

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
NORTHEASTERN DIVISION

RONALD KASSOVER, On Behalf of Himself	)	Civ. Action No.
and All Others Similarly Situated,	)	
	)	<b><u>CLASS ACTION</u></b>
Plaintiff,	)	
	)	<b>COMPLAINT FOR VIOLATION OF</b>
vs.	)	<b>THE FEDERAL SECURITIES LAWS</b>
	)	
KING PHARMACEUTICALS, INC.,	)	
JOHN M. GREGORY,	)	
JEFFERSON J. GREGORY,	)	
JOSEPH R. GREGORY, KYLE P. MACIONE,	)	
JAMES P. LATFANZI,	)	
CREDIT SUISSE FIRST BOSTON	)	<b><u>DEMAND FOR JURY TRIAL</u></b>
CORPORATION, J.P. MORGAN	)	
SECURITIES, INC., BANC OF AMERICA	)	
SECURITIES, INC., and UBS WARBURG LLC,	)	
	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

1. This is an action on behalf of purchasers of King Pharmaceuticals. Inc. (“King” or the “Company”) publicly traded securities during the period from February 16, 2000 to March 10, 2003 (the “Class Period”). King is vertically integrated pharmaceutical company that develops, manufactures, markets and sell primarily branded prescription pharmaceutical products.

2. During the Class Period, defendants caused King’s shares to trade at artificially inflated levels through the issuance of false and misleading financial statements. While the stock was inflated, King completed two secondary stock offerings, raising more than \$900 million in proceeds, including a November 1, 2001 offering of 20,500,000 shares of King stock at \$38.00 per share that raised \$588,800,000 for the Company after underwriting discounts and commissions (the “November 2001 Offering”). The Registration Statement and Prospectus issued pursuant to the November 2001 Offering (the “Prospectus” or “Registration Statement”) and an April 2000 offering contained the Company\*s false financial statements.

1. Ultimately, on March 11, 2003, the Company disclosed an investigation by the Securities and Exchange Commission ("SEC") into the Company's rebates to distributors in prior years. On this news the Company's stock price declined to as low as \$11.60 before closing at \$12.17, on volume of 19.5 million shares, a decline of 73% from the Class Period high of \$46.05.<sup>1</sup>

### **JURISDICTION AND VENUE**

4. The claims asserted below arise under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77k, 77l(a)(2), and 77o, and Sections 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5, and Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

5. Jurisdiction is conferred upon this Court by Section 27 of the Exchange Act, 15 U.S.C. §78aa, 28 U.S.C. §§ 1331 and 1337 and Section 22 of the Securities Act, 15 U.S.C. § 77v.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) and Section 22 of the Securities Act. Many of the acts and transactions constituting the violations of law described in this complaint occurred within this judicial district.

7. In connection with the acts alleged herein, the defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the United States mails and wire services.

### **THE PARTIES**

8. Plaintiff purchased King's publicly traded securities as detailed in the attached Certification and was damaged thereby.

9. Defendant King is a vertically integrated pharmaceutical company that develops, manufactures, markets and sells primarily branded prescription pharmaceutical products.

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<sup>1</sup> Unless noted otherwise, all share and per share amounts are adjusted to reflect a 3 for 2 stock split in June 2000 and a 4 for 3 stock split in July 2001.

10. Defendant John M. Gregory (“John Gregory”) served as Chairman and CEO of the Company until June 2002. He signed the Registration Statement for the November 2001 Offering.

11. Defendant Jefferson J. Gregory (“Jefferson Gregory”) has been Chairman and CEO of the Company since June 2002. Prior to that he served as President and CEO of the Company. He signed the Registration Statement for the November 2001 Offering.

12. Defendant Joseph R. Gregory (“Joseph Gregory”) has been Vice Chairman of the Company since 1997 and is President of Monarch Pharmaceuticals, Inc., a wholly-owned subsidiary of King. He signed the Registration Statement for the November 2001 Offering.

13. Defendant Kyle P. Macione (“Macione”) has been President of the Company since April 2002. Prior to that he served as Executive Vice President of Corporate Affairs of the company.

14. Defendant James P. Lattanzi (“Lattanzi”) is CFO and a director of the Company. He signed the Registration Statement for the November 2001 Offering.

15. During the Class Period, defendants John Gregory, Joseph Gregory, Jefferson Gregory, Macione and Lattanzi (collectively the "Individual Defendants") were either: (a) responsible for the issuance or approval of materially false and misleading statements concerning the Company's operations; (b) failed to correct those statements during the Class Period; and/or (c) traded shares in the Company while in possession of the material, adverse information described herein.

16. During the Class Period, the Individual Defendants each occupied positions in the Company that made them privy to material adverse non-public information. Because of their positions of control and authority as executive officers, directors and/or controlling shareholders of King, they each had access to such internal information. The Individual Defendants knew or recklessly disregarded that the adverse facts specified herein were being concealed from the public. Notwithstanding the duty to refrain from selling stock to the public while in possession of material adverse non-public information, as detailed herein, John Gregory and Joseph Gregory sold King stock in the November 2001 Offering at artificially inflated prices during the Class

Period, thereby profiting greatly from the fraudulent scheme and misuse of material non-public information.

17. Because of the Individual Defendants' positions, their ability to exercise power and influence with respect to King's course of conduct, their substantial holdings of King common stock, and because of their access to material inside information, the Individual Defendants were, at the time of the wrongs alleged herein, controlling persons of King within the meaning of Section 20(a) of the 1934 Act.

18. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false and misleading information conveyed in the Company's financial statements, public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above.

19. As officers and/or directors of a publicly-held company whose shares were, and are, registered with the SEC pursuant to the Exchange Act, traded on the New York Stock Exchange ("NYSE") and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate accurate and truthful information with respect to the Company's financial condition and performance, operations, business, internal controls, products, markets, management, earnings and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly traded securities would be based upon truthful and accurate information. Under rules and regulations promulgated by the SEC under the Exchange Act, specifically Item 303 of Regulation S-K, the Individual Defendants also had a duty to report all trends, demands or uncertainties that were reasonably likely to impact: (I) the Company's revenues and/or income; and/or (ii) previously reported financial information such that it would not be indicative of future operating results. The Individual Defendants' representations and assurances during the Class Period violated these specific requirements and obligations.

20. The Individual Defendants all participated in the drafting, preparation, and/or approval of the various statements and other communications complained of herein, were aware of or

recklessly disregarded the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of Board membership, executive positions with the Company and other avenues of access to information not generally known by the investing public, each of the Individual Defendants had access to, and actual knowledge of, the adverse undisclosed information about King's rebates to distributors, knew that these adverse facts rendered the positive representations made by and about King, its financial condition and business prospects materially false and misleading; knew that the market price of King's stock was thereby artificially inflated; and knew that such adverse facts should be disclosed.

21. In addition, the Individual Defendants, because of their positions of control and authority, were able to and did control the content of the various financial reports, press releases, presentations to securities analysts and other public statements pertaining to the Company. The Individual Defendants were provided with copies of the financial statements and documents 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. Accordingly, each of the Individual Defendants was responsible for the accuracy of the financial statements and public reports and releases detailed herein and is, therefore, primarily liable for the representations contained therein.

22. Defendant Credit Suisse First Boston Corporation ("CSFB") was, at all relevant times, an investment banking firm incorporated in Delaware and principally located in New York City. CSFB was a Lead Joint Book-Running Manager of the November 2001 Offering.

23. Defendant J.P. Morgan Securities, Inc. ("Morgan") was, at all relevant times, an investment banking firm incorporated in Delaware and principally located in New York City. Morgan was a Lead Joint Book-Running Manager of the November 2001 Offering.

24. Defendant Banc of America Securities, Inc ("BOAS") was, at all relevant times, an investment banking firm incorporated in Delaware and principally located in San Francisco. BOAS was a Lead Joint Book-Running Manager of the November 2001 Offering.

25. Defendant UBS Warburg LLC ("UBS") was, at all relevant times, an investment banking firm incorporated in Delaware and principally located in New York City. UBS was a Lead Joint Book-Running Manager of the November 2001 Offering.

26. CSFB, Morgan, BOAS and UBS are hereinafter collectively referred to as the "Underwriters" or the "Underwriter Defendants." The Underwriter Defendants substantially participated in the commission of the wrongs alleged herein through their involvement in the November 2001 Offering of shares of King's common stock. The Underwriter Defendants were at all relevant times entities engaged in the business of investment banking, underwriting and selling securities to the investing public. The Underwriter Defendants were the co-lead underwriters for the November 2001 Offerings, for which they collectively received fees of \$24.6 million. At all relevant times herein, the Underwriter Defendants had a duty to promptly disseminate truthful and accurate information with respect to King and its operations, which they failed to do throughout the Class Period.

### **BACKGROUND**

27. King is a vertically integrated pharmaceutical company that develops, manufactures, markets and sells primarily branded prescription pharmaceutical products. The Company violated its duty under federal laws by giving rebates to non-government clients and recognizing revenue from the government to which it was not entitled. During the Class Period, defendants engaged in illegal activities (as described below) in order to artificially inflate the Company's financial results, together with the price of the Company's shares. As described below, these financial results were false.

28. Each of the Individual Defendants and King is liable for making false and misleading statements in that they inflated the prices of King securities by making false and misleading

statements and omitting material adverse information. The defendants\* wrongful course of business (i) artificially inflated the prices of King's securities during the Class Period; (ii) deceived the investing public, including plaintiff and other Class members, into acquiring King's securities at artificially inflated prices, including in the November 2001 Offering; and (iii) allowed the Company to sell 46 million shares of King to grow and benefit economically from the wrongful course of conduct.

2. Defendants knew that by concealing King's true financial results they could foster the perception in the business community that King was a "growth company," i.e., it was the only way King could post the revenue and earnings per share ("EPS") growth claimed by defendants.

**FALSE AND MISLEADING STATEMENTS  
DURING THE CLASS PERIOD**

30. On February 16, 2000, King issued a release announcing its 4Q 1999 and year-end 1999 results that stated in part:

King Pharmaceuticals, Inc. announced today that revenues totaled \$107.4 million for the fourth quarter ending December 31, 1999, a 114% increase over the fourth quarter on last year, and \$3482 million for the twelve months ending December 31, 1999, a 113% increase over the same period for 1998. For the fourth quarter of 1999, net income increased 93% to \$14.0 million, up from \$7.3 million, excluding an extraordinary charge, in the same quarter of the prior year. Absent extraordinary charges net income equaled \$45.7 million for the year ended December 31, 1999, up 80% from \$25.3 million for the same period of 1998. Diluted earnings per share was [15] cents for the fourth quarter of 1999, up 93% from [8] cents for the fourth quarter of 1998, and 94 cents for the 1999 year-end, up 68% from 56 cents for the 1998 year-end, absent extraordinary charges.

\* \* \*

The increase in fourth quarter revenues and net income is attributable primarily to the acquisition by King of ALTACE(R) from Hoechst Marion Roussel December 1998, the acquisition of LORABID(R) from Eli Lilly and Company in August 1999, and the sales growth of certain significant branded pharmaceutical products. King's branded pharmaceutical products are marketed primarily by its wholly owned subsidiary, Monarch Pharmaceuticals, Inc.

Net sales of branded pharmaceuticals totaled \$98.5 million for the fourth quarter of 1999, a 145% increase over the fourth quarter of 1998. For the fourth quarter of 1999, revenue from contract manufacturing equaled \$8.2 million, while remaining revenue, comprised primarily of generic sales, totaled \$0.6 million. For the year ended December 31, 1999, net sales of branded pharmaceuticals totaled \$304.0 million, a 142% increase over the prior year, while revenue from contract manufacturing equaled \$34.8 million, and remaining revenue, comprised primarily of generic sales, totaled \$9.5 million.

ALTACE(R) net sales grew to \$39.8 million, and LORABID(R) net sales totaled \$19.2 million in the fourth quarter of 1999, FLUOGEN( R) gross sales increased by 52% to \$12.9 million in the fourth quarter of 1999, as compared to the fourth quarter of 1998. Net sales of all other branded pharmaceutical products in the aggregate totaled \$28.2 million.

John M. Gregory, Chairman and Chief Executive Officer of King stated, "We are very pleased with King's solid fourth quarter and year-end 1999 performance. The year 1999 represented another watershed year for King with the initial presentation, and the subsequent early release by The New England Journal of Medicine of an article reporting the results, of the landmark HOPE (Heart Outcomes Prevention Evaluation) Study pertaining to our product ALTACE. These events, along with the acquisition of the patented antibiotic LORABID from Eli Lilly Company and the signing of a definitive merger agreement with Medco Research, provide a sound basis for King's continued successful implementation of our growth strategies during 2000."

31. On April 19, 2000, King filed a Prospectus Supplement pursuant to the offering of 8 million shares of its stock at \$20.81 per share. The Prospectus and Registration Statement included and/or incorporated King's 1999 financial statements. These financial statements were false and misleading. The offering was successful for the Company, providing it with some \$160 million in proceeds.
32. On May 2, 2000, King issued a release announcing its first quarter 2000 results which stated in part:
33. King Pharmaceuticals, Inc. announced today that the U.S. Food and Drug Administration's ("FDA") Cardio-Renal Drugs Advisory Committee on May 1, 2000, recommended the approval of new and unique indications for King's product ALTACE(R) (ramipril), an Angiotensin Converting Enzyme ("ACE") inhibitor. The recommended indications are for the significant reduction of



cardiovascular death, myocardial infarction, stroke, and “all-cause mortality” in patients at risk for such cardiovascular events. The Advisory Committee recommended also that the expanded labeling include a statement that the data supporting the new indications does not adequately establish such effects among African-American based on the small percentage of African-Americans who participated in the supporting international clinic study. While the favorable recommendation of the Advisory Committee is not binding, the FDA generally follows the advice of its expert panel members.

\* \* \*

Also, King announced today the revenues totaled \$91.4 million for the first quarter ending March 31, 2000, a 35% increase over the first quarter of 1999. Excluding merger and restructuring costs, net income increased 31% to \$11.5 million for the first quarter of 2000, up from \$8.8 million in the same quarter of the prior year. Diluted earnings per share, absent merger and restructuring costs, was [11] cents for the first quarter of 2000, up 31% from [8] cents for the first quarter of 1999.

\* \* \*

ALTACE(R) net sales grew to \$26.7 million in the first quarter of 2000, a 19% increase over the first quarter of 1999. ALTACE(R) new prescriptions totaled 312,319 and total prescriptions equaled 829,178 during the first quarter of 2000, increases of 32% and 13%, respectively, over the first quarter of 1999, according to IMS America data.

\* \* \*

John M. Gregory, Chairman and Chief Executive Officer of King stated, “We are very pleased to report that King, during the first quarter of maintained its track record of growth and of exceeding consensus earnings expectations. In particular, we continued to successfully execute our growth strategies with the completion of King\*s merger with Medco and through sales growth of our branded pharmaceutical products during the first quarter of 2000.”

34. On July 24, 2000, King issued a release announcing its second quarter 2000 results which stated in part:

35. King Pharmaceuticals, Inc. today announced that revenues totaled \$103.1 million for the second quarter ending June 30, 2000, a 21% increase over the second quarter for last year, and \$194.6 million for the first six months of 2000, a 28% increase over the first six months of 1999. For the second quarter of 2000,

excluding extraordinary charges, net income increased 25% to \$16.5 million, up from \$3.2 million in the same quarter the prior year. Net income, excluding extraordinary charges and merger and restructuring costs, equaled \$28.1 million for the first six months of 2000, up 24% from \$22.7 million for the first six months of 1999. Excluding extraordinary charges, diluted earnings per share was [14] cents for the second quarter of 2000, up from [12] cents for the second quarter of 1999.

\* \* \*

The increase in second quarter revenues and net income is attributable primarily to the sales growth of certain significant branded pharmaceutical products, including, in particular, ALTACE(R), the acquisition by King of LORABID(R) (loracarbef) from Eli Lilly Company in August 1999, and King's merger with Medco in February 2000. King's branded pharmaceutical products are marketed primarily by its wholly owned subsidiary, Monarch Pharmaceuticals, Inc.

Net revenue from branded pharmaceuticals totaled \$88.1 million for the second quarter of 2000, a 26% increase over the second quarter of 1999. For the second quarter of 2000, revenue from contract manufacturing equaled \$10.1 million, while remaining revenue, comprised primarily of generic sales, totaled \$4.9 million.

ALTACE(R) net sales grew to \$37.4 million in the second quarter of 2000, a 63% increase over the second quarter of 1999. ALTACE(R) new prescriptions totaled 375,000 and total prescriptions equaled 1,026,000 during the second quarter of 2000. increases of 59% and 35%, respectively, over the second quarter of 1999, according to IMS America data.

\* \* \*

John M. Gregory, Chairman and Chief Executive Officer of King stated, "I am very pleased with our second quarter results and continued earnings and revenue growth. Moreover, we look forward to the anticipated approval by the FDA of our sNDA (supplemental new drug application) requesting approval of additional indications for our largest product, ALTACE( R), as unanimously recommended by the FDA's Cardio-Renal Drugs Advisory Committee on May 1, 2000. Subject to FDA approval, ALTACE(R) will be the only ACE (Angiotensin Converting Enzyme) inhibitor with potential resulting new and unique indications for the significant reduction of cardiovascular death, myocardial infarction, stroke, and "all-cause mortality" in patients at risk for such cardiovascular events. The expected approval of such indications by the FDA, along with our recently announced marketing alliance with American Home Products, dramatically enhances the future growth potential of ALTACE(R)."

36. On November 2, 2000, King issued a press release entitled, “King Pharmaceuticals Reports Third Quarter 2000 EPS of [\$0.20] Excluding Special Charges.” The press release stated in part:

King Pharmaceuticals, Inc. announced today that net earnings equaled \$45.7 million for the third quarter ending September 30, 2000, up 47.9% from \$30.9 million in the third quarter of 1999, excluding special charges. For the nine months ending September 30, 2000, net earnings totaled \$114.6 million, excluding special charges, a 52.8% increase over net earnings of \$75.0 million for the same period the prior year.

\* \* \*

ALTACE(R) net sales grew to \$47.8 million in the third quarter of 2000, a 28.5% increase over the third quarter of 1999. ALTACE(R) new prescriptions totaled approximately 380,000 and total prescriptions equaled approximately 1,120,000 during the third quarter of 2000, increases of 67% and 50%, respectively, over the third quarter of 1999, according to IMS America data.

\* \* \*

John M. Gregory, Chairman and Chief Executive Officer of King stated, “We are pleased to report that King maintained its track record earnings and revenue growth, excluding special charges, during the third quarter of 2000. Likewise, we continued to successfully execute our growth strategies with the completion of King's merger with Jones and through sales growth of our branded pharmaceutical products, especially Altace(R). Moreover, the FDA's approval of new indications for Altace(R), along with our marketing alliance with American Home Products, dramatically enhances the future growth potential of our largest product.”

“We look forward of the relaunch of Altace(R) next week under our co-promotion agreement with the Wyeth-Ayerst division of American Home Products,” commented Joseph R. Gregory, President and Chief Executive Officer of Monarch. “Starting on November 6, 2000, a combined sales force of over 2,000 representatives will commence detailing Altace(R), the only ACE inhibitor indicated to reduce the risk of stroke, heart attack, and cardiovascular death in appropriate patients at high risk for such cardiovascular events.”

37. On November 3, 2000, King issued a press release entitled, “Updated: King Pharmaceuticals Reports Third Quarter 2000 EPS of [\$0.20] Excluding Special Charges.” The press release stated in part:

King Pharmaceuticals, Inc. announced today that net earnings equaled \$45.7 million for the third quarter ending September 30, 2000, up 47.9% from \$30.9 million in the third quarter of 1999, excluding special charges. For the nine months ending September 30, 2000, net earnings totaled \$114.6 million, excluding special charges, a 52.8% increase over net earnings of \$75 .0 million for the same period of the prior year.

Diluted earnings per share was [20] cents for the third quarter of 2000, up 34.2% from [15] cents for the third quarter of 1999, excluding special charges.

\* \* \*

Altace(R) net sales grew to \$47.8 million in the third quarter of 2000, a 28.5% increase over the third quarter of 1999. Altace(R) new prescriptions totaled approximately 380,000 and total prescriptions equaled approximately 1,120,000 during the third quarter of 2000, increases of 67% and 50%, respectively, over the third quarter of 1999, according to IMS America data.

38. On July 23, 2001, King issued a press release entitled, "King Pharmaceuticals Reports Strong Growth for Second Quarter 2001 Net Earnings of 77 Percent to \$56.8 Million on Revenues of \$206.5 Million, Excluding Special Charges During the Prior Year." The press release stated in part:

King Pharmaceuticals, Inc. announced today that net earnings equaled \$56.8 million for the second quarter ending June 30, 2001, an increase of 77% over the second quarter of last year, excluding special charges during the second quarter of the prior year. For the six months ending June 30, 2001, net earnings equaled \$101 .6 million an increase of 64% over the same period of 2000 excluding special charges during the same period of the prior year.

Reflecting the Company\*s recent four for three stock split distributed on July 19, 2001, diluted earnings per share was \$0.25 cents for the second quarter of 2001, up 67% from \$0.15 for the second quarter of 2000, excluding special charges during the second quarter of the prior year. Diluted earnings per share, reflecting the recent stock split, increased 52% to \$0.44 for the six months ending June 30, 2001, compared to \$0.29 cents for the same period of 2000, excluding special charges during the same period of the prior year. On a pre-split basis, diluted earnings per share was \$0.33 cents for the second quarter of 2001 and \$0.58 cents for the six months ended June 30, 2001.

\* \* \*

Altace(R) net sales grew to \$66. 7 million in the second quarter of 2001, a 92% increase over the second quarter of 2000. Altace(R) new prescriptions

totaled approximately 619,000 and total prescription equaled approximately 1,673,000 during the second quarter of 2001, increases of 65% and 63% respectively, over the second quarter of 2000, and increases of 11% and 16% respectively, over the first quarter of 2001, according to IMS America monthly prescription data.

\* \* \*

Commenting on the continued growth of Altace(R), Joseph R. Gregory, vice Chairman of King, noted, "New prescription market share for Altace(R) among cardiologists grew to over 17% for the week ending June 6, 2001, from 15.5% for the week ending April 13, 2001, according to IMS America data. This growth continues to expand the market share of Altace(R), which has the second largest market share of new prescriptions written by cardiologists for ACE inhibitors, based on IMS American data."

39. On October 29, 2001, King issued a press release entitled "King Pharmaceuticals Reports Solid Revenue Growth for Third Quarter 2001 of 39% to \$230.1 Million and Diluted Earnings Per Share Growth of 33% to \$0.28. Excluding Special Charges." The press release stated as follows:

King Pharmaceuticals, Inc. announced today that net earnings equaled \$64.8 million for the third quarter ending September 30, 2001, an increase of 38% over the third quarter of last year, excluding special charges. For the nine months ending September 30, 2001, net earnings equaled \$166.4 million, an increase of 5% over the same period of 2000, excluding special charges.

\* \* \*

Net revenue from branded pharmaceuticals, including royalty income, totaled \$223.1 million for the third quarter of 2001. a 46% increase over the third quarter of 2000. For the third quarter ending September 30, 2001, revenue from contract manufacturing equaled \$6.3 million, while remaining revenue, comprised primarily of generic sales, totaled \$702 thousand.

Altace(R) net sales grew to \$76.2 million in the third quarter of 2001, exceeding our projected range, a 51% increase over the third quarter of 2000. Altace(R) new prescriptions totaled approximately 628,000 and total prescriptions equaled approximately 1,849,000 during the third quarter of 2001, increases of 65.3% and 65.1% respectively, over the third quarter of 2000, according to IMS America monthly prescription data.

40. On November 1, 2001, King filed the Prospectus pursuant to an offering of 20.5 million shares of its stock at \$38 per share. The Prospectus incorporated by reference King's financial statements for 1999, 2000 and the first two quarters of 2001. As noted above, these financial statements were false and misleading. The November 2001 Offering was successful for the Company, generating some \$750 million in proceeds.

41. In addition to generating funds for the Company, John Gregory and Joseph Gregory were "Selling Shareholders" pursuant to the November 2001 Offering. John Gregory sold 2,500,000 shares of King pursuant to the November 2001 Offering, thereby reaping proceeds of approximately \$95,000,000. Joseph Gregory sold 2,000,000 shares of King pursuant to the November 2001 Offering, thereby reaping proceeds of approximately \$76,000,000.

42. Defendants John Gregory and Joseph Gregory, motivated by their desire to reap together over \$170 million dollars on the November 2001 Offering, ensured that no truthful and accurate information concerning King's financials, specifically concerning its rebates to distributors, reached the public investors prior to November 2001. The failure of John Gregory and Joseph Gregory to disclose King's rebates to distributors was material. John Gregory and Joseph Gregory knew that if the market learned of the rebates and the Company's true financial condition, the November 2001 Offering could not have come to market -- and certainly not at \$38.00 per share.

43. The Underwriters, enticed by the underwriting fees from the November 2001 Offering, also failed to conduct proper due diligence and failed to ensure that the Prospectus properly disclosed material information concerning King's rebates and its true financial condition, business and prospects.

44. On December 17, 2001, King issued a press release entitled, "King Pharmaceuticals Provides 2002 Quarterly Financial Guidance." The press release stated in part:  
King Pharmaceuticals, Inc. provided today quarterly guidance for its previously announced projected ranges for estimated net sales of Altace(R) (rampril), estimated total revenue, and estimated earnings per share, before any special charges, for year-end 2002.

\* \* \*

Jefferson J. Gregory, President and Chief Executive Officer-elect of King effective January 1, 2002 stated, "We believe the growth trends of our branded prescription pharmaceutical products, particularly Altace(R) and Levoxyl(R) (levothyroxine sodium tab lets, USP), continue to support the Company's financial projections for the current fourth quarter of 2001 and for 2002. We are especially pleased with the continued growth rate of Altace(R). For the month of November 2001, new prescription market share for Altace(R) was equal 9.4%, representing a 68% increase in monthly new prescription market share over the same month of the prior year, according to IMS America prescription data. Furthermore, weekly new prescription market share for Altace(R) among cardiologists grew to 19.4% as of the week ending November 30, 2001, which we believe continues to provide a very positive lead indicator of the potential growth of Altace( R)."

Mr. Gregory commented further, "Last week's FDA approval for the NDA for Tigan(R) (trimethobenzamide hydrochloride) 300mg capsules is the latest example of the continued successful execution of our growth strategies. We believe the Company is well positioned to potentially continue to successfully implement our proven growth strategies, particularly given King's receipt of net proceeds of approximately \$1 billion from our recent equity and convertible debenture offerings."

45. On February 4, 2002, King issued a press release entitled, "King Pharmaceuticals Responds to Recent Unjustified Share Price Decline." The press release stated in part:

King Pharmaceuticals, Inc. confirmed today, in response to reported baseless stories circulating last week, that the Company remains highly confident in the enforceability of the Altace( R) (ramipril) composition of matter patent that expires in October 2008. Also, King continues to strategically focus on potential acquisitions that upon closing will not have a dilutive effect on King's projected estimates for earnings per share, excluding any special charges. The Company believes that reported baseless stories to the contrary contributed significantly to last week's unjustified decline of approximately 14% in King's share price. Since the market opening on Monday, January 28, 2002, King's share price declined from \$40.20 to \$34.70 at the market closing on Friday, February 1, 2002.

Jefferson J. Gregory, President and Chief Executive Officer of King,. stated, "We believe the continued exclusivity of our largest product, Altace(R), is well protected by a composition of matter patent that does not expire until October 2008. The Company is privy to the conclusions of well-qualified patent counsel who have reviewed the patents related to Altace(R) and concluded that the 2008 composition of matter patent should prove clearly enforceable if ever challenged. Moreover, we are not aware of any present intent to change the 2008

patent. If such a challenge ever arises, the Company intends to aggressively and, we believe, successfully defend against challenge.”

Mr. Gregory further commented, “King continued to successfully execute and build on our proven growth strategies. An important consideration when evaluating a potential acquisition in addition to growth potential and any complementary synergies, is whether the transaction will be accretive to King's projected estimates for earnings per share. All products and company acquisitions to date have been accretive upon closing, and this remains an important factor when considering potential opportunities.” Mr. Gregory added, “With over \$900 million in cash, we believe King is well positioned for the continued successful execution of our proven acquisition growth strategies.”

46. On February 19, 2002, King issued a press release entitled, “King Pharmaceuticals Reports Fourth Quarter 2001 Net Earnings Growth of 35 Percent to \$74.1 Million, Diluted EPS of 31 Cents (Up 29 Percent), Excluding Special Charges.” The press release stated in part:

King Pharmaceuticals, Inc. announced today that net earnings equaled \$74.1 million for the fourth quarter ending December 31, 2001, up 35% from \$54.9 million in the fourth quarter of 2000, excluding special charges. For the year ending December 31, 2001, net earnings totaled \$240.4 million, a 46% increase over net earnings of \$164.4 million for the prior year, excluding special charges.

\* \* \*

Altace(R) net sales grew to \$85.3 million in the fourth quarter of 2001, a 70% increase over the fourth quarter of 2000, and \$284.7 million for the year ending December 31, 2001, a 76% increase over the prior year. Altace(R) new prescriptions totaled approximately 721,000 and total prescriptions equaled approximately 2,104,000 during the fourth quarter of 2001, increases of 67% and 69%, respectively, over the fourth quarter of 2000, according to IMS America data. Moreover, Altace(R) new prescriptions totaled approximately 2,522,000 and total prescriptions equaled approximately 7,072,000 during the year ending December 31, 2001, both increasing 66% over the prior year, according to IMS America data.

47. On April 29, 2002, King issued a press release entitled, “King Pharmaceuticals Reports Strong Earnings and Revenue Growth for First Quarter 2002, with Diluted EPS Growth of 53% to \$0.29; And Announces that Jefferson J. Gregory, Chief Executive Officer, Will Become Also Chairman of the Board and that Kyle P. Macione Has Been Named President of King.” The press release stated in part:



King Pharmaceutical, Inc. announced today that net earnings equaled \$71.3 million for the first quarter ending March 31, 2002, up 60% from \$44.7 million in the first quarter of 2001, excluding special charges during the same period of the prior year.

Diluted earnings per share was \$0.29 for the first quarter of 2002, up 53% from \$0.19 for the first quarter of 2001.

\* \* \*

Altace(R) net sales grew to \$99.5 million in the first quarter of 2002, a 76% increase over the first quarter of 2001. Altace(R) new prescriptions totaled approximately 816,000 and total prescriptions equaled approximately 2,299,000 during the first quarter of 2002, increases of 46% and 59% respectively, over the first quarter of 2001, according to IMS America monthly prescription data.

48. On June 27, 2002, King issued a press release entitled, "King Pharmaceuticals Provides

2003 Financial Guidance." The press release stated in part:

King Pharmaceuticals, Inc. today announced the Company's projections for estimated net sales of Altace(R) (ramipril), estimated total revenue, and estimated earnings per share, before any special charges, for year-end 2003.

King currently projects the following ranges for estimated net sales of Altace(R), estimated total revenue, and estimated diluted earnings per share, before any special charges, on a year-end basis for 2003 (dollars in millions, except EPS):

	2003
Altace Net Sales	\$ 585 - 715
Revenue	\$1350- 1500
Diluted EPS	\$ 1.54-1.66

For purposes of the foregoing projections, diluted earnings per share for year-end 2003 was calculated based on an estimated 243.5 million shares outstanding.

Jefferson J. Gregory, Chief Executive Officer of King, stated, "We believe the strong growth trends of our branded prescription pharmaceutical products, particularly Altace(R) (levothyroxine sodium tablets, USP), support the Company's financial projections for year-end 2003. We are especially pleased with the continued growth of Altace(R). In May 2002, new and total prescriptions for Altace(R) continued to achieve record monthly highs, equaling 308,000 and 889,000, respectively, according to IMS America prescription data."

Mr. Gregory added, "Altace(R) is the leader of new prescription market share for all ACE inhibitors among cardiologists in the United States. New prescription market share for Altace(R) among cardiologists, presently at 21.5% continues to grow at impressive rates and greatly exceeds the prescription market share for Altace(R) among all physician prescriber groups combined. We believe

this provides a very positive lead indicator of the potential growth of Altace(R). Furthermore, the Company\*s share of voice in the marketplace for Altace(R) should dramatically expand as exclusivity ends this month for the two highest prescribed ACE inhibitors in the U.S., which presently have a combined total prescription market share of approximately 38% according to IMS America weekly data.”

Kyle P. Macione, President of King, stated, “In addition to our projections for strong revenue and earnings growth, King is well positioned for the continued aggressive execution of our proven growth strategies with our positive cash flow trends and over \$1 billion in cash and available capacity under our revolving credit facility.”

49. On July 29, 2002, King issued a press release entitled, “King Pharmaceuticals Reports Solid Revenue Growth for Second Quarter 2002 of 37 Percent to \$282.5 Million and Net Earnings Growth of 36 Percent to \$77.1 Million, Excluding Special Charges.” The press release stated in part:

King Pharmaceuticals, Inc. announced today that net earnings equaled \$77.1 million for the second quarter ended June 30, 2002, an increase of 36% over the second quarter of last year, excluding special charges. For the six months ending June 30, 2002, net earnings equaled \$148.4 million, an increase of 46% over the same period of 2001, excluding special charges.

\* \* \*

The increase in second quarter revenues and net earnings is attributable primarily to the sales growth of certain of the Company\*s branded pharmaceutical products, including, in particular, Altace(R) (ramipril) and Levoxyl(R) (levothyroxine sodium tablets, US P), the acquisition of three branded pharmaceutical products. along with a fully paid license to a fourth product from Bristol-Myers Squibb Company in August 2001, and the acquisition of Ortho-Prefest(R) (estradiol/norgestimate) tablets from Ortho-McNeil Pharmaceuticals in May 2002. King\*s branded pharmaceutical products are marketed primarily by its wholly owned subsidiaries, Monarch Pharmaceuticals, Inc. and Jones Pharma Incorporated.

Net revenue from branded pharmaceuticals, including royalty income, totaled \$272.3 million for the second quarter of 2002, a 36% increase over the second quarter of 2001. For the second quarter ending June 30, 2002, revenue from contract manufacturing equaled \$9.8 million, while remaining revenue, comprised primarily of generic sales, totaled \$0.4 million.

Altace(R) net sales grew to \$110.4 million in the second quarter of 2002, a 65% increase over the second quarter of 2001. Altace(R) new prescriptions

totaled approximately 899,000 and total prescriptions equaled approximately 2,607,000 during the second quarter of 2002, increases of 46% and 56%, respectively, over the second quarter of 2001, according to IMS America monthly prescription data.

\* \* \*

Jefferson J. Gregory, Chairman and Chief Executive Officer of King, stated, "King continued the Company's record of solid revenue and earnings growth during the second quarter of 2002. We are especially pleased with the continued prescription and sales growth trends of our two largest products, Altace(R) and Levoxyl(R). Of particular significance is the sustained shift in Altace(R) prescriptions to the 10mg dose, the same strength administered to patients in the landmark HOPE trial that resulted in the dramatic findings based on which the FDA approved new indications for Altace(R). Specifically, for the three month period ending June 30, 2002, total prescriptions for 10mg Altace(R) increased 74% over the same period of the prior year according to IMS America monthly prescription data."

50. On October 28, 2002, King issued a press release entitled, "King Pharmaceuticals Reports Solid Revenue Growth for Third Quarter 2002 of 37% to \$315.7 Million and Net Earnings Growth of 31% to \$84.7 Million, Excluding Special Charges." The press release stated in part:

King Pharmaceuticals, Inc. announced today that net earnings equaled \$84.7 million for the third quarter ending September 30, 2002, an increase of 31% over the third quarter of last year, excluding special charges. For the nine months ended September 30, 2002, net earnings equaled \$233.1 million, an increase of 40% over the same period of 2001, excluding special charges.

\* \* \*

The increase in third quarter revenues and net earnings is attributable primarily to the sales growth of certain of the Company's branded pharmaceutical products, including, in particular, Altace(R) (ramipril) and Levoxyl( R), and the acquisition of Ortho-Prefest(R) (estradiol/norgestimate) tablets from Ortho-McNeil Pharmaceutical in May 2002. King's branded pharmaceutical products are marketed primarily by its wholly owned subsidiaries, Monarch Pharmaceuticals, Inc. and Jones Pharma Incorporated.

Net revenue from branded pharmaceuticals, including royalty income, totaled \$308.7 million for the third quarter of 2002, a 38% increase over the third quarter of 2001. For the third quarter ending September 30, 2002, revenue from contract manufacturing equaled \$6.7 million, while remaining revenue, comprised primarily of generic sales, totaled \$0.3 million.

Altace(R) net sales grew to \$130.5 million in the third quarter of 2002, a 71% increase from \$76.2 million in the third quarter of 2001. Altace(R) new prescriptions totaled approximately 901,000 and total prescriptions equaled approximately 2,777,000 during the third quarter of 2002, increases of 43% and 50% respectively, over the third quarter of 2001, according to IMS America monthly prescription data.

51. On February 18, 2003, King press release entitled, "King Pharmaceuticals Reports Fourth Quarter 2002 Net Earnings Growth of 32 Percent to \$98 Million, Diluted EPS Increases 32 Percent to 41 Cents, Excluding Special Items; 200 Annual Revenues Rise 35 Percent and Surpass \$1 Billion; Philip M. Pfeffer Appointed to Board of Directors." The press release stated in part:

King Pharmaceuticals, Inc. announced today that net earnings equaled \$98.1 million for the fourth quarter ending December 31, 2002, up 32% From \$74.1 million in the fourth quarter of 2001, excluding special items. For the year ending December 31, 2002, net earnings totaled \$331.9 million, a 38% increase over net earnings of \$240.4 million for the prior year, excluding special items.

Jefferson J. Gregory, Chairman and Chief Executive Officer of King, stated, "King continued its impressive record of sustained revenue and earnings growth, along with numerous milestone accomplishments, during the fourth quarter and year ending December 31, 2002. These results and achievements, together with our recently announced planned acquisition from Elan Corporation, plc of its primary care business in the United States and Puerto Rico, are indicative of the continued successful execution of our growth strategies and strategically position King for sustained future revenue and earnings growth."

Kyle P. Macione, President of King, said, "We remain excited about the continued growth of our largest product Altace(R). During 2002, Altace(R) became the leading prescribed branded angiotensin converting enzyme ("ACE") inhibitor among cardiologists in the United States according to IMS America monthly prescription data. We believe that Altace(R)'s monthly new prescription market share among cardiologists of approximately 22%, which is nearly double that of Altace(R)'s monthly new prescription market share among all physician groups according to IMS America data for the month of January 2003, continues to provide very positive lead indicator of the potential growth of Altace(R). Additionally, for the year ending December 31, 2002, total prescriptions for 10mg Altace( R), the same dose used in the landmark HOPE trial, increased approximately 71% over the prior year, in comparison to an increase of 36% for the other strengths of Altace combined, according to NDC Health monthly prescription data. With our planned continued aggressive marketing of the

product, unique indications among ACE inhibitors, outstanding supporting clinical data, and a composition of matter patent that we strongly believe should protect the product from generic competition through October 2008, Altace( R) is advantageously positioned for continued impressive growth.”

### **THE SCHEME BEGINS TO UNRAVEL**

52. On March 11, 2003, prior to the market opening, King issued a press release entitled, “King Pharmaceuticals Reports Receipt of SEC Document Request; Pledges Full and Complete Cooperation.” The press release stated in part:

King Pharmaceuticals, Inc. reported today that the receipt of a letter from the U.S. Securities and Exchange Commission (“SEC”) stating that the SEC is conducting an investigation of the Company. The letter is accompanied by a subpoena requesting the production of certain documents. King is not aware of the underlying reason for the SEC’s investigation. The requested documents seem to focus on the years 1999 and 2000, and include all documents related to sales of King’s products to VitaRx and Prison Health Services during 1999 and 2000, King’s “best price” lists, all documents related to the pricing of King’s pharmaceutical products to any governmental Medicaid agency during 1999, the accrual and payment of rebates on Altace(R) (ramipril) from 2000 to the present, and other general requests.

53. As a result of this announcement, King’s stock price plummeted from \$15.90 on March 10, 2003 to \$12.17 per share on March 11, 2003, on volume of 19,531,600 -- over 24 times the prior day’s volume.

### **KING’S FALSE FINANCIAL REPORTING DURING THE CLASS PERIOD**

54. In order to inflate the price of King’s securities, defendants caused the Company to falsely report its results during 1999-2002 through its illegal revenue recognition associated with its rebates to non-governmental clients.

55. The 1999-2002 results were included in Forms 10-Q and 10-K filed with the SEC, including filings that were incorporated by reference in the November 2001 Offering. The results were also included in press releases.

56. King improperly recorded revenue by not giving the “best price” to Medicaid in its 1999-2002 financial statements such that its 1999-2002 financial statements were not a fair presentation of King’s results and were presented in violation of Generally Accepted Accounting Principles (“GAAP”) and SEC rules.

57. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. SEC Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate, despite footnotes or other disclosures. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C. F.R. §210.10-1(a).

58. GAAP, as described by FASB Statement of Concepts No. 5. ¶83, states that revenue should not be recognized unless and until it is earned. King was required to offer to Medicaid at least as low of a price as it offered other customers. To the extent King recorded revenue from Medicaid sales for prices higher than other customers, the Company was not entitled to derive revenue from the higher prices, and such revenue recognition was improper.

59. The SEC is now investigating rebates given to other customers, including VitaRx and Prison Health Services. The SEC is also seeking information on the payment of rebates from 2000 to the present on the Company’s high blood pressure medication, Altace.

60. Due to these accounting improprieties, the Company presented its financial results and statements in a manner which violated GAAP, including the following fundamental accounting principles:

(a) The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements was violated (APB No. 28. ¶10);

(b) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶ 34);

(c) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);

(d) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources to which it has been entrusted was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

(e) The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least in part on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);

(f) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶ 58-59);

(g) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No.2, ¶79); and

(h) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶ 95, 97).

61. Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

## **FIRST CLAIM**

### **(Against All Defendants For Violations of Section 11 of the Securities Act of 1933)**

3. Plaintiff repeats and realleges each and every allegation contained above, except to the extent that any allegations contained above that may be interpreted to sound in fraud, such allegations are not incorporated in the present claim.

63. This Claim is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of the Class, against all defendants.

64. The Registration Statement, when it became effective, was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed adequately to disclose material facts as described above.

65. Plaintiff and the other members of the Class purchased King's common stock pursuant to and traceable to the Registration Statement.

66. King is the registrant for the shares sold to plaintiffs and other members of the Class. The defendants named herein were responsible for the contents and dissemination of the Registration Statement and the November 2001 Prospectus.

67. As issuer of the shares, King is strictly liable to plaintiffs and the Class members for the misstatements and omissions.

68. None of the defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and the November 2001 Prospectus were true and without omissions of any material facts and were not misleading.

69. Defendants issued, caused to be issued and participated in the issuance of materially false and misleading written statements to the investing public which were contained in the November 2001 Prospectus, which misrepresented or failed to disclose, inter alia, the facts set forth above.



By reasons of the conduct herein alleged, each defendant violated, and/or controlled a person who violated, Section 11 of the Securities Act.

70. Plaintiff and the Class Members have sustained damages. The value of King shares has declined substantially subsequent to and due to defendants' violations.

71. At the times they purchased King shares, plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to the Offering. Less than one year elapsed from the time that plaintiffs discovered or reasonably could have discovered the facts upon which this complaint is based to the time that plaintiff filed his Complaint. Less than three years elapsed from the time that the securities upon which this Claim is brought were bona fide offered to the public to the time plaintiff filed his Complaint.

## **SECOND CLAIM**

### **(Against Defendants King, John Gregory, Joseph Gregory and the Underwriter Defendants For Violations of Section 12(a)(2) of the Securities Act of 1933)**

72. Plaintiff repeats and realleges each and every allegation contained above, except to the extent that any allegations contained above that may be interpreted to sound in fraud, such allegations are not incorporated in the present claim.

73. This Claim is brought by plaintiffs pursuant to Section 12(a)(2) of the Securities Act on behalf of the Class against defendants King, John Gregory, Joseph Gregory and the Underwriter Defendants. Defendants King, John Gregory, Joseph Gregory and the Underwriter Defendants were sellers, offerors, and/or solicitor of sales of the shares offered pursuant to the Prospectus.

74. The November 2001 Prospectus contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. King's, John Gregory's and Joseph Gregory's and the Underwriter

Defendants' actions of solicitation included participating in the preparation of the false and misleading November 2001 Prospectus.

75. King, John Gregory, Joseph Gregory and the Underwriter Defendants owed to the purchasers of King shares, including plaintiff and other Class Members purchasers of King shares, the duty to make a reasonable and diligent investigation of the statements contained in the offering materials, including the November 2001 Prospectus contained therein, to insure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. King knew of, or in the exercise of reasonable care should have known of, the misstatements and omissions contained in the November 2001 Prospectus as set forth above.

76. Plaintiff and other members of the Class purchased King shares pursuant to and traceable to the defective Prospectus. Plaintiffs did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Prospectus.

77. Plaintiff, individually and representatively, hereby offers to tender to defendants those securities which plaintiff and other Class Members continue to own, on behalf of all members of the Class who continue to own such securities, in return for the consideration paid for those securities together with interest thereon.

78. By reason of the conduct alleged herein, King, John Gregory, Joseph Gregory and the Underwriter Defendants violated, and/or controlled a person who violated, § 12(a)(2) of the Securities Act. Accordingly, plaintiffs and members of the Class who hold King shares purchased pursuant to the November 2001 Prospectus have the right to rescind and recover the consideration paid for their King shares and, hereby elect to rescind and tender their King shares

to King, John Gregory, Joseph Gregory and the Underwriter Defendants. Plaintiff and Class members who have sold their King shares are entitled to rescissory damages.

79. Less than three years elapsed from the time that the securities upon which this Claim is brought were sold to the public to the time of the filing of this action. Less than one year elapsed from the time when plaintiff discovered or reasonably could have discovered the facts upon which this Claim is based to the time of the filing of this action.

### **THIRD CLAIM**

#### **(Against The Individual Defendants For Violations of Section 15 of the Securities Act of 1933)**

80. Plaintiff repeats and realleges each and every allegations contained above, except to the extent that any allegations contained above that may be interpreted to sound in fraud, such allegations are not incorporated in the present claim.

81. The Individual Defendants, by reason of their duty to King and the investing public, and their control of King and its statements, and by reason of their acts as described herein, controlled King within the meaning of Section 15 of the Securities Act.

82. The Individual Defendants thus violated Section 15 of the Securities Act and are liable for the acts of King which caused damages to plaintiff and the Class.

### **FOURTH CLAIM**

#### **(Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5 Promulgated Thereunder Against King and the Individual Defendants)**

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

84. During the Class Period, King and the Individual Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (I) deceive the investing public, including plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of King securities; and (iii) cause plaintiff and other members of the Class to purchase King common stock at inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

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

4. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, these defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. Sections 210.01 et seq.) and Regulation S-K (17 C.F.R. Sections 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and earnings so that the market price of the Company's common stock would be based on truthful, complete and accurate information.

87. King and the Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of King as specified herein. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of King's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about King and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of King common stock during the Class Period.

88. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (I) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and revenues at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

89. King and the Individual Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing King's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's business and operations throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

90. At all relevant times, the market for King common stock was an efficient market for the following reasons, among others:

- (a) King common stock met the requirements for listing and was listed and actively traded on the NYSE, highly efficient and automated market;
- (b) As a regulated issuer, King filed periodic public reports with the SEC and NYSE; and
- (c) King regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (d) King was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms which issued research reports on King during the Class Period.

91. As a result, the market for King securities promptly digested current information regarding the Company from all publicly available sources and reflected such information in King's stock price. Under these circumstances, all purchasers of King shares on the open market during the Class Period suffered similar injury through their purchase of shares at artificially inflated prices and a presumption of reliance applies to plaintiff's claims arising under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. Plaintiff will also rely upon the presumption of reliance established by a material omission of fact as it pertains to these same Section 10(b) and Rule 10b-5 claims.

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

93. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known of the true financial condition and business prospects of King, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their King securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

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

95. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

#### **FIFTH CLAIM**

#### **(Violation Of Section 20(a) Of The Exchange Act Against Independent Defendants)**

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

97. The Individual Defendants acted as controlling persons of King within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's regulatory status. The Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

98. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.



99. As set forth above, King and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

**PRAYER**

**WHEREFORE**, plaintiff, on his own behalf and on behalf of the Class, prays for judgment as follows:

- A. Declaring plaintiff to be a proper class representative and this action to be a proper class action;
- B. Awarding plaintiff and all other members of the Class damages against all defendants jointly and severally in an amount which may be proven at trial, together with prejudgment interest thereon;
- C. Awarding plaintiff legal fees and expert fees, together with interest, costs and disbursements; and
- D. For such other relief as to this Court appears just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: March 18, 2003

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