

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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: **Master File No. 3:97CV00813(CFD)**
IN RE EIS INTERNATIONAL, INC. :
SECURITIES LITIGATION : **JURY TRIAL DEMANDED**
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SECOND CONSOLIDATED AND AMENDED CLASS ACTION COMPLAINT

Plaintiffs, by counsel, for their Second Consolidated and Amended Class Action Complaint (“Complaint”), allege upon knowledge with respect to themselves, and upon information and belief with respect to all other matters, as follows:

NATURE OF THE CASE

1. The allegations based “upon information and belief” include the investigation of counsel. This investigation included interviews with former EIS International, Inc. (“EIS” or the “Company”) employees from EIS’s Surefind Information Inc. (“Surefind”) and Cybernetics Systems International Inc. (“Cybernetics”) divisions and a review of internal EIS documents. Based upon this investigation, plaintiffs set forth herein supplemental factual allegations which reflect: (1) the specific failed efforts by Surefind to sell their product to EIS’s customer base in 1995 prior to commencement of the Class Period (¶¶ 49-50); (2) the bases for the allegations that defendants were aware of those failed efforts in 1995 (¶ 49); (3) the stability and functionality problems with Cybernetics’ EMPSX product which prevented any new sales between January 1, 1996 and September 30, 1996, the first three quarters of 1996 (¶ 98);

(4) the stability and functionality problems with Cybernetics' Workforce Manager ("WFM") product which caused non-payment by key customers (American Airlines, FDC, TeleTech Teleservices and APAC Teleservices (Complaint, ¶ 102); and (5) caused Cybernetics sales representatives to refuse to sell it beginning in mid-1996 and forced Cybernetic to redesign it in the fall of 1996 (¶¶ 99-104); and (6) the bases for these allegations regarding Cybernetics (¶¶ 91, 96).

2. This is a securities class action brought on behalf of all persons who purchased the common stock and/or call options of EIS on the open market during the period November 28, 1995 through March 31, 1997, inclusive ("Class Period").

3. During the Class Period, defendants Joseph J. Porfeli ("Porfeli") and Kent M. Klineman ("Klineman") violated the securities laws by engaging in a course of conduct by which they sold businesses in which they had substantial investments to EIS for excessive consideration, and then, along with defendant Edward J. Sarkisian ("Sarkisian"), made a series of materially false and misleading statements concerning those businesses with the intent and having the effect of substantially inflating the price of EIS securities.

4. Among other things, defendants materially misrepresented that there were significant synergies between EIS and the two companies that had been acquired, Surefind and Cybernetics, and that those companies were likely to achieve revenues in fiscal year ended December 31, 1996 of \$7.4 million and \$15 million, respectively.

5. EIS provides services and automated systems for outbound calling centers typically used by telemarketers and collections businesses. Defendant Porfeli, while EIS's Chief Executive Officer ("CEO"), was also CEO and a substantial shareholder of Surefind. Defendants touted the Surefind acquisition as synergistic because Surefind, using telephone lines for data transmission, could securely store data away from the call centers, and once stored the data could be immediately retrieved at any time.

6. The \$22 million Cybernetics acquisition was similarly touted as well-suited to the Company, since, while EIS provided outbound calling systems and services, Cybernetics was "a leading provider of in-bound workforce management software" with its flagship EMPSX software to be used by business centers and WFM software for personal computer use.

7. These representations were made in 1995 and 1996, and reiterated again in presentations by defendant Porfeli to institutional investors in early May 1996. Such representations had a dramatic impact on EIS's common stock and call options price. In May 1996 alone, EIS's common stock price rocketed from \$16.75 per share on May 1, 1996 to \$30.00 per share on May 30, 1996.

8. The representations concerning Surefind and Cybernetics were known, or defendants were reckless in not knowing at the time they were made, to be false. Surefind's Sales Force, as defined herein (¶49) engaged in no less than four failed marketing initiatives specifically directed at EIS customers prior to November 1995: (1) a

mass mailing directed to EIS's entire customer base in the Spring of 1995; (2) presentations to five EIS customers (Market USA, TeleStar Marketing, Reese Brothers, Omega Communications and CTC TeleServices); (3) presentation to EIS management in May 1995; and (4) solicitations at EIS's user conference at the ANA Hotel in Washington, D.C. on June 9, 1995. As alleged herein, Surefind Vice President Tom Behr oversaw these sales efforts and reported the negative results directly to defendant Porfeli as they occurred.

9. As for Cybernetics, EMPSX was extremely unstable and would repeatedly either freeze operation of the software or report a fault. These problems caused a halt to EMPSX sales between January 1, 1996 through September 30, 1996. WFM was only able to receive data from certain brand telephones; and was not able to operate in a Windows operating network, even though the product was sold without disclosure of these significant limitations. These problems caused Cybernetics' sales force to slow their selling of the WFM product in mid-1996 which, in turn, caused Cybernetics to redesign the WFM product in the fall of 1996.

10. While the hype surrounding the Surefind and Cybernetics acquisitions induced public investors to buy the Company's stock, and ultimately injured them, they directly benefitted defendants Porfeli, Klineman, and Sarkisian, (the "Individual Defendants"). First, as part of the merger, defendant Porfeli exchanged his worthless Surefind shares for EIS common stock valued at between \$1.2 million and \$1.7 million. Then, in connection with the Surefind acquisition, EIS repaid with interest defendants

Porfeli's and Klineman's substantial loans to Surefind. Finally, defendants Klineman and Sarkisian sold approximately \$1.5 million of EIS common stock on three days in May 1996 at stock prices between \$29.25 and \$30.00 per share, thereby reaping enormous personal profits.

11. Within a few weeks of the insider sales, however, the hype concerning Surefind and Cybernetics began to unravel. In mid August 1996, EIS announced a significant \$3.9 million Cybernetics customer dispute and purported "disappointment" in customer response to Surefind's marketing efforts. Defendant Porfeli (falsely) assured investors at that time that the Cybernetics customer dispute was an isolated event. Then, on October 3, 1996, EIS reported a net loss for the quarter (including revenue of only \$9,000 for Surefind), and substantial charges for a "customer dispute" (i.e., Bell (\$2.2 million)), increase in allowance for doubtful accounts and returns (\$1.3 million), and inventory write-downs (\$1.8 million). The net loss indicated the undisclosed fact that there was no revenue from the sale of EMPSX for the nine-month period ended September 30, 1996. EIS's common stock price plunged again, approximately 60% -- from \$13.875 per share on October 1, 1996 to \$7.875 per share on October 3, 1996.

12. On February 7, 1997, new EIS management announced that it was "analyzing" the acquisitions made in 1996 and that defendant Porfeli had resigned. On March 3, 1997, EIS disclosed that all Surefind operations would be permanently shut down and the Cybernetics main facility in Coral Gables, Florida would be closed. Finally, on

March 31, 1997, EIS announced a \$19 million net loss, including a \$17 million charge that would be taken to write off overstated Cybernetics assets and to reflect operating losses. By March 31, 1997, EIS common stock price had declined to \$5.875 per share.

JURISDICTION AND VENUE

13. This action arises under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b), 78t(a); and Rule 10b-5 promulgated pursuant to Section 10(b) by the SEC, 17 C.F.R. § 240.10b-5.

14. The jurisdiction of this Court is based on Section 27 of the Exchange Act, 15 U.S.C. § 78aa; and on Sections 1331 and 1337 of the Judicial Code, 28 U.S.C. §§ 1331 and 1337.

15. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and Section 1391(b) of the Judicial Code, 28 U.S.C. § 1391(b). The Company is headquartered in this District and the wrongs alleged in this Action occurred in substantial part in this District, including the preparation and dissemination to the investing public of false and misleading information.

16. In connection with the acts and conduct alleged herein, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mails and the facilities of the national securities exchanges.

PARTIES

PLAINTIFFS

17. Lead Plaintiff Scott Dahl purchased shares of EIS securities as detailed in the Plaintiff's Certification annexed hereto and was damaged thereby.

18. Lead Plaintiff Aimee Dechter purchased shares of EIS securities as detailed in the Plaintiff's Certification annexed hereto and was damaged thereby.

19. Lead Plaintiff Keith Hallman purchased shares of EIS securities as detailed in the Plaintiff's Certification annexed hereto and was damaged thereby.

20. Lead Plaintiff Ann Jacobs purchased shares of EIS securities as detailed in the Plaintiff's Certification annexed hereto and was damaged thereby.

21. Lead Plaintiff Jay Moskowitz purchased shares of EIS securities as detailed in the Plaintiff's Certification annexed hereto and was damaged thereby.

22. Eighteen additional Class members came forward pursuant to the notice requirements of the Private Securities Litigation Reform Act and moved to serve as Lead Plaintiff. Upon the request of the Court, and with the agreement of all Parties, plaintiffs have put forward the aforementioned Class members to serve as Lead Plaintiff and to represent the claims of all others who had come forward and of the Class.

DEFENDANTS

23. Defendant EIS is a Delaware corporation that was headquartered at 1351 Washington Blvd., Stamford, Connecticut, until January 1997, when it relocated its headquarters to Pittsburgh, Pennsylvania. EIS relocated its offices, in March 1997 to Herndon, Virginia. EIS was formed in 1988 and sells services and automated systems for outbound calling centers used by telemarketers and bill collectors, among others. In fiscal year ended December 31, 1995 ("Fiscal 1995"), EIS reported revenue of \$89,610,000 and net income of \$11,357,000. EIS's patented voice-recognition system allows users of its equipment to contact more customers and work more efficiently than with manual telephone dialing.

24. Surefind, incorporated in Delaware and based in Pittsburgh, Pennsylvania, is a provider of Local Area Network (LAN) and PC data disaster recovery services. Surefind's software purportedly allows users to automatically back-up computer data by transmitting it over telephone lines to Surefind's electronic vaults in Pittsburgh, Pennsylvania and Charlotte, North Carolina. The data is stored on jukeboxes using optical disk technology, ready for retrieval within minutes.

25. Cybernetics, incorporated in Delaware and based in Coral Gables, Florida, is a provider of software to the call center industry.

26. Defendant Joseph J. Porfeli was during all periods relevant hereto Chairman of the Board of Directors, Chief Executive Officer, and Director of EIS. Defendant Porfeli

was President of EIS from February 1996 through February 7, 1997. Defendant Porfeli was also President of Surefind from June 1995 through February 1996, during which time EIS acquired Surefind. Defendant Porfeli was paid cash compensation of \$383,899 for EIS's fiscal year ended December 31, 1995, comprised of \$248,899 in salary and \$135,000 in bonus. In addition, as of May 20, 1996, Porfeli owned 450,736 shares of EIS common stock. This included 2,430 shares issuable upon the exercise of then currently exercisable warrants and 353,750 shares issuable upon the exercise of options which were exercisable within sixty days of May 20, 1996. These options were valued at \$4,833,867 as of December 31, 1995, based on the difference between the market value of the common stock underlying the options and the exercise price of such options.

27. By virtue of his positions as Chairman, Chief Executive Officer, President, and Director of EIS, and his large stock holdings in EIS and Surefind, (Porfeli had been a director of Surefind in January 1995 and CEO in June 1995), defendant Porfeli had the authority and ability to control and, in fact, controlled the contents of the Company's public press releases and public disclosures relating to its financial operations and operating results. Further, defendant Porfeli's actions during the Class Period caused the material misstatements of the Company's financial condition and operating results as alleged herein. Defendant Porfeli was aware of the Company's public filings, publicly disseminated press releases and public representations alleged herein to be misleading prior to their issuance

and had the ability and opportunity to prevent their issuance or cause them to be corrected, but failed to do so.

28. Defendant Kent M. Klineman was the Secretary of EIS and a director since June 1988. He also served as Treasurer of the Company from June 1988 until December 1989. In addition, Klineman, during the Class Period, performed legal and consulting services for EIS and was paid a retainer of \$5,000 per month in consideration of these services. As of January 31, 1996, Klineman and his wife owned 451,261 shares of EIS common stock, including 27,750 shares issuable upon exercise of stock options.

29. By virtue of his large stock ownership in EIS and Surefind, his position as a director at EIS, his status as a creditor and as an attorney for Surefind, defendant Klineman had the authority and ability to control and, in fact, controlled the contents of the Company's public press releases and public disclosures relating to its financial operations and results. Further, defendant Klineman's actions during the Class Period caused the material misstatements of the Company's financial condition and operating results as alleged herein. Defendant Klineman was aware of the Company's public filings, publicly disseminated press releases and public representations alleged herein to be misleading prior to their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected, but failed to do so.

30. During the Class Period, defendants Porfeli and Klineman arranged for EIS to repay with interest loans they had made to Surefind. Defendant Porfeli held a promissory

note in the amount of \$50,000, and warrants to purchase 12,500 shares of Surefind Class A common stock for \$3.50 per share issued in connection with the promissory note. Defendant Porfeli's promissory note was one of a group of bridge loans made to Surefind in September 1995 totaling \$499,000 (the "Bridge Loans"). The Bridge Loans were repaid on December 21, 1995 from the proceeds of a loan from EIS. Defendant Porfeli also received approximately 94,556 EIS shares as a result of the Surefind merger with a market value of approximately \$1.7 million. Defendant Klineman held a bridge loan in the amount of \$100,000 and warrants to purchase 25,000 shares of Surefind Class A common stock for \$3.50 per share issued in connection with the promissory note. Defendant Klineman's Bridge Loan was repaid on December 21, 1995 from the proceeds of a loan from EIS.

31. Defendant Edward J. Sarkisian was the Executive Vice President, Worldwide Sales and Marketing of EIS from March 1995 to February 1996. In February 1996, Sarkisian was made the President of EIS's Surefind division. As of January 31, 1996, Sarkisian owned 38,500 shares of EIS common stock issuable upon exercise of stock options. Sarkisian was paid a base salary of \$134,808 and a cash bonus of \$207,116 in fiscal 1995. During fiscal 1996, Sarkisian exercised options to acquired 15,000 shares of EIS common stock. Those options, on the date of exercise, had a value of \$366,844, calculated as the difference between the market value of the common stock on the date of exercise and the option exercise price. As set forth below defendant Sarkisian sold

substantially all of his holdings in EIS while in possession of material adverse information concerning Surefind and Cybernetics.

PLAINTIFFS' CLASS ACTION ALLEGATIONS

32. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of the Class, which consists of all persons who purchased EIS common stock and/or call options on the open market from November 28, 1995 through March 31, 1997, inclusive. Excluded from the Class are defendants herein, the officers and directors of EIS, Surefind, and Cybernetics, and members of their immediate family, any entity in which any defendant has or had a controlling interest, and the legal representatives, heirs, successors, or assigns of any such excluded party.

33. As of June 9, 1997, 11,402,079 shares of EIS common stock were issued and outstanding and actively traded on an efficient market, the Nasdaq National Market System, in which millions of shares were traded during the Class Period. The EIS call options were traded on the American Stock Exchange which is an efficient market for such securities. While the exact number of Class members is unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, plaintiffs believe that there are thousands of members of the Class who may be identified from records maintained by EIS or its transfer agent. The members of the Class are, therefore, so numerous that joinder of all members is impracticable.

34. Plaintiffs' claims are typical of the claims of the other members of the Class in that plaintiffs and each Class member purchased EIS securities during the Class Period in a market in which the true state of the Company's financial condition, business prospects, and opportunities were not disclosed, and sustained injury as a result of defendants' wrongful conduct complained of herein.

35. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests that are adverse or antagonistic to those of the Class. Plaintiffs have retained counsel competent and experienced in class action and securities litigation.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all Class members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members to seek redress individually for the wrongful conduct alleged herein. There will be no difficulty in the management of this action as a class action.

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

- a. whether the federal securities laws were violated by defendants' acts as alleged herein;

- b. whether statements made by defendants to the investing public and the shareholders during the Class Period omitted and misrepresented material facts about the financial condition, business condition, and future prospects of EIS;
- c. whether defendants acted wilfully or recklessly in omitting to state and misrepresenting material facts;
- d. whether the market price of EIS securities during the Class Period was artificially inflated due to the nondisclosures and misrepresentations complained of herein;
- e. whether the members of the Class have sustained damages and, if so, the proper measure of such damages; and
- f. whether defendants Porfeli and Klineman are control persons of EIS within the meaning of Section 20(a) of the Exchange Act.

38. Plaintiffs envision no difficulty in the management of this Action as a class action.

39. The names and addresses of purchasers of EIS securities during the Class Period are available from EIS's transfer agent. Notice can be provided to such record owners via first class mail using techniques and a form of notice similar to those customarily used in class actions.

FRAUD-ON-THE-MARKET

40. Plaintiffs will rely, in part, upon the presumption of reliance established by the fraud-on-the market doctrine in that:

- a. Defendants made public misrepresentations or omitted material facts during the Class Period, as alleged herein;
- b. the misrepresentations or omissions were material;
- c. EIS securities were traded in an efficient market;
- d. the misrepresentations or omissions alleged induced the securities markets and reasonable investors to misjudge the value of EIS securities; and
- e. Plaintiffs and the other members of the Class acquired EIS securities between the time defendants made the misrepresentations or omissions and the time the truth was revealed, during which time the price of EIS securities were artificially inflated by defendants' misrepresentations and omissions.

41. Based upon the foregoing, plaintiffs and the other members of the Class are entitled to a presumption of reliance upon the integrity of the market for, at least, the purposes of class certification, as well as for ultimate proof of the claims on their merits. Similarly, plaintiffs and the other members of the Class are entitled to a presumption of reliance with respect to the omissions alleged herein.

SUBSTANTIVE ALLEGATIONS

EIS's Surefind Acquisition

42. On November 28, 1995, the start of the Class Period, EIS announced via a PRNewswire release that it had entered into a definitive agreement to acquire Surefind through the issuance to Surefind shareholders (upon a conversion ratio of 1 share of EIS stock for every 5.143 shares of Surefind) of 549,396 shares of EIS common stock. At EIS's closing price of \$16.125 on November 27, 1995, the acquisition had a value of \$8,859,000. EIS also announced in its press release that it had agreed to enter into a "credit facility" to enable Surefind to borrow up to \$1 million during the period November 3, 1995 through April 30, 1996, from EIS to provide for working capital, to support capital equipment purchases, and for "repayment of existing debt." [Emphasis added.]

43. E. Kevin Dahill, then EIS's President and Chief Operating Officer, also stated in the PRNewswire press release that he anticipated that Surefind would contribute to EIS's earnings as early as 1996:

We are pleased with the rapid conclusion of the definitive agreement and are optimistic about the prospects for combining Surefind's services with the call center expertise of EIS. Excluding the costs associated with the combination of the companies, and if Surefind operates according to plan, Surefind earnings are expected to be contributive to EIS earnings in 1996 and thereafter.

44. Although not disclosed in the November 28, 1995 press release, defendants Porfeli and Klineman had substantial investments in Surefind rendering the press release

materially false. Defendant Porfeli was the President, Chief Executive Officer, and a director of Surefind, and held the following debt and equity of Surefind: (i) 134,190 shares of convertible, nonvoting Class B Common Stock which were convertible on a share-for-share basis to Class A Common Stock at defendant Porfeli's option any time after January 23, 1996 and were automatically convertible to Class A Common Stock upon the acquisition of Surefind if there was an exchange of 50% or more of the Class A Common Stock for shares of the acquiring corporation; (ii) options to purchase 352,113 shares of Surefind Class A Common Stock at \$1.42 per share; and (iii) a promissory note from Surefind in the amount of \$50,000, and warrants to purchase 12,500 shares of Surefind Class A common stock for \$3.50 per share issued in connection with the promissory note. As a result of the acquisition, defendant Porfeli's warrants were to become warrants to purchase up to 2,430 shares of EIS common stock at \$18.00 per share. Defendant Porfeli was to receive 68,464 shares of EIS common stock in the merger as a result of his exercise of Surefind options.

45. Defendant Klineman held a promissory note from Surefind in the amount of \$100,000, and warrants to purchase 25,000 shares of Surefind Class A common stock for \$3.50 per share issued in connection with the promissory note. As a result of the acquisition, defendant Klineman's warrants were to become warrants to purchase up to 4,861 shares of EIS common stock at \$18.00 per share. These promissory notes were part

of a group of bridge loans made to Surefind in September 1995 totaling \$499,000. The bridge loans were repaid on December 21, 1995 from the proceeds of a loan from EIS.

46. On or about January 31, 1996, EIS filed with the SEC a Registration Statement which included a Prospectus (the “January Prospectus”) for the issuance of 549,577 shares of EIS common stock to be exchanged for all outstanding shares of Surefind (the “January Offering”). Each outstanding Surefind share was converted into the right to receive .19444 shares of EIS common stock. The January Prospectus, signed by defendants Porfeli and Klineman, touted the acquisition of Surefind as beneficial to the Company, stating that:

- (i) The Merger will provide EIS with a new service to market to its current and future outbound call center customers and others.
- (ii) The Surefind Service has the potential to be marketed successfully to inbound call centers, an emerging marketplace for EIS.

(January Prospectus at 28.)

47. Moreover, defendants represented that EIS’s marketing channels would provide ready-made outlets for Surefind business, stating that “EIS’s well-developed domestic and international marketing channels and existing customer base should provide potential outlets for the Surefind Service.” (January Prospectus at 29.)

48. Pursuant to the Surefind acquisition, defendant Porfeli, Surefind’s CEO at the same time he was EIS’s CEO, received 68,464 shares of EIS common stock as a result of

his exercise of his Surefind options, and 26,091 shares on the conversion of defendant Porfeli's preferred stock.

49. The above statements in the January Prospectus about the market for Surefind among EIS's call centers (§§ 46, 47) were materially false and misleading at the time they were made because Surefind, under Porfeli's direction had already tried and failed to market the Surefind product to EIS call center customers. The sales force responsible for marketing the Surefind Product was composed, in part, of Paul Innamorato (responsible for the Pennsylvania region), Darren Hepburn (responsible for the New York/New Jersey region), and Steve Romano (responsible for the Massachusetts region) ("Surefind Sales Force"). The Surefind Sales Force reported to Surefind Vice President Tom Behr, who reported directly to defendant Porfeli. The allegations herein (§§ 49-50) are based upon interviews with Tom Behr.

50. Beginning in 1995 Surefind endeavored to market the Surefind products to EIS customers. Specifically, Surefind engaged in at least four major sales efforts to sell to EIS customers:

- a. on or about April or May 1995, mass mailings were made by Surefinds' Sales Force to all EIS customers with not a single interested response;
- b. specific individual presentations were made in 1995 to the following EIS customers each of whom indicated no interest in using the product:
 - Market USA

- Telestar Marketing
- Reese Brothers
- Omega Communications
- CTC Teleservices c. presentations were even made at EIS itself in May 1995 for EIS to use the Surefind product, but EIS also rejected it;

d. sales efforts were made at the EIS user conference at the ANA Hotel on or about June 9, 1995 with no customer interest as alleged herein. Mr. Behr personally informed defendant Porfeli of each of these failed sales efforts (each of which occurred prior to the Surefind merger with EIS). In addition, defendants Porfeli and Klineman were aware of these failed sales efforts because they received sales and sales pipeline reports.

51. Defendants Porfeli and Klineman knew that the January Offering was crucial to them personally because, without EIS, shares being issued in exchange for what they knew were virtually worthless shares of Surefind stock, they would not salvage their Surefind loans, and profit at the expense of the investing public.

52. On February 9, 1996, EIS announced on the PRNewswire that it had signed a memorandum of agreement to acquire Cybernetics for \$22.75 million. The purchase price

consisted of \$9.27 million in cash and the remainder in EIS stock and stock equivalents. Revenues for Cybernetics for the prior fiscal year, Fiscal 1995, were stated to have been \$10.7 million. Defendant Porfeli stated, “This acquisition is consistent with our long-term strategy of extending our scope beyond leadership of the outbound call center industry. As market leaders in providing software to inbound call centers, Cybernetics complements the offering of EIS and allows us to serve both major segment of the call center industry.”

53. With this announcement, EIS’s common stock price rose from \$14.875 per share on February 7, 1996 to \$16.8125 on February 9, 1996.

54. On February 29, 1996, EIS issued a press release on the PRNewswire announcing that it had completed the acquisition of Surefind, which had been approved by the shareholders of both companies. Defendant Porfeli was quoted in the press release as stating that “[t]he acquisition of Surefind is consistent with the EIS strategy of offering our customers value-added software solutions, while continuing to broaden our scope beyond the call center industry.”

55. The February 29, 1996 press release further stated that defendant Sarkisian, formerly executive vice president of worldwide sales for EIS, would become president of Surefind.

56. Defendant Porfeli had owned approximately 18% of the capital stock of Surefind on a fully diluted basis, for which he paid aggregate consideration of \$690,550.

As a result of the acquisition, defendant Porfeli acquired 94,556 shares of the Company's Common Stock with a market value of approximately \$1,702,000.

57. On March 4, 1996, in an EIS announcement via the PRNewswire, defendant Porfeli stressed that EIS's "acquisition strategy," which included the acquisition of Cybernetics, "has always been focused on acquiring businesses that are highly compatible and operationally synergistic with our own." Defendant Porfeli referred to Cybernetics as one of the "leading providers of inbound work-force management software," stating "We believe our companies complement each other well, and combined, will be a potent force in the call center industry."

58. EIS filed its Form 10-K for fiscal 1995 with the SEC on March 26, 1996. In a letter to shareholders, contained as an exhibit to the Form 10-K, defendant Porfeli wrote:

To ensure success in 1996, we will continue to provide the high level of customer service demanded of mission-critical systems. The significant investments made in our support organization this past year are expected to increase service revenue while further reducing installation and response times. Ongoing product enhancements and add-on product and service offerings will also help maintain high customer satisfaction.

Our customer base will continue to grow as more and more companies rely on tele-commerce. Our industry expertise, product strategy, and technology vision will ensure our market leadership and position to take advantage of the opportunities ahead.

Overall, it's clear that each company milestone has been a link in a chain of successes.

From our roots as a predictive dialing manufacturer, we expanded our software offerings to meet the needs of an evolving call center industry. We quickly distanced our-selves from other companies that delivered only a piece

of the total solution -- either voice or data -- to be a pioneer in computer-telephone integration. Most importantly, we listened to our customers and created practical business solutions that increased productivity and profits in the call center.

With each acquisition, we built on our strengths. . . .

Looking ahead, EIS will continue on a path of new introductions and acquisitions that meet customers' needs and leverage our core competencies.

59. Defendants Porfeli and Klineman each signed the Fiscal 1995 Form 10-K.

60. On April 24, 1996, EIS reported on the PRNewswire that its first quarter ended March 31, 1996, results were the "highest first quarter revenue in the Company's history" and that EIS had successfully completed both the Surefind (on February 29, 1996) and Cybernetics (on March 1, 1996) acquisitions.

"We are extremely pleased with the results of the first quarter of 1996, and with the successful completion of the acquisitions of Cybernetics and Surefind," said Joseph J. Porfeli, Chairman, President and Chief Executive Officer. "EIS International is now a multi-divisional corporation that can serve the entire call center industry with the broadest spectrum of products while allowing us to expand our reach beyond the call center to serve larger, more diverse markets." The Company's products now include outbound systems, integrated inbound/outbound solutions, inbound workforce management software, backup and recovery services, and interactive training software, among others. [Emphasis added.]

Porfeli's May 1996 "Roadshow" To Institutional Investors

61. On May 8, 1996, defendant Porfeli gave an interview to Jeff Mamera of the Bloomberg News Forum, which was rebroadcast over the Bloomberg terminal system. The Bloomberg terminal system is used by most financial institutions and any information contained in it is in the public mix of information.

62. During the May 8, 1996 Bloomberg News Forum interview, defendant Porfeli discussed EIS's acquisitions of Surefind and Cybernetics, defendant Porfeli's forecasts for EIS's earnings, and the structure of EIS following the acquisitions of Surefind and Cybernetics. He stated during the interview that Surefind's earnings would be in line with analysts' estimates for the second quarter and that Cybernetics should contribute \$15,000,000 in revenue and \$3,000,000 in pretax profits in 1996 and that \$7.4 million was on the low-side of EIS's 1996 revenue estimates for Surefind.

And Cybernetics is in a unique marketplace called work force management. One of the biggest dilemmas in an inbound call center is having the optimum number of agents to satisfy the caller. If you have too few agents, wait times or queue times go up -- customers get dissatisfied -- and costs go up because you're paying for those 800 number calls while they're on hold. If you have too many agents, you've got an overhead for people sitting around doing nothing. So with Cybernetics, you can absolutely take a look at historical call patterns, historical trends and forecast the amount of people you need to have on staff at varying times during the day and varying days during the week, thereby setting the optimum workforce for the call queue. What that did for EIS International is it provided for us now not only an outbound solution -- which we're very good at -- but also allows us to serve the full inbound call center market, which is estimated to be 6 to 10 times larger than the outbound center market.

* * * *

[O]ne of the real positives about the Cybernetics relationship is it furthers the whole EIS International joint partnering with the inbound switch vendors -- firms like Rockwell, AT&T and Northern Tel. And what it provides for is when Rockwell sells a switch -- an inbound switch -- they will promote the Cybernetics product as an adjunct to that switch -- to provide for the workforce management technology that we talked about earlier. The reason for it is because this product Cybernetics has will help Rockwell sell switches and vice versa because there's no reason for a call center to stumble through workforce management as they have historically. There's 40,000 call centers in the United States -- only 5% of them -- even know we're utilizing a product such as Cybernetics.

* * * *

Surefind is a product service that you spend 15 minutes once in your life worrying about backing up your file. And never worry about it again. It's PC product software that goes onto your PC or your Lan. You configure it -- tell it how many times a week you want to backup your files and forget about it. Surefind wakes up in the middle of the night, takes a look at any files that have changed since the last wakeup call, packs them up, encrypts them, sends them up to Surefind.... So if you have a file disaster of any sort -- whether it's a lost file or somebody steals a PC -- Surefind has your files -- you point and click it brings it right back. This is available as a service. For call centers with large volumes of transactions -- it'll bring 'em back in a minute and you can do it every night.

* * * *

The two acquisitions will add to our bottom line significantly over time.
(Emphasis supplied).

63. Defendant Porfeli's statements on the Bloomberg News Forum were not identified as forward-looking statements and were not accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement.

64. Defendant Porfeli statements had a dramatic impact on EIS's common stock price which soared approximately 61% -- from \$18.125 on May 13, 1996 to \$29.125 on May 22, 1996. The exuberance concerning EIS was specifically tied to EIS claims about Surefind and Cybernetics in a Bloomberg news article on May 17, 1996:

EIS International Inc.'s stock soared 29 percent on optimism that two recent acquisitions will help propel the company into a bigger market for its software.

“Institutional investors are buying the hell out [of] it,” said Herbert Tinger, an analyst at First Albany Corp. in Albany, New York, who on Wednesday raised EIS’s shares from “hold” to “strong buy.”

Stamford, Connecticut-based EIS makes software to help companies match staffing in their customer service departments and catalog businesses to the flow of calls.

EIS bought the closely held software maker Cybernetics Systems International Corp., which is based in Coral Gables, Florida, on Feb. 29 for \$22.8 million. The next day, it bought Surefind, a Pittsburgh-based company that sells a service to allow computer users to back up their files.

Last week, EIS took to the road to explain the strategy behind those two acquisitions.

It paid off.

EIS shares jumped \$5 7/8 to 26 today in trading of 4.2 million shares, 21 times average volume of about 193,700 shares in the past three months. The shares rose 9 points in the past week, and is up 63 percent so far this year.

“We think it’s people finally beginning to understand the strategy behind the two acquisitions, and what it portends for the future of the business,” said EIS Chief Executive Joseph Porfeli.

“We made some acquisitions and management changes, then did the Bloomberg Forum and went out on the Street to get the word out,” Porfeli said. “It’s starting to work.”

During the last two days, EIS touted its prospects at a First Analysis Corp. conference in Chicago. On May 9, Porfeli told a Bloomberg Forum in New York how EIS’s Cybernetics and Surefind purchases are expanding the company’s customer base into the market for inbound calling centers such as customer service groups and catalog companies.

That market is six to 10 times as large as the outbound calling center, which EIS has traditionally targeted, Porfeli said.

Next week, Porfeli heads to California to tout the company to West Coast investors.

First Albany's Tinger said he expects EIS shares to touch \$36 by the end of the year – and \$30 by next week. He called the stock, “the most undervalued in its industry.” [Emphasis added.]

65. Defendant Porfeli's statements as part of the Roadshow (¶ 63) that Surefind would be used by call centers and thus generate substantial revenue was blatantly false given what defendant Porfeli knew about the total lack of interest call centers showed to Surefind in Surefind's 1995 marketing efforts.

66. The Company's forecast of revenue and pretax profits in 1996 from Cybernetics' was materially false and misleading given the true state of non-performance of Cybernetics principle products as described below (¶ 104).

67. On May 16, 1996, First Albany Corp. boosted its recommendation of EIS from a “hold” to a “strong buy” stating that “after spending significant time with the Company's management . . . boosted our confidence” in the company. According to the First Albany May 17, 1996 research report, the analysts' concerns that defendants, including Porfeli and Sarkisian, were able to dispel were: “(1) EIS's ability to maintain a dominant market position in the telemarketing segment and keep both margins and receivables intact, (2) potential dilution to 1997 earnings due the Surefind Information Inc. acquisition, and (3) the strength of the new management team.” First Albany's 1996 earnings per share estimate was \$1.35, with a price target of \$35 per share.

May 1996 Sale of EIS Common Stock

68. On or about May 16, 1996, EIS filed with the SEC a Registration Statement and Prospectus covering the resale by certain EIS stockholders (the “May Selling Shareholders”) of 96,509 shares of EIS common stock (the “May Offering”). These shares were issued or were issuable to the May Selling Shareholders upon the exercise, inter alia, of certain Cybernetics warrants which were assumed by EIS pursuant to the Cybernetics acquisition.

69. Between May 23, 1996 and May 29, 1996, defendant Klineman sold 40,000 shares of EIS’s common stock at prices ranging between \$29.25 and \$30.00 per share. On May 28, 1996, defendant Sarkisian sold 15,000 shares of EIS’s common stock at a price of \$30.00 per share.

70. Defendants Klineman and Sarkisian sold substantial percentages of their stock holdings while in possession of material, non-public information that Surefind’s and Cybernetic’s products had not been well received by customers, and that EIS would not achieve defendant Porfeli’s publicly stated revenue and earnings projections.

71. On June 18, 1996, EIS filed a prospectus and registration statement governing the public offering of 148,962 shares of EIS common stock by certain selling shareholders. Such shares were to be sold from time to time at prices related to the then-current market price or in negotiated transactions. The selling shareholders included defendants Porfeli and Klineman.

Defendants Further Tout the Acquisitions

72. On July 17, 1996, as reported on the PRNewswire, the Company announced its financial results for the quarter ended June 30, 1996. The Company announced consolidated net revenues for the three months ended June 30, 1996 of \$30.627 million, and \$56.403 million for the six months ended June 30, 1996.

73. The July 17, 1996 press release quoted defendant Porfeli extolling the Company's substantial "financial achievements," especially in light of the two recent acquisitions:

We are extremely pleased with EIS International's strong growth and financial achievements during the second quarter. . . . This is the first full quarter where we've had multiple operating companies in place. The positive financial results point to the admirable performance and dynamic leadership of the presidents of EIS Systems, Surefind and Cybernetics.

74. The July 17, 1996 press release was knowingly or recklessly materially false and misleading when made because, among other things, it failed to disclose that Cybernetics was in the midst of a product dispute with one of its major customers, which would retard future revenue growth, and that Surefind had capitalized approximately \$1.5 million of advertising expenses that should have been written off because the advertising had generated little demand for Surefind's product or prospect for future revenue. The nature of the Surefind product required customers to load the software and register with the company. Accordingly, by July 17, 1996, defendants knew or were reckless in failing to know of the limited demand for the Surefind product.

75. The press release gave no hint that customers had expressed dissatisfaction with EIS's products.

76. On August 12, 1996, as reported in the Financial World, defendant Porfeli stated that the Cybernetics acquisition would increase EIS shareholder value:

because EIS is now getting into the inbound calling service through the nondilutive acquisition of Cybernetics, a move applauded by Wall Street. Cybernetics makes extremely lucrative software that allows companies to answer incoming calls more quickly. Sales are growing at an average annual rate of 40% and gross margins are at least 80%. [Emphasis added.]

77. The above statement was materially false and misleading when made because defendant Porfeli had attended a management conference at Cybernetics in Coral Gables, Florida, in August 1996 and was told personally by Cybernetics sales and product management personnel that WFM did not work and that the demonstration product would not "stay-up" (i.e., work) long enough to use by sales personnel. Defendant Porfeli assigned Harry Peisach, president of Cybernetics, the task of creating action plans to fix the product. There were follow-up meetings with defendant Porfeli in Coral Gables, Florida, but WFM never performed as marketed.

**The Company Reports Positive
Second Quarter 1996 Results**

78. EIS filed its Form 10-Q with the SEC on August 14, 1996. The Form 10-Q, signed by defendant Porfeli, contained EIS's condensed consolidated Balance Sheet, Statement of Operations, and Cash Flow for the period ended June 30, 1996.

79. In reporting the Company's financial results for the second quarter and six months ended June 30, 1996, the Form 10-Q emphasized the Company's substantial revenue and net income growth, stating:

Net revenues of \$30.6 million in the second quarter of fiscal 1996 increased 47% from \$20.8 million in the second quarter of fiscal 1995. Net revenues increased to \$56.4 million in the first six months of fiscal 1996 as compared to \$39.0 million in the corresponding period of fiscal 1995, representing growth of 45%.

80. The Company attributed these improved results in substantial part, to purported positive performance at Cybernetics:

The growth in product revenues during the quarter and six month period is primarily a result of the increase in purchases of the Company's products by the existing customer base and of the addition of a number of new domestic and international customers. In addition, inbound software sales from Cybernetics contributed \$4.1 million of software revenue for the quarter.

81. Moreover, the Form 10-Q disclosed a customer dispute which would adversely affect its net income for the quarter. However, the Company stated its reserves were sufficient to protect against the claim.

82. To allay investor concerns about any potential customer refund, EIS held a conference call on August 23, 1996. Defendants claimed that the purpose of the call was to correct a mistake in the second quarter 1996 Form 10-Q and disclose subsequent events.

83. In a press release issued after the conference call, EIS portrayed the customer dispute as inconsequential. Defendant Porfeli stated that he was in the process of negotiating a solution to it. Even if EIS was forced to return part of the revenue, he

explained, the impact on earnings would not be material, because \$2,000,000 remained in an escrow account established in connection with the Cybernetics acquisition and would cover most of any potential loss.

84. The press release further stated that Porfeli had met the prior week with “several other key Cybernetics customers” who “assured him that this is an isolated customer situation and is not at all indicative of overall customer dissatisfaction.”

85. Defendant Porfeli also acknowledged in the press release and on the conference call that:

While we continue to be encouraged by the interest in Surefind and the viability of on-line backup and recovery, the number of actual registrations are below our expectations.

86. Defendant Porfeli’s statements that he had only learned of the Cybernetics’ “customer dispute” in July 1996 and that the dispute was just an isolated incident and that overall customer satisfaction was high was materially false and misleading when made because he knew or was reckless in not knowing of the customer dispute, which was with Bell, months before and was also aware that there were pervasive problems with Cybernetics’ products.

87. Defendant Porfeli also announced on August 23, 1996 that “EIS’s Surefind unit, which makes products that back up important computer data, hasn’t met the company’s expectations, and EIS is taking steps ‘to align our expenses with revenues.’” Defendants moved quickly to staunch any damage. As a result of communications with

management, however, on August 23, 1996, analyst Herbert Tinger of First Albany Corp. characterized the customer refund as a “non-issue” and recommended that investors buy EIS’s common stock.

88. On August 30, 1996, EIS announced, as reported on the PRNewswire a write-off of costs incurred in connection with Surefind’s marketing campaign as follows:

its Surefind operating company anticipates recording a one-time SG&A expense in the third quarter of 1996 that could reduce EPS by approximately \$0.09. These costs are associated with the Surefind marketing launch and are being written off as a result of the cancellation of the direct consumer marketing program. The Company continues to be committed to the direct selling of Surefind through distribution channels, and by doing so, will align Surefind’s operating expenses with revenue generation. EIS is expected to report its third quarter earnings on October 17, 1996. [Emphasis added.]

89. Nevertheless, defendant Porfeli in the August 30, 1996 PRNewswire press release reiterated his “confidence” in Surefind as follows:

We remain confident in the viability of the Surefind business, and believe that by moving our expenses in line with our revenue we will be able to more appropriately build the businesses while targeting broader distribution channels, corporate field sales organizations and small business local area network users.

90. On September 20, 1996, Oppenheimer & Co., published a research report stating that “we spoke with EIS management this morning and confirmed that there was no rational reason for yesterday’s extreme stock sell off.” EIS’s statement to Oppenheimer was materially false and misleading as would soon be disclosed.

**Undisclosed Problems With WFM
and EMPSX Cybernetics Products**

91. The positive statements (in ¶¶ 52, 54, 57-58, 73, 76, 80) regarding Cybernetics' market, financial results and its EMPSX and WFM products were false and misleading because they concealed massive perform problems and customer non-payment because of those problems. The sales force at Cybernetics in 1995, 1996 and 1997 included but was not limited to Ed Haggerty, Dawn Scharer, Larry Hennessey, Nate Lampe, Mary Gardner, Steve Stapp, David Bunce, Don Scharer, Todd Cotheran and Brad York (the "Cybernetics Sales Force"). The Cybernetics Sale Force reported to Vice President Tom Yanilos. The allegations set forth herein (¶¶ 93-104) are based upon interviews with certain former members of the Cybernetics Sales Force.

92. While Cybernetics did not get paid in full until final customer acceptance, it recorded as revenue the entire amount of the order at the time it received either a purchase order or a contract. The Cybernetics Sales Force had direct personal knowledge of the problems with Cybernetics products because Cybernetics did not receive full payment, and those employees did not receive full sales commissions, until final customer acceptance occurred – this was only after installation, customer training and full functionality was achieved.

93. Cybernetics recognized substantial revenue from the sale of EMPSX in the fall of 1995, and from WFM sales in 1995 and 1996, even though both EMPSX and WFM were "unstable" products and sales of WFM had slowed dramatically by mid 1996.

Much of these purported sales were effectively written off at the end of the Class Period because the customers had withheld payment due WFM and EMPSX performance failure.

94. In the fall of 1995 Cybernetics recorded approximately \$7.3 million in revenue from the sale of its EMPSX product as follows:

<u>Date</u>	<u>Customer</u>	<u>Order Amount</u>
9/95	CIBC	\$352,137
10/95	Pitney Bowes	\$265,200
11/95	NYNEX	\$6,710,053

95. The EMPSX product purported to be sophisticated software to be used by businesses with inbound call center functions. EMPSX was supposed to be able to analyze a historical pattern of calls and call volume so as to allow for among other things, the prediction of inbound call center staffing.

96. However, the EMPSX software was so unstable that it consistently caused the computer to “freeze” or report on the screen that an illegal function had been performed. Cybernetics was also unable to get EMPSX to perform the specific functions promised to major customers such as NYNEX. As a result of these stability and functionality problems, from January 1, 1996 through September 31, 1996 not a single EMPSX sale was made. This fact is reflected in two Cybernetics documents, which were generated by the Cybernetics Sales Force and provided to senior management, including defendants Porfeli and Klineman. The first is a document dated January 3, 1997 and entitled “Cybernetics Systems International Contract Signing Schedule by Quarters,” that

delineates “EMPSX” and “Non-EMPSX” sales by quarter from 1993 through 1996. This document was prepared on a quarterly basis. The second document is dated September 19, 1996 and is entitled “Cybernetics International Contract Sign Schedule.” This second document, which was prepared on a monthly basis, shows EMPSX and WFM sales, the name of the customer, the date of the sale and which product -- EMPSX or WFM -- was sold. Both of these documents were prepared by Cybernetics comptroller Louis Aviles and sent to senior EIS management including Defendants Porfeli and Klineman.

97. In terms of non-EMPSX sales, Cybernetics reported WFM sales of \$2,339,130 in 1995 and \$1,595,005 in 1996 (through September 19, 1996). The WFM product was to perform many of the same basic functions as EMPSX but in a smaller setting and with a personal computer or small network of personal computers. WFM suffered from the same stability problem as the EMPSX.

98. The WFM product suffered from numerous additional problems including:
- a. the software did not allow for data collection from all types of telephones;
 - b. the WFM Software did not function in a shared Windows environment or network causing a number of customers, including Cigna Dental, to return and cancel their WFM order in the Spring 1996;

c. WFM also had problems interacting with Windows operating systems with respect to Windows memory management-- functions which WFM relied upon to function properly.

99. On July 15, 1996, defendant Porfeli attended a meeting held at Cybernetics attended by the Sales Force wherein Mr. Porfeli was fully informed of the problems with the Cybernetics products.

100. Prior to the Cybernetics acquisition, the following key accounts were withholding payment and were in jeopardy because of the WFM performance failures:

- American Airlines;
- FDC;
- TeleTech Teleservices; and
- APAC Teleservices Inc.

101. By September 1996 the Company faced a crisis – the Cybernetics Sales Force was refusing to continue to sell the WFM product. As a result, Tom Yanilos issued a memorandum wherein he stated “I am concerned that there is an internal perception that we have “nothing to sell.” Yanilos conceded that WFM did not work, promised that it would be fixed, that, sales should be made based upon the yet unreleased but purported “stabilized” WFM product; and the commission rate would be increased to 1.5x regular commission rates:

I am concerned that there is an internal perception that we have “nothing to sell”. NOT SO! I understand the various issues that you have faced with the current version of 3.2 We as a company have stepped up to this situation and have revamped our development process and organization.

Shortcomings are being addressed, and relief is “just around the corner”. It is critical to our success that we create a high sales activity NOW.

To recognize your efforts and to establish momentum, I am pleased to tell you that EFFECTIVE IMMEDIATELY, AND THROUGH 12/31/96, ALL CONTRACTS WRITTEN DURING THIS TIME PERIOD WILL BE PAID SALES COMMISSIONS AT 1.5 TIMES THE REGULAR COMMISSION RATE!!!!

By November 1, 1996 you will have a “bullet resistant” version of 3.2, renamed v3.2 Release 2, available for you to demo. We will also release this version on a controlled basis to existing accounts, with the expressed intent of installing all current customers on this release. In the meantime, you should be actively utilizing your existing sales tools with the knowledge that these improvements are right around the corner.

102. The above undisclosed Cybernetics product problems experienced in 1995 and 1996 lead to the massive \$17 million write down of Cybernetics assets in 1997.

EIS Announces a Stunning Reversal

103. In a reversal of their prior positive statements, on October 3, 1996, defendants partially revealed the falsity of their earlier statements about EIS’s financial condition, the adequacy of its reserves, and customer acceptance of its products. Announcing that third quarter 1996 results will fall below expectations, the Company disclosed it expected to report break-even operating results, and a loss for the third quarter ended September 30, 1996, due to a \$5,300,000 charge against income. In the same quarter of the previous year, EIS had earned \$3,200,000, or \$.32 per share, on revenue of \$23,000,000.

104. Defendant Porfeli falsely attributed the failure to meet analyst expectations to “delays in several key orders at EIS Systems and Cybernetics, and disappointing results from its international efforts, and not to product failures.”

105. The market reacted swiftly to this announcement. On October 3, 1996, shares of EIS’s common stock plummeted 39%, from \$12.85 to \$7.625 per share on trading of 4,930,000 million shares, making it the most actively traded stock in the United States markets.

106. On October 11, 1997, EIS announced that Harry Peisach was leaving Cybernetics and would be replaced by defendant Sarkisian who had been appointed President and Chief Operating Officer of Cybernetics.

107. On October 17, 1996, EIS issued a press release disclosing actual operating results for the third quarter of fiscal 1996. EIS reported consolidated net revenues for the third quarter totally \$18.2 million and a net loss of \$6.9 million, or \$.063 per share. In the prior year (which did not include Cybernetics’ operating results), EIS had reported net revenue of \$23,142 and operating income of \$4,118,000. Incredibly, EIS reported third quarter revenues that were \$5 million lower than the prior year, notwithstanding the Cybernetics and Surefind acquisitions.

108. Consolidated net revenues for the nine months ended September 30, 1996 were \$74.6 million. The Company recorded a net loss for the nine month period of \$19.6 million, or \$1.85 per share, which included the above mentioned charges and non-recurring

charges for acquired technology in process and other merger related costs for the acquisitions of Cybernetics and Surefind.

109. Defendant Porfeli tried to present the operating results in the best possible light:

We are clearly disappointed that, for the first time in our 17 quarters as a public company, we did not achieve the results we had hoped to report for this quarter. Despite this temporary setback, I am confident that the fundamentals of our business have not changed.

110. EIS filed its Form 10-Q for the third quarter with the SEC on November 11, 1996. The Form 10-Q was signed by defendant Porfeli.

111. On Friday, January 24, 1997, EIS again shocked the market by disclosing, after the close of the stock market, that it expected to release its 1996 fourth quarter and year-end earnings the first week in February and that preliminary indications were that the Company would post a loss for the fourth quarter. EIS was expected to earn \$0.22 a share for the quarter, based on the average estimate of three analysts.

112. The fourth quarter press release dispelled any notion that the poor third quarter operating results had reflected a deferral of orders to the fourth quarter. Rather, by January 24, 1997, defendants had to acknowledge that the poor operating results were attributable to the lack of demand for EIS's products.

113. On Monday, January 27, 1997, shares of EIS fell as much as \$2.75 per share to \$4.75. EIS common stock closed on January 27, 1997 at \$5.625 per share. Trading

volume was 756,800 shares, more than quadruple the three-month daily average of 161,000 shares.

**Defendant Porfeli Resigns;
Surefind Operations Are Shut Down;
Cybernetics Facility Is Closed;
Surefind and Cybernetics Assets Are Written Off.**

114. On February 7, 1997, as reported on the PRNewswire, EIS issued a further partial disclosure announcing the resignation of defendant Porfeli and its planned reorganization, or “organizational changes,” which were likely to result in charges in the first quarter. The Company also specifically stated that management “is also analyzing the operations of certain other business acquired in 1996 and the value of the related intangible assets” and that as a result, “additional charges may be incurred in 1996.” [Emphasis added.]

115. On March 3, 1997 -- only 12 months after the acquisition of Surefind and Cybernetics for approximately \$31 million -- EIS announced via the PRNewswire the entire discontinuation of operations at the Surefind unit and the closing of a Cybernetics facility in Florida:

EIS will implement a restructuring and reorganization plan that includes closing the company’s corporate facility in Pittsburgh, discontinuing operations at its Surefind unit, closing the company’s corporate facility in Pittsburgh and closing a Cybernetics unit facility in Coral Gables, Fla.

116. The final blow to EIS shareholders came on March 31, 1997, the close of the Class Period. As reported on the PRNewswire, EIS announced it would report a net loss

of \$19 million or \$1.75 per share for the quarter ended December 31, 1996. This substantial loss was a result of charges of \$17 million relating to operating losses and the write-down of assets associated with the acquisition of Cybernetics as well as charges of \$1.1 million for the discontinuance of Surefind.

DEFENDANTS ACTED WITH SCIENTER

117. Defendants' positive statements about the Surefind product, its purported substantial existing market, including among EIS's call center customers, and the beneficial impact of EIS's acquisition of Surefind set forth herein (¶¶ 43, 46-47, 54, 62, 64, 73) were materially false and misleading because defendant Porfeli was aware of at least four separate failed sales efforts (prior to the commencement of the Class Period) to sell the Surefind product to EIS's call center customers as set forth herein (¶¶ 49-50). The bases for these allegations are interviews with Tom Behr, former Surefind Sales Vice President who reported directly to defendant Porfeli (¶¶ 49-50).

118. Defendants' positive statements about Cybernetics' business products, its profitability, the purported synergies or benefits from EIS's acquisition of Cybernetics as set forth herein (¶¶ 52, 54, 57-58, 62, 64, 73, 76, 80) were materially false and misleading because defendants knew, or recklessly disregarded that stability and functionality problems had shut down Cybernetics ability to sell its EMPSX between January 1, 1996 and September 30, 1996 and slowed WFM sales and caused nonpayment by major customers as set forth herein (¶¶ 91-101). The bases for these allegations are interviews with former members of Cybernetics sales force and Cybernetics internal company documents described herein (¶¶ 91, 96).

119. The Individual Defendants were fully aware or were reckless in failing to know that EIS had failed to disclose material adverse information and misrepresented the

truth about the Company, its financial performance, earnings, and future business prospects thereby causing its common stock to be artificially inflated. The Individual Defendants realized substantial unlawful profits from their fraud by selling EIS common stock during the Class Period, as set forth below:

Insider Sales

120. As EIS’s common stock reached its height of \$29.00 or \$30.00 per share in May 1996, officers and/or directors of EIS made substantial sales of EIS common stock as follows:

<u>Name</u>	<u>Date</u>	<u>Shares Sold</u>	<u>Share Price</u>	<u>Amount Sold</u>
Edward J. Sarkisian	5/28/96	15,000	\$30.00	\$ 450,000.00
Kent M. Klineman	5/28/96	4,000	\$29.6438	\$ 118,575.20
	5/24/96	10,000	\$30.00	\$ 300,000.00
	5/24/96	23,000	\$29.6685	\$ 682,375.50
	5/23/96	1,000	\$29.25	\$ 29,250.00
	5/23/96	2,000	\$29.375	\$ 58,750.00

Defendants Porfeli and Klineman Used EIS to Cash out Their Money Losing Investment in Surefind

121. Defendant Porfeli who was, at the time of the Surefind acquisition, Chairman of the Board of Directors, Chief Executive Officer, President, and Director of EIS was also President and Chief Executive Officer of Surefind. Defendant Porfeli held a promissory note in the amount of \$50,000 from Surefind, and warrants to purchase 12,500 shares of

Surefind Class A common stock for \$3.50 per share issued in connection with the promissory note. Defendant Porfeli's promissory note was one of a group of bridge loans made to Surefind in September 1995 totaling \$499,000 (the "Bridge Loans"). The Bridge Loans were repaid on December 21, 1995 from the proceeds of a loan from EIS. Defendant Porfeli also received approximately 94,556 EIS shares as a result of the Surefind merger with a market value of approximately \$1.7 million.

122. Defendant Kent M. Klineman was, at the time of the Surefind acquisition, Secretary of EIS, a member of the Company's Board of Directors; served as the Company's legal counsel; and provided legal services to Surefind. As of March 23, 1995, Defendant Klineman held a **Bridge Loan** in the amount of \$100,000 from Surefind and warrants to purchase 25,000 shares of Surefind Class A common stock for \$3.50 per share issued in connection with the promissory note. Defendant Klineman's Bridge Loan was repaid on December 21, 1995 from the proceeds of a loan from EIS.

**Defendants Porfeli and Klineman Sold
EIS Common Stock in a June 1996 Offering**

123. On or about June 18, 1996, EIS filed with the SEC a Registration Statement and Prospectus covering the resale by certain EIS stockholders (the "June Selling Shareholders") of 148,962 shares of EIS common stock (the "June Offering"). These shares were issued or were issuable to the June Selling Shareholders upon the exercise, inter alia, of certain Surefind warrants which were assumed by EIS pursuant to the Surefind acquisition.

124. Pursuant to the June Offering, defendant Porfeli offered for sale to the investing public 2,430 shares of EIS common stock at a maximum price of \$27.375 per share thereby realizing proceeds of approximately \$66,521.25.

125. Pursuant to the June Offering, defendant Klineman offered for sale to the investing public 4,861 shares of EIS common stock at a maximum price of \$27.375 per share thereby realizing proceeds of approximately \$133,069.88.

**FOR A FIRST CLAIM FOR RELIEF
(Against All Defendants under
Section 10(b), Exchange Act and SEC
Rule 10b-5 Promulgated Thereunder)**

126. Plaintiffs incorporate by reference the foregoing paragraphs 1 through 125 as if fully set forth herein.

127. During the Class Period, defendants, individually and in concert, directly and indirectly, by use and means of instrumentalities of interstate commerce, the mails, or the national securities exchanges, employed devices, schemes, and artifices to defraud pursuant to which they knowingly or recklessly made untrue statements of material fact and/or omitted to state material facts necessary to make the statements made not misleading; and engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities regarding EIS's financial results and business prospects and opportunities which inflated the market prices for EIS's securities in violation of Section 10(b) of the Exchange Act and SEC Rule 10b-

5 promulgated thereunder. All defendants are sued as primary participants in the wrongful and illegal conduct charged herein.

128. 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 omissions were done knowingly or recklessly and for the purpose and effect of concealing EIS's operating condition, finances, business practices, and future business prospects from the investing public which affected the market prices for EIS's securities. As demonstrated by defendants' misstatements of the Company's finances and prospects 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.

129. Plaintiffs and the other purchasers of EIS securities similarly situated, at the time of said misrepresentations and omissions, were ignorant of, and could not have known of, the falsity of these statements. As a direct and proximate result of defendants' wrongful conduct, and in reliance upon the integrity of the market, and the fidelity, integrity, and superior knowledge of defendants, and in ignorance of the truth, plaintiffs

and the other Class members were induced to and did purchase EIS securities at prices that were inflated by defendants' conduct and were damaged thereby.

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

**FOR A SECOND CLAIM FOR RELIEF
(AGAINST DEFENDANTS PORFELI AND KLINEMAN
UNDER SECTION 20(a), EXCHANGE ACT)**

131. Plaintiffs incorporate by reference the foregoing paragraphs 1 through 130 as if fully set forth herein.

132. This claim is asserted against defendants Porfeli and Klineman and is based on Section 20(a) of the Exchange Act. Defendants Porfeli and Klineman were control persons of EIS within the meaning of Section 20(a) of the Exchange Act. Defendant Porfeli, by reason of his position as Chairman, Chief Executive Officer, and Director of EIS, his large stock holdings in EIS and Surefind, his status as a creditor of Surefind, and his hand-picked and dominated Boards of Directors of both EIS and Surefind (Porfeli had been a director of Surefind in January 1995 and CEO in June 1995) and defendant Klineman, by reason of his large stock ownership in EIS and Surefind, his position as a director at EIS, his status as a creditor and as an attorney for Surefind, had the power and authority to cause or to prevent the wrongful conduct complained of herein, and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that plaintiff contends

are false and misleading. Defendants Porfeli and Klineman were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiffs to be materially false and misleading before 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.

133. Pursuant to Section 20(a) of the Exchange Act, by virtue of their positions as a controlling persons, defendants Porfeli and Klineman are liable jointly and severally with and to the same extent as the Company for the Company's aforesaid violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. As a direct and proximate result of defendants Porfeli's and Klineman's wrongful conduct, plaintiffs and the other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

WHEREFORE, plaintiffs respectfully pray for judgment as follows:

- i. Declaring plaintiffs to be proper class representatives and this action to be a proper class action;
- ii. Awarding plaintiffs and all other members of the Class damages against all defendants jointly and severally in an amount that may be proven at trial, together with prejudgment interest thereon;
- iii. Awarding plaintiffs legal fees and expert fees, together with interest, costs and disbursements; and
- iv. For such other relief as to this Court appears just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues.

Dated: Hartford, Connecticut

PLAINTIFFS AND THE CLASS

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