declined on
7 November 21, 2005, even before the formal announcement after the market close.
8 On November 21, 2005, Cooper's stock price closed at \$64.78, down 10.7% from
9 the \$72.55 close on November 18, 2005, the previous trading day. The full truth
10 about the Company, and the reasons for the lowered guidance was not disclosed in
11 the press release, which was issued after the day's trading session closed, and
12 would have to await the next morning's conference call. Accordingly, Cooper
13 stock remained artificially inflated.

14 63. In a conference call held on November 22, 2005, before the open of
15 ordinary trading, defendants attributed the dramatic reduction in multi-year
16 guidance on a host of factors, including a weak Euro. Contrary to his earlier
17 statements regarding the silicone hydrogel products, defendant Bender admitted
18 that "there is no doubt the silicone hydrogel two-week disposable products have
19 had a major impact on our business in the U.S." Much of the shortfall was
20 attributed to weakness in the two-week disposable market, a market in which,
21 defendant Bender previously represented, Proclear was selling particularly well
22 and was not losing out to silicone hydrogel products. This was also the market in
23 which Cooper experienced inventory, that defendant Bender represented, on
24 September 7, 2005, with great confidence, was behind the Company and would no
25 longer be an issue. It was also the market in which Cooper competed with Ocular
26 Sciences. Defendant Bender stated as follows on the call:

1 Bob, let me make a couple comments here and put a little balance here. The
2 results are not what we wanted, and we don't want anybody to think they are,
3 for God's sake. This is the first time, I want to say, since '96, '97, that our
4 Vision business has not grown faster than the market. That we have not
5 gained market share. I am talking about in constant currency, in organic
6 growth.

7 We're probably going to end up the year around 8% growth for our soft lens
8 product lines. I think the market is -- probably because of all the new
9 products that have been introduced by some very powerful competitors, J&J
10 and CIBA -- I would not be surprised to see the global market grow in
11 organic. I'm talking about constant currency, organic growth, or constant
12 currency growth. Something better than that, probably 9% at least.
13 Obviously the year has not ended yet for these companies.

14
15 So we are not happy with that. *And you can identify almost every bit of it,*
16 *every bit of it, is in the two-week disposable business in the U.S.* And we
17 must stop the bleeding; and by God, we are. We're going to do everything
18 we can. [Emphasis added].

19 64. Defendant Bender also represented that the Company would
20 experience "capacity constraints" in manufacturing the silicone hydrogel products,
21 due to the new manufacturing platform required:

22
23 TOM BENDER: Okay, I will take the first question, Bob, and let you get
24 into the manufacturing, because I think we both have an answer to that.
25 Because there are definitely going to be some capacity constraints as we
26 build up the platform, the manufacturing platform for our silicone product.

1 Which is absolutely a different platform, manufacturing platform than we
2 currently have.

3 65. In response to these revelations, the price of Cooper common stock
4 fell 20.5% to \$51.47, from \$64.78 on November 22, 2005, on unusually heavy
5 trading volume of over 11 million shares.

6 66. Because the Company's Class Period earnings projections reflected
7 the Company's inappropriate accounting for intangible assets (by decreasing
8 amortization expense), the November 21 and November 22 announcements, by
9 finally revealing the Company's realistic earning potential in 2005, removed the
10 artificial inflation to Cooper securities caused by defendants' accounting
11 manipulation, resulting in a massive, 29% market capitalization loss over the two
12 days in which this was disclosed.

13 67. Following these disclosures, one market analyst noted that Cooper
14 management has lost credibility with the market. As quoted in the *Rochester*
15 *Democrat & Chronicle*:

16
17 "Management credibility has been shot out the window in our
18 opinion," wrote Joanne Wuensch, an analyst with Harris Nesbitt in
19 New York, in a report Tuesday. Wuensch downgraded the company's
20 stock from "outperform" to "neutral."

21 "After a tough year of battling competitive silicone hydrogel lens
22 offerings and a year of integrating Ocular Sciences, management does
23 not appear to be gaining rhythm, but still fighting the tide," Wuensch
24 wrote.

25 68. On January 17, 2005, Cooper filed with the SEC its 2005 annual
26 report on Form 10-K. In the report, the Company disclosed that the Company
27 improperly accounted for
28

1 intangible assets acquired in the Ocular Sciences merger. In a Form 8-K filed on
2 January 23, 2005, the Company clarified that it improperly recognized \$30 million
3 to intangible assets other than goodwill, and that it should have allocated \$130
4 million to that category. This had the effect of reducing its reported amortization
5 expense and income in the first three quarters of 2005. The Company reported as
6 follows regarding the matter:

7
8 Item 4.02. Non-Reliance on Previously Issued Financial Statements or
9 a Related Audit Report or Completed Interim Review

10 (a) On January 17, 2006, the audit committee of the board of directors
11 of The Cooper Companies, Inc. (the “Company”), in consultation with
12 management, concluded that previously issued financial statements
13 contained in the Company’s quarterly reports on Form 10-Q for the
14 periods ended January 31, 2005, April 30, 2005 and July 31, 2005
15 should not be relied upon because of errors in those financial
16 statements.

17 As previously reported in the Company’s annual report on Form 10-K
18 for the fiscal year ended October 31, 2005, the Company made an
19 error in its initial allocation of purchase price to customer
20 relationships and manufacturing technology acquired in the purchase
21 of Ocular Sciences, Inc. The Company had originally ascribed \$30
22 million to intangible assets other than goodwill, but subsequently
23 determined that it should have allocated \$130 million to intangible
24 assets other than goodwill, specifically \$70 million to customer
25 relationships and \$60 million to manufacturing technology. This
26 correction resulted in the recognition of additional amortization
27 expense which impacted operating income in the amount of \$0.7
28 million, \$2.2 million, and \$2.2 million in the first, second and third

1 fiscal quarters, respectively. In addition, an adjustment to reduce cost
2 of sales was recorded for \$2.2 million related to certain inventory
3 handling costs which should have been capitalized in the third fiscal
4 quarter. These amounts have been reflected as cost of sales in the
5 fourth fiscal quarter. Also, the Company corrected several items,
6 which were immaterial individually and in the aggregate, which
7 impacted net income in the amounts of \$223,000, \$10,000 and
8 \$178,000 in the first, second and third fiscal quarters, respectively.
9 These corrections are set forth in Note 14, Selected Quarterly
10 Financial Data (Unaudited), to the Company's financial statements for
11 the fiscal year ended October 31, 2005 included in its annual report on
12 Form 10-K, in which the Company reported a material weakness in its
13 internal control over financial reporting identified in connection with
14 the error in the purchase price allocation. The Company's audit
15 committee has discussed with management and the Company's
16 independent registered public accounting firm the matters disclosed in
17 this Item 4.02(a).

18 As a result of the restatement of these amounts, the Company expects
19 to amend as soon as practicable its quarterly reports on Form 10-Q for
20 the periods ended January 31, 2005, April 30, 2005 and July 31, 2005.

21 **Applicability Of Presumption Of Reliance:**
22 **Fraud-On-The-Market Doctrine**

23 69. At all relevant times, the market for Cooper's securities was an
24 efficient market for the following reasons, among others:

25 (a) Cooper's stock met the requirements for listing, and was listed
26 and actively traded on the NYSE, a highly efficient and automated market;

1 (b) As a regulated issuer, Cooper filed periodic public reports with
2 the SEC and the NYSE;

3 (c) Cooper regularly communicated with public investors *via*
4 established market communication mechanisms, including through regular
5 disseminations of press releases on the national circuits of major newswire services
6 and through other wide-ranging public disclosures, such as communications with
7 the financial press and other similar reporting services; and

8 (d) Cooper was followed by several securities analysts employed
9 by major brokerage firms who wrote reports, which were distributed to the sales
10 force and certain customers of their respective brokerage firms. Each of these
11 reports was publicly available and entered the public marketplace.

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

18 **LOSS CAUSATION**

19
20 71. Defendants' wrongful conduct, as alleged herein, directly and
21 proximately caused the damages suffered by plaintiff and the Class.

22 72. During the Class Period, plaintiff and the Class purchased securities
23 of Cooper at artificially inflated prices and were damaged thereby. The price of
24 Cooper common stock declined when the misrepresentations made to the market,
25 and/or the information alleged herein to have been concealed from the market,
26 and/or the effects thereof, were revealed, causing investors' losses.

ADDITIONAL SCIENTER ALLEGATIONS

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

74. In addition, defendants were motivated to engage in the fraud alleged herein so that Cooper insiders, including the Individual Defendants, could sell their personally held Cooper stock at artificially inflated prices. Before the value of Cooper securities collapsed, insiders sold a total of **1,970,233** shares of common stock for proceeds of **\$141,492,613**. A chart detailing the insider sales is attached hereto as Exhibit B.

75. These insider sales were highly suspicious in timing and amount. The selling began after the merger was completed and the bulk ended in September 2005, thereby catching the inflation and avoiding the collapse in November. The amounts involved, as evidenced by the charts, were highly material, particularly for defendants Bender, Weiss and Fruth, who collected proceeds of over \$26 million, \$5.9 million and \$71.6 million, respectively.

FIRST CLAIM
Violation Of Section 10(b) Of The Exchange Act And Rule 10b-5
Promulgated Thereunder Against All Defendants

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2
3 76. Plaintiff repeats and realleges each and every allegation contained
4 above as if fully set forth herein.

5 77. During the Class Period, Cooper and the Individual Defendants, and
6 each of them, carried out a plan, scheme and course of conduct which was intended
7 to and, throughout the Class Period, did: (a) deceive the investing public, including
8 plaintiff and other Class members, as alleged herein; (b) artificially inflate and
9 maintain the market price of Cooper's securities; and (c) cause plaintiff and other
10 members of the Class to purchase Cooper's securities at artificially inflated prices.
11 In furtherance of this unlawful scheme, plan and course of conduct, defendants,
12 and each of them, took the actions set forth herein.

13 78. Defendants (a) employed devices, schemes, and artifices to defraud;
14 (b) made untrue statements of material fact and/or omitted to state material facts
15 necessary to make the statements not misleading; and (c) engaged in acts,
16 practices, and a course of business that operated as a fraud and deceit upon the
17 purchasers of the Company's securities in an effort to maintain artificially-high
18 market prices for Cooper's securities in violation of Section 10(b) of the Exchange
19 Act and Rule 10b-5. All defendants are sued either as primary participants in the
20 wrongful and illegal conduct charged herein or as controlling persons as alleged
21 below.

22 79. In addition to the duties of full disclosure imposed on defendants as a
23 result of their making of affirmative statements and reports, or participation in the
24 making of affirmative statements and reports to the investing public, defendants
25 had a duty to promptly disseminate truthful information that would be material to
26 investors in compliance with the integrated disclosure provisions of the SEC as
27 embodied in SEC Regulation S-X (17 C.F.R. Sections 210.01 *et seq.*) and
28

1 Regulation S-K (17 C.F.R. Sections 229.10 *et seq.*) and other SEC regulations,
2 including accurate and truthful information with respect to the Company's
3 operations, financial condition and earnings so that the market price of the
4 Company's securities would be based on truthful, complete and accurate
5 information.

6 80. Cooper and the Individual Defendants, individually and in concert,
7 directly and indirectly, by the use, means or instrumentalities of interstate
8 commerce and/or of the mails, engaged and participated in a continuous course of
9 conduct to conceal adverse material information about the business, operations and
10 future prospects of Cooper as specified herein.

11 81. These defendants employed devices, schemes and artifices to defraud,
12 while in possession of material adverse non-public information and engaged in
13 acts, practices, and a course of conduct as alleged herein in an effort to assure
14 investors of Cooper's value and performance and continued substantial growth,
15 which included the making of, or the participation in the making of, untrue
16 statements of material facts and omitting to state material facts necessary in order
17 to make the statements made about Cooper and its business operations and future
18 prospects in the light of the circumstances under which they were made, not
19 misleading, as set forth more particularly herein, and engaged in transactions,
20 practices and a course of business that operated as a fraud and deceit upon the
21 purchasers of Cooper's securities during the Class Period.

22 82. The Individual Defendants' primary liability, and controlling person
23 liability, arises from the following facts: (a) the Individual Defendants were high-
24 level executives and/or directors at the Company during the Class Period; (b) the
25 Individual Defendants were privy to and participated in the creation, development
26 and reporting of the Company's internal budgets, plans, projections and/or reports;
27 and (c) the Individual Defendants were aware of the Company's dissemination of
28

1 information to the investing public, which they knew or recklessly disregarded was
2 materially false and misleading.

3 83. The defendants had actual knowledge of the misrepresentations and
4 omissions of material facts set forth herein, or acted with reckless disregard for the
5 truth in that they failed to ascertain and to disclose such facts, even though such
6 facts were available to them. Such material misrepresentations and/or omissions
7 by defendants were done knowingly or recklessly and for the purpose and effect of
8 concealing Cooper's operating condition and future business prospects from the
9 investing public and supporting the artificially inflated price of its securities. As
10 demonstrated by defendants' overstatements and misstatements of the Company's
11 business, operations and earnings throughout the Class Period, defendants, if they
12 did not have actual knowledge of the misrepresentations and omissions alleged,
13 were reckless in failing to obtain such knowledge by deliberately refraining from
14 taking those steps necessary to discover whether those statements were false or
15 misleading.

16 84. As a result of the dissemination of the materially false and misleading
17 information and failure to disclose material facts, as set forth above, the market
18 price of Cooper's securities was artificially-inflated during the Class Period. In
19 ignorance of the fact that market prices of Cooper's publicly-traded securities were
20 artificially inflated, and relying directly or indirectly on the false and misleading
21 statements made by defendants, or upon the integrity of the market in which the
22 securities trade, and/or on the absence of material adverse information that was
23 known to or recklessly disregarded by defendants but not disclosed in public
24 statements by defendants during the Class Period, plaintiff and the other members
25 of the Class acquired Cooper securities during the Class Period at artificially-high
26 prices and were damaged thereby.

1 85. At the time of said misrepresentations and omissions, plaintiff and
2 other members of the Class were ignorant of their falsity and believed them to be
3 true. Had plaintiff and the other members of the Class and the marketplace known
4 of the true financial condition and business prospects of Cooper, which were not
5 disclosed by defendants, plaintiff and other members of the Class would not have
6 purchased or otherwise acquired their Cooper securities; or, if they had acquired
7 such securities during the Class Period, they would not have done so at the
8 artificially inflated prices that they paid.

9 86. By virtue of the foregoing, defendants have violated Section 10(b) of
10 the Exchange Act, and Rule 10b-5 promulgated thereunder.

11 87. As a direct and proximate result of defendants' wrongful conduct,
12 plaintiff and the other members of the Class suffered damages in connection with
13 their respective purchases and sales of the Company's securities during the Class
14 Period.

15
16 **SECOND CLAIM**
17 **Violation Of Section 20(a) Of**
The Exchange Act Against the Individual Defendants

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

20 89. The Individual Defendants acted as controlling persons of Cooper
21 within the meaning of Section 20(a) of the Exchange Act as alleged herein. By
22 virtue of their high-level positions, and their ownership and contractual rights,
23 participation in and/or awareness of the Company's operations and/or intimate
24 knowledge of the statements filed by the Company with the SEC and disseminated
25 to the investing public, the Individual Defendants had the power to influence and
26 control and did influence and control, directly or indirectly, the decision-making of
27 the Company, including the content and dissemination of the various statements
28

1 that plaintiff contends are false and misleading. The Individual Defendants were
2 provided with or had unlimited access to copies of the Company's reports, press
3 releases, public filings and other statements alleged by plaintiff to be misleading
4 prior to and/or shortly after these statements were issued and had the ability to
5 prevent the issuance of the statements or cause the statements to be corrected.

6 90. In particular, the Individual Defendants had direct and supervisory
7 involvement in the day-to-day operations of the Company and, therefore, are
8 presumed to have had the power to control or influence the particular transactions
9 giving rise to the securities violations as alleged herein, and exercised the same.

10 91. As set forth above, Cooper and the Individual Defendants each
11 violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this
12 Complaint. By virtue of their positions each as a controlling person, the Individual
13 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct
14 and proximate result of Cooper's and the Individual Defendants' wrongful
15 conduct, plaintiff and other members of the Class suffered damages in connection
16 with their purchases of the Company's securities during the Class Period.

17
18 **PRAYER FOR RELIEF**

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

20 A. Determining that this action is a proper class action, designating
21 plaintiff as lead plaintiff and certifying plaintiff as class representatives under Rule
22 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as lead counsel;

23 B. Awarding compensatory damages in favor of plaintiff and the other
24 Class members against all defendants, jointly and severally, for all damages
25 sustained as a result of defendants' wrongdoing, in an amount to be proven at trial,
26 including interest thereon;

1 C. Awarding plaintiff and the Class their reasonable costs and expenses
2 incurred in this action, including counsel fees and expert fees; and

3 D. Such other and further relief as the Court may deem just and proper.

4 **JURY TRIAL DEMANDED**

5 Plaintiff hereby demands a trial by jury.

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7 DATED: February 15, 2006

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