Attorneys for Plaintiffs

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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| and , Individually and on Behalf of All Others Similarly Situated,<br><br>Plaintiffs,<br><br>vs.<br><br>SPECTRUM PHARMACEUTICALS, INC., RAJESH C. SHROTRIYA, BRETT L. SCOTT and JOSEPH KENNETH KELLER,<br><br>Defendants. | Case No.<br><br>CLASS ACTION<br><br>COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS<br><br>DEMAND FOR JURY TRIAL |

## INTRODUCTION

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of Spectrum Pharmaceuticals, Inc. ("Spectrum" or the "Company") between August 8, 2012 and March 12, 2013, inclusive (the "Class Period"), against Spectrum and certain of its former and/or current officers and/or directors for violations of the Securities Exchange Act of 1934 (the "1934 Act"). These claims are asserted against Spectrum and certain of its officers and/or directors who made materially false and misleading statements during the Class Period in press releases, analyst conference calls, and filings with the SEC.

2. Spectrum is a biotechnology company with integrated commercial and drug development operations with a focus on hematology and oncology. In the United States, Spectrum primarily markets two oncology drugs, FUSILEV® (levoleucovorin) ("FUSILEV") and ZEVALIN®.

3. Specifically, throughout the Class Period, defendants violated the federal securities laws by disseminating false and misleading statements to the investing public in connection with Spectrum's oncology drug FUSILEV, a folate analog used for the treatment of patients with advanced metastatic colorectal cancer, and concealed the impact that the increased availability of a competing generic drug (leucovorin) would have on sales of FUSILEV. As a result of defendants' false statements, Spectrum's stock traded at artificially inflated prices during the Class Period, reaching a high of $13.05 per share on September 18, 2012.

4. On March 12, 2013, after the market closed, Spectrum issued a press release providing its full-year revenue outlook. The Company reported that sales of FUSILEV, the Company's most revenue-generating drug, would be dropping significantly due to anticipated changes in ordering patterns for FUSILEV, due in part to the recent stabilization of the folate analog market. The Company reported sales will be approximately $10 to $15 million for the first quarter

of 2013, and approximately $80 to $90 million for the fiscal year 2013. Additionally, the Company forecast full-year 2013 revenues in the range of $160 to $180 million, much lower than analysts' revenue expectations of $297.33 million for 2013. The release stated in part:

> Based upon recent communications with customers, Spectrum Pharmaceuticals anticipates a change in ordering patterns of FUSILEV® following the recent stabilization of the folate analog market. The Company now expects that FUSILEV sales will be approximately $10 to $15 million for the first quarter of the year, and approximately $80 to $90 million for the 2013 fiscal year. The Company noted that, while hospital sales are shifting to generics, the end-user demand for FUSILEV remains stable in the clinics, and the Company continues to anticipate solid demand in this segment in 2013.

5. On this news, Spectrum's stock plummeted $4.64 per share to close at $7.79 per share on March 13, 2013, a one-day decline of 37% on volume of 22.5 million shares.

6. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

(a) Once the availability of leucovorin, a generic folate analog, increased, Spectrum's sales of FUSILEV would plummet.

(b) The purported advantages of FUSILEV over leucovorin would not be sufficient for clinics and hospitals to continue to opt for the more expensive FUSILEV once leucovorin was available in larger quantities.

(c) Based upon the above, defendants lacked a reasonable basis for their positive statements about the Company and its revenue and earnings during the Class Period.

7. As a result of defendants' false statements, Spectrum stock traded at artificially inflated levels during the Class Period. However, after the above revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down 40% from their Class Period high.

## JURISDICTION AND VENUE

8. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the 1934 Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5) by the U.S. Securities and Exchange Commission ("SEC"). This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and §27 of the 1934 Act (15 U.S.C. §78aa).

9. Venue is proper in this District pursuant to §27 of the 1934 Act and 28 U.S.C. §1391(b), as many of the acts and practices complained of herein occurred in substantial part in this District.

10. Spectrum maintains its principal executive offices at 11500 South Eastern Avenue, Suite 240, Henderson, Nevada 89052. Certain of the acts and conduct complained of herein, including dissemination of materially false and misleading information to the investing public, occurred in this District.

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

## PARTIES

12. (a) Plaintiff purchased the common stock of Spectrum during the Class Period as set forth in the certification attached hereto and was damaged as the result of defendants' wrongdoing as alleged in this complaint.

(b) Plaintiff purchased the common stock of Spectrum during the Class Period as set forth in the certification attached hereto and was damaged as the result of defendants' wrongdoing as alleged in this complaint.

13. Defendant Spectrum is a biotechnology company with integrated commercial and drug development operations with a focus on hematology and oncology.

14. Defendant Rajesh C. Shrotriya ("Shrotriya") is, and at all relevant times was, the Company's Chief Executive Officer ("CEO"), President and Chairman of the Board. During the Class Period, Shrotriya sold 735,993 shares of his Spectrum stock for proceeds of nearly $8.8 million. This was in addition to total compensation of $25.2 million Shrotriya received for 2011.

15. Defendant Brett L. Scott ("Scott") is, and at all relevant times was, the Company's Acting Chief Financial Officer ("CFO") and Senior Vice President. During the Class Period, Scott sold 6,000 shares of his Spectrum stock for proceeds of $72,000. Scott was also compensated in excess of $1.5 million for 2011.

16. Defendant Joseph Kenneth Keller ("Keller") is, and at all relevant times was, the Company's Chief Operating Officer ("COO") and Executive Vice President.

17. The defendants named above in ¶¶14-16 are referred to herein as the "Individual Defendants."

18. The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of Spectrum's quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. They were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions with the Company, and their access to material non-public information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then

materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein.

## FRAUDULENT SCHEME AND COURSE OF BUSINESS

19. Defendants are liable for: (i) making false statements; or (ii) failing to disclose adverse facts known to them about Spectrum. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Spectrum common stock was a success, as it: (i) deceived the investing public regarding Spectrum's prospects and business; (ii) artificially inflated the price of Spectrum common stock; (iii) allowed the Individual Defendants to sell over $8.85 million worth of their own Spectrum stock at artificially inflated prices; and (iv) caused plaintiffs and other members of the Class to purchase Spectrum common stock at inflated prices.

20. Defendants were also compensated based on Spectrum's stock price maintaining certain levels over specified periods of time. For 2011, such compensation was tied to Spectrum's market capitalization exceeding $750 million over a specified time period. For subsequent years, the market capitalization target for compensation was $1 billion. Depending on the number of shares outstanding, this meant Spectrum's stock price needed to trade above $13.00 per share. Had defendants fully disclosed the impact the increased availability of leucovorin would have on the Company's FUSILEV sales, Spectrum's stock would have declined and the Company would have fallen well short of its market capitalization targets.

## BACKGROUND

21. Spectrum is a biotechnology company with integrated commercial and drug development operations with a focus on hematology and oncology. In the United States, it markets two oncology drugs, FUSILEV and ZEVALIV®, and has two drugs, apaziquone and belinostat, in late-stage development, along with a pipeline of drug candidates.

22. FUSILEV is a folate analog formulation and the pharmacologically active isomer (the levo-isomer) of the racemic compound, levoleucovorin. FUSILEV rescue is indicated after high-dose methotrexate therapy in patients with osteosarcoma. FUSILEV has been designated as an orphan drug for its approved indications.

23. The key competitive formulation to FUSILEV was a generic drug, leucovorin. In 2008 and 2009, leucovorin supplies declined as one manufacturer, Teva Pharmaceuticals Industries Ltd., reported low stockpiles due to increased demand, and another, Bedford Laboratories, stopped production due to expansion of its facility. These shortages of leucovorin, which were the subject of Food and Drug Administration ("FDA") alerts, represented a huge opportunity for Spectrum, as it was able to increase its sales of FUSILEV. Sales rapidly increased, with revenues for 2010 up 160% over 2009. However, analysts expressed concern that sales of FUSILEV would suffer once leucovorin supplies increased. This became particularly important in 2012, as increased availability of leucorovin grew increasingly imminent. Defendants continually dismissed such concerns, claiming sales of FUSILEV would not be adversely affected by increased supplies of leucovorin.

24. On December 9, 2011, Spectrum issued a press release entitled "Spectrum Pharmaceuticals Affirms Strong Patent Protection for FUSILEV® (levoleucovorin) Through December 31, 2019," which stated in part:

> Spectrum Pharmaceuticals, a biotechnology company with fully integrated commercial and drug development operations with a primary focus in hematology and oncology, affirmed today that the U.S. Food & Drug Administration (FDA) has granted FUSILEV® (levoleucovorin) "Orphan Drug" exclusivity for use in combination chemotherapy with 5-fluorouracil in the palliative treatment of patients with advanced metastatic colorectal cancer. In addition, FUSILEV therapeutic compositions are protected under a US Patent which expires at the end of December 2019. This is a composition of matter patent claiming a therapeutically effective amount of purified levoleucovorin. The Company has already filed a patent extension application.

"We are aware that a company has filed an Abbreviated New Drug Application for the generic version of FUSILEV," said Rajesh C. Shrotriya, MD., Chairman, Chief Executive Officer, and President of Spectrum Pharmaceuticals. "While we recognize that such filings are not unusual given that FUSILEV has reached significant revenue milestones, we are confident that our exclusivity position is strong. Our Orphan Drug exclusivity protects FUSILEV from generic levoleucovorin competition for the next seven years. In addition, we believe our intellectual property protecting FUSILEV is strong and we plan to vigorously defend it to the full extent of the law."

**DEFENDANTS' FALSE AND MISLEADING STATEMENTS ISSUED DURING THE CLASS PERIOD**

25. On August 8, 2012, Spectrum issued a press release announcing its second quarter 2012 financial results. The Company reported net income of $18.1 million, or $0.29 diluted earnings per share ("EPS"), and revenue of $68.7 million for the quarter ending June 30, 2012. Additionally, the Company reported record FUSILEV revenue of $56.6 million. The release stated in part:

"The second quarter was a historic period for Spectrum, during which we had record revenues and strong profits," said Rajesh C. Shrotriya, MD, Chairman, Chief Executive Officer, and President of Spectrum Pharmaceuticals. "These are exciting times at Spectrum, and we expect several key catalysts before the end of the year. Based on our current product portfolio, strong financial position, robust pipeline and active business development, we are in a formidable position to further grow our company over the next 5 years."

26. After releasing its second quarter 2012 financial results on August 8, 2012, Spectrum hosted a conference call with analysts, investors and media representatives, during which defendant Shrotriya represented:

[ANALYST:] Raj, I think one of the other questions linked to FUSILEV, just pick up where Joe Pantginis left off is, that there's a common perception that once the generic leucovorin shortage is alleviated, that basically you guys are toast. And so what I'd like to hear from you is number one, what's your understanding about the recent developments in the leucovorin shortage? And number two, assuming that at some point in the future the generic leucovorin does make it back to the marketplace, how does Spectrum continue to gain further share against generic equivalent?

[SHROTRIYA:] Mike, that's a very good question. First thing let me say that it's a pity that, that question keeps coming up for the last seven or eight quarters. I've heard that the dating for approval on April 28 last year, when we got approval,

somebody put out a blog saying that this drug is going to be – Spectrum is going to go down the hill and we lost a huge market cap on that day, on a day when we got approval for FUSILEV.

Quarter after quarter, around our earnings release there are some blogs [that] appear and misinformation appears. And that has absolutely no basis. That information appears with trying to manipulate our stock or some malicious intent. In fact, numbers speak for themselves. I think people have to understand that FUSILEV is not leucovorin generic, which is a mixture of 50% biologically inactive dextro form and 50% levo form. That drug has been around for 60 years.

In Europe, there is no shortage of generic leucovorin. And still the sales of FUSILEV or levoleucovorin in Europe and Japan ex-US are close to between $150 million, $200 million a year. And this drug has been available for over 15 years ex-US. So we believe, not only the fact that FUSILEV got approval in 2011 as compared to generic leucovorin approval of 1952, the fact that ZEVALIN has a unique genocode should clearly tell people who are educated enough to understand the marketing and selling of oncology drugs, that it is differentiated product and it has nothing to do with generic leucovorin. That's number one.

Number two, generic companies come in and out of market. The shortage of generic leucovorin, why is it shortage generic leucovorin? There are many companies that make it. They will compete with each other. There are companies that will get approval, more companies will get generic approval. In fact, as generic leucovorin supplies increase in the marketplace, so in other words, the shortage is abating, FUSILEV sales are continuing to grow. So the penetration and traction of FUSILEV is sustainable. And I believe the generic companies will compete with themselves, not with FUSILEV.

27. Immediately after this news, Shrotriya began selling his shares of Spectrum, selling $2.6 million worth of Spectrum stock in mid August 2012.

28. On November 7, 2012, Spectrum issued a press release announcing third quarter 2012 financial results. The Company reported net income of $21.3 million, or $0.33 diluted EPS, and revenue of $69 million for the quarter ending September 30, 2012. Additionally, the Company reported expectations of pro-forma revenue to exceed $300 million in 2012, up from previous guidance of around $300 million. The release stated in part:

"The third quarter marks the eighth consecutive profitable quarter that has helped Spectrum establish a great foundation and platform to attain additional growth," said Rajesh C. Shrotriya, M.D., Chairman, President and Chief Executive

> Officer of Spectrum Pharmaceuticals, Inc. "Diversification is key to our strategy, and we took a major step in that direction by completing the acquisition of Allos in September and adding a third product, FOLOTYN, to our portfolio. Four years ago we were primarily a FUSILEV company with limited cash. Today, Spectrum has FUSILEV, worldwide ZEVALIN, and FOLOTYN, along with a robust, maturing pipeline, and a strong balance sheet."

29. After releasing its third quarter 2012 financial results on November 7, 2012, Spectrum hosted a conference call with analysts, investors and media representatives, during which defendants represented the following

> [KELLER:] The second area I want to cover today is the progress we made in building and refitting our commercial organization to accelerate the growth of our three marketed oncology drugs. We are starting this process from a solid foundation. Because of changes in buying patterns, there can be some fluctuation in FUSILEV sales, as we saw this quarter. Importantly, ***FUSILEV demand remains strong despite readily-available supplies of generic leucovorin***. Market research shows that 75% of physicians say that generic leucovorin is available without difficulty. It is clear that physicians are continuing to choose FUSILEV even when other options are available. This quarter there was a 13% increase in the number of accounts ordering FUSILEV. When we look at market penetration over the past 12 months, FUSILEV penetration is up from 29% in the last quarter to 31% in this quarter, and we believe there is room for improvement.
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> [SHROTRIYA:] I'm looking for a day when the market is over-flooded with all genetic Leucovorin supplies and they fight with each other and kill each other and Spectrum's FUSILEV will keep performing on its growth trajectory that it has been doing in the past. And all the naysayers, all the people who believe that somehow FUSILEV sales are going to go fall off the cliff, we have proven them wrong for eight quarters and you must take my word for it. We have proved it forever.

30. On November 15, 2012, Spectrum attended a Credit Suisse Group AG Healthcare Conference with analysts, investors and media representatives, during which defendant Shrotriya represented the following:

> As you will see, our FUSILEV sales have been growing consistently quarter after quarter. The reason for that is that we have more clinics, more clinicians, and more physicians ordering FUSILEV quarter after quarter. In fact, our estimate is that in last quarter 31% penetration has occurred of our drug and there are more accounts ordering. Repeated orders are coming for FUSILEV.

> We have a dedicated sales force that promotes FUSILEV. In fact, a big thing now all of our sales force, combined sales force of Allos Therapeutics and combined sales force of Spectrum Pharmaceuticals, they both will now together promote FUSILEV. Every sales rep in the Spectrum while [sic] now promote all three drugs – FUSILEV, ZEVALIN, and Folotyn.

31. On December 12, 2012, Spectrum attended an Oppenheimer Holdings Inc. Healthcare Conference with analysts, investors and media representatives, during which defendant Shrotriya represented the following:

> [SHROTRIYA:] Let me talk briefly about FUSILEV. FUSILEV is a differentiated, only branded folate analog that is approved for metastatic colorectal cancer. Colorectal cancer is the third-most frequently diagnosed cancer in men and women, and it is the second-leading cause of cancer death in men and women in the United States.
>
> And as you will see, this latest study that was published in JCO that shows in a head-to-head comparison against generic leucovorin, which is a mixture of dextro form and levo form, a 50-50 mixture, it shows that the patients on FUSILEV live longer and, in fact, they had less side effects. It is statistically significant, less side effects.
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> [AUDIENCE MEMBER:] I was curious about pricing and pricing discounts. Are you being forced to offer discounts to larger groups?
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> [SHROTRIYA:] We do not give any special discounts. Whatever discounting is practiced in the health industry, that's all we do.
>
> For example, one of the ways you can judge us, the way the average sales price is. If the company discounts, that adversely affects the average sales price of the drug. Our FUSILEV sales price, for example, has been going up. The average sales price of FUSILEV has grown from $160 per vial to $190 per vial over the three quarters. So, therefore, you can see that it has not adversely affected the ASP. This Company would go out and give huge discounts to anybody, then it will erode the average sales price.

32. Following these statements, Shrotriya sold $4.2 million worth of his Spectrum stock at the end of December 2012.

33. On February 21, 2013, Spectrum issued a press release announcing its fourth quarter and full-year 2012 financial results. The Company reported net income of $8.6 million, or $0.13

diluted EPS, and revenue of $70.1 million for the fourth quarter ended December 31, 2012. Additionally, the Company reported net income of $94.5 million, or $1.46 diluted EPS, and revenue of $267.7 million for the period ended December 31, 2012. The release stated in part:

> "With substantial year-over-year sales growth, 2012 stands out as a transformational year for Spectrum and provides a solid platform for anticipated strong growth in sales and operating income in 2013," stated Rajesh C. Shrotriya, M.D., Chairman, President and Chief Executive Officer of Spectrum Pharmaceuticals, Inc. "FUSILEV® sales volume was up in the fourth quarter in a competitive environment. We also diversified our commercial portfolio through the addition of FOLOTYN® last fall, and FOLOTYN demonstrated robust sales in the most recent quarter. As we enhanced our global footprint and increased our commercial and market penetration, we also expanded our senior commercial team and implemented a new structure to allow our sales force to be even more customer-facing."

34. After releasing its fourth quarter and full-year 2012 financial results on February 21, 2013, Spectrum hosted a conference call with analysts, investors and media representatives, during which defendants represented the following:

> [SHROTRIYA:] We are very excited about the outlook for the Company. Last year, FUSILEV grew 56% in unit volume and 33% in dollar sales. FUSILEV demand remains strong, and we continue to see opportunities to expand its use.
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> * * *
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> [KELLER:] In the second half of 2012, our FUSILEV business shifted more towards accounts qualified for government pricing especially 340B purchasing. While in 2012, FUSILEV unit sales increased approximately 56% over 2011, government rebates inclusive of 340B chargebacks increased approximately tenfold from $3.8 million in 2011 to $47.3 million in 2012. Our market research shows that this shift is largely complete, and going forward, we expect stable demand in this segment. Currently, approximately 75% of total FUSILEV business resides in the clinic segment. This creates a very strong base of FUSILEV business on which we can build upon and focus our promotional efforts against.
>
> To reinforce this, I'm pleased to share with you that the number of clinics purchasing FUSILEV continues to grow and end-user demand year-to-date in 2013 is higher than in December of 2012. We expect this trend to continue throughout 2013.
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> * * *

> So when we look at FUSILEV business right now, what we see is end-user demand, customer generated demand is very, very stable right now. In fact, when you look at the first few weeks of this year, and we have data all the way through January, the demand is actually higher than it was in December. So we feel that the underlying demand is very stable. Net purchasing patterns do change, but the underlying demand is very, very solid.
>
> The second point I think that will help to clarify it is today, 75% of FUSILEV business is in the clinic setting. That is a setting that is very, very sticky for FUSILEV. Once accounts are using this product, it is very rare rarely do they go back to generic Leucovorin. So that gives us a nice place to build upon and really use our new commercial organization to drive and grow the business in that segment from where we are right now.

35. On March 12, 2013, Spectrum's stock closed at $12.43 per share. After the market closed, Spectrum issued a press release providing its full-year revenue outlook. The Company reported that sales of FUSILEV, the Company's most revenue-generating drug, would be dropping significantly due to anticipated changes in ordering patterns for FUSILEV, due in part to the recent stabilization of the folate analog market. The Company reported sales will be approximately $10 to $15 million for the first quarter of 2013, and approximately $80 to $90 million for the fiscal year 2013. Additionally, the Company forecast full-year 2013 revenues in the range of $160 to $180 million, much lower than analysts' revenue expectations of $297.33 million for 2013. The release stated in part:

> Based upon recent communications with customers, Spectrum Pharmaceuticals anticipates a change in ordering patterns of FUSILEV® following the recent stabilization of the folate analog market. The Company now expects that FUSILEV sales will be approximately $10 to $15 million for the first quarter of the year, and approximately $80 to $90 million for the 2013 fiscal year. The Company noted that, while hospital sales are shifting to generics, the end-user demand for FUSILEV remains stable in the clinics, and the Company continues to anticipate solid demand in this segment in 2013. The Company believes the majority of the impact from the change in ordering patterns will be reflected in the first half of 2013 and expects to return to a run-rate that more closely aligns with end-user demand by the end of the year.

36. On this news, Spectrum's stock plummeted $4.64 per share to close at $7.79 per share on March 13, 2013, a one-day decline of 37% on volume of 22.5 million shares, 28 times Spectrum's average trading volume.

37. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

(a) Once the availability of leucovorin increased, Spectrum's sales of FUSILEV would plummet.

(b) The purported advantages of FUSILEV over leucovorin would not be sufficient for clinics and hospitals to continue to opt for the more expensive FUSILEV once leucovorin was available in larger quantities.

(c) Based upon the above, defendants lacked a reasonable basis for their positive statements about the Company and its revenue and earnings during the Class Period.

38. As a result of defendants' false statements, Spectrum stock traded at artificially inflated levels during the Class Period. However, after the above revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down 40% from their Class Period high.

**LOSS CAUSATION**

39. During the Class Period, as detailed herein, the defendants made false and misleading statements and engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of Spectrum common stock and operated as a fraud or deceit on Class Period purchasers of Spectrum common stock by misrepresenting the Company's business and prospects. Later, when the defendants' prior misrepresentations and fraudulent conduct became apparent to the market, the price of Spectrum common stock fell precipitously, as the prior artificial inflation came

out of the price over time. As a result of their purchases of Spectrum common stock during the Class Period, plaintiffs and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

**NO SAFE HARBOR**

40. Spectrum's verbal "Safe Harbor" warnings accompanying its oral forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

41. The defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of Spectrum who knew that the FLS was false. None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions 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.

**CLASS ACTION ALLEGATIONS**

42. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired Spectrum common stock during the Class Period (the "Class"). Excluded from the Class are defendants and their families, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

43. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Spectrum has over 60.1 million shares of stock outstanding, owned by hundreds if not thousands of persons.

44. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) whether the 1934 Act was violated by defendants;

(b) whether defendants omitted and/or misrepresented material facts;

(c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of Spectrum common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

45. Plaintiffs' claims are typical of those of the Class because plaintiffs and the Class sustained damages from defendants' wrongful conduct.

46. Plaintiffs will adequately protect the interests of the Class and have retained counsel who are experienced in class action securities litigation. Plaintiffs have no interests which conflict with those of the Class.

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

## COUNT I

### For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

48. Plaintiffs incorporate ¶¶1-47 by reference.

49. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

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

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiffs and others similarly situated in connection with their purchases of Spectrum common stock during the Class Period.

51. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Spectrum common stock. Plaintiffs and the Class would not have purchased Spectrum common stock at the prices they paid, or at all, if they had been aware that the market price had been artificially and falsely inflated by defendants' misleading statements.

## COUNT II

### For Violation of §20(a) of the 1934 Act Against All Defendants

52. Plaintiffs incorporate ¶¶1-51 by reference.

53. The Individual Defendants acted as controlling persons of Spectrum within the meaning of §20(a) of the 1934 Act. By virtue of their positions with the Company, and ownership of Spectrum stock, the Individual Defendants had the power and authority to cause Spectrum to engage in the wrongful conduct complained of herein. Spectrum controlled the Individual Defendants and all of its employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

## PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment as follows:

A. Determining that this action is a proper class action, designating plaintiffs as Lead Plaintiffs and certifying plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure and plaintiffs' counsel as Lead Counsel;

B. Awarding plaintiffs and the members of the Class damages, including interest;

C. Awarding plaintiffs' reasonable costs and attorneys' fees; and

D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED:

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