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11 **IN THE UNITED STATES DISTRICT COURT**
12 **IN AND FOR THE CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

13

14 CHRIS STAYMAN, individually
and on behalf of all other
15 similarly situated,

16 Plaintiff,

17 vs.

18 HIENERGY TECHNOLOGIES, INC.;
BOGDAM MAGLICH; BARRY ALTER;
19 GREGOR F. GILBERT; AND PHILIP
GURIAN,

20 Defendants.

21

22

Case No. _____

COMPLAINT FOR VIOLATION OF
FEDERAL SECURITIES LAWS

(CLASS ACTION)

PLAINTIFF DEMANDS A TRIAL
BY JURY AS TO ALL ISSUES
SO TRIABLE

23 Plaintiffs allege that:

24

JURISDICTION

25 1. This Court has jurisdiction over the subject matter of
26 this action pursuant to Section 27 of the Securities Exchange
27 Act of 1934 (the "Exchange Act") (15 U.S.C. § 78aa et seq.)
28 and 28 U.S.C. §§1331 and 1367. In connection with the acts

1 and course of conduct alleged in this Complaint, Defendants,
2 directly and indirectly, used the means and instrumentalities
3 of interstate commerce, including the U.S. mails and inter-
4 state telephone communications.

5 **INTRODUCTION AND OVERVIEW**

6 2. This is a class action brought on behalf of those
7 persons who acquired the stock of HiEnergy Technologies, Inc.
8 ("HiEnergy" or the "Company") during the period from February
9 22, 2002 through July 8, 2004 (the "Class Period"). Plain-
10 tiffs allege claims against all defendants for violations of
11 § 10 and § 20(a) of the Securities Exchange Act of 1934 (the
12 "1934 Act") arising out of false and misleading statements in
13 publicly annual reports, registration statements and other
14 filings with the Securities & Exchange Commission during the
15 Class Period.

16 3. HiEnergy is a publicly traded company that has purport-
17 edly developed a car-bomb sensor for use in airports and by
18 law enforcement and the military that uses neutron-based
19 technology to remotely and non-invasively detect dangerous
20 and illicit substances such as plastic explosives, cocaine,
21 anthrax, liquid explosives and other biological and chemical
22 threats that are located inside sealed containers.

23 4. The company was founded by Dr. Bogdan Castle Maglich as
24 HiEnergy Microdevices in 1995. In April 2002, the company
25 entered into a reverse merger with SLW Enterprises, Inc., a
26 publicly traded company, and changed the name of the newly
27 merged entity to HiEnergy Technologies, Inc. HiEnergy

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1 Technologies, Inc. obtained a public listing on the OTC
2 Bulletin Board Market and trades under the ticker symbol
3 HIET.

4 5. On July 8, 2004, the Company disclosed that the SEC
5 intended to charge the Company for securities fraud in con-
6 nection with their dissemination of false and misleading
7 press releases regarding the company's bomb detector, for
8 misleading statements related to a purported "oral agreement"
9 with the Dallas - Fort Worth Homeland Security Alliance, and
10 for issuing false financial statements.

11 6. HiEnergy issued numerous press releases that overstated
12 the progress made in developing and the effectiveness of
13 their bomb detection devices, and the prospects for getting
14 their devices into the marketplace and for securing govern-
15 ment contracts. This included false statements claiming that
16 an "oral understanding" with the Dallas-Fort Worth Homeland
17 Security Alliance existed, and a false and misleading presen-
18 tation at the Investment Opportunities in Homeland Security
19 and Defense Conference in Washington D.C. on March 30, 2004,
20 which was subsequently posted on the Company's website from
21 April 7 to April 13, 2004.

22 7. HiEnergy also filed statements containing material
23 omissions of fact concerning the regulatory and criminal
24 history of the company's major shareholders, officers, direc-
25 tors and control persons.

26 8. HiEnergy has also just admitted that its financial
27 statements for the fiscal years ended April 30, 2002 and
28 April 30, 2003 as well as quarterly reports for quarters

1 ended July 31, 2002 through January 31, 2004 must be restated
2 because all such reports are inaccurate. The Company has
3 admitted that expenses were understated by at least \$1.0
4 million and accumulated deficit by \$3.0 million. The Com-
5 pany's auditors have stated that the previously issued audit
6 opinions and financial statements which are dated June 5,
7 2002, and July 8, 2003 cannot be relied on and are immedi-
8 ately withdrawn.

9 9. During the Class Period, the Defendants also misled the
10 investing public in a series of SEC filings, press releases
11 and on their corporate website by omitting to state certain
12 material information about their business dealings with Phil
13 Gurian ("Gurian"), a convicted felon and former stocktrader
14 who was permanently barred from the securities business by
15 the National Association of Securities Dealers in March 1995
16 for his involvement in stock manipulation schemes.

17 10. Gurian, with the assistance of Barry Alter, a director
18 of HiEnergy at the time, formed an undisclosed group to
19 secretly control more than 80% of HiEnergy's outstanding
20 shares as part of a textbook "pump and dump" securities
21 fraud.

22 11. As revealed in an SEC investigation, Gurian is the
23 party in control of a British Virgin Islands hedge fund
24 called Benil Finance Ltd. ("Benil"). Benil purchased 9% of
25 the outstanding common stock of HiEnergy.

26 12. The SEC investigation also revealed that Rheal Cote
27 ("Cote"), acting as Gurian's nominee, owned 61% of HiEnergy's
28 common stock. Through his holdings with Benil and his nomi-

1 nee, Cote, Gurian thus controlled 70% of HiEnergy's outstand-
2 ing shares of common stock. The listed address for Rheal
3 Cots is a condominium owned by Jeannine Gurian, Phil Gurian's
4 mother.

5 13. Barry Alter, a friend of Gurian's and onetime Chief
6 Executive Officer and director of HiEnergy, owned nearly 10%
7 of HiEnergy's common stock.

8 14. The combined holdings of close friends Gurian and
9 Alter collectively amounted to nearly 81% of HiEnergy's
10 outstanding shares of common stock.

11 15. Through various Canadian brokerage firms, accounts
12 related to Benil have sold over \$2 million of HiEnergy stock
13 since February 2002.

14 16. The sales of HiEnergy stock by Benil are related to
15 the manipulation of stock by various persons.

16 17. Under United States securities laws, HiEnergy was
17 required to disclose the identity of their control persons
18 and major shareholders in the reports and registration state-
19 ments they are required to file with the SEC. These reports
20 must contain all information necessary to ensure that state-
21 ments made in them are not materially misleading.

22 18. In addition as an officer and director, Alter was
23 required to disclose that he was part of a group that con-
24 trolled more than 80% of HiEnergy's stock, and which intended
25 to and did in fact sale more than \$2.0 million of HiEnergy
26 stock into the marketplace at a substantial profit.

27 19. Metro Trading Inc. was, at one time, a market maker
28 for HiEnergy stock. A number of employees of Metro Trading

1 Inc. had worked at Sovereign Equity Management ("Sovereign").
2 Sovereign is one of two brokerage firms, along with Falcon
3 Trading Group Inc., in which Gurian had a hidden interest and
4 exercised control over trading decisions.

5 20. One of the traders at Metro Trading, Christopher
6 Tavares, gave HiEnergy a buy rating and a price target of
7 \$3.50 to \$4.00 in October 2002. The other principal at Metro
8 Trading was Greg Vittor. Greg Vittor's older brother is Glen
9 Vittor, who was indicted, along with Gurian and Abramo in
10 1999.

11 21. Gurian, Abramo, Glen Vittor, Louis Consalvo and Barry
12 Gesser were all indicted in Florida in a 21-count Federal
13 indictment on charges of mail fraud, wire fraud, securities
14 fraud, interference with commerce by extortion, conspiracy to
15 commit money laundering and witness tampering.

16 22. Like his brother, Greg Vittor was also in trouble for
17 previous securities fraud allegations. In 1998, Greg and
18 Glen Vittor, Sovereign, Falcon, John Fiero and others took
19 part in a manipulative bear raid against a now defunct bro-
20 kerage firm called Hanover Sterling. Greg Vittor settled
21 with NASD regulators in this matter in April 1999. As a part
22 of his settlement, Greg Vittor admitted that he had repeat-
23 edly failed to make the required affirmative determination
24 that certain securities he sold short should be delivered and
25 he was fined \$20,000 and suspended from business for 30 days.

26 23. The NASD had also suspended Glen Vittor. In 1995,
27 Glen Vittor and Falcon were fined and suspended by the NASD
28 for failing to complete trades. Gurian was also part of this

1 1995 investigation and was fined for allegations that he had
2 participated in and was compensated for trading activities at
3 falcon while not properly registered with the NASD.

4 24. Glen Vittor and Gurian are both permanently barred
5 from the securities industry by the NASD. Falcon and Sover-
6 eign were expelled from NASD membership in 1997.

7 25. One of the owners of Falcon was Jeannine Gurian, Phil
8 Gurian's mother. Ms. Gurian also used an alias, "Jeannine
9 Schnapik" to create Benil to purchase 9% of HiEnergy's out-
10 standing shares of common stock.

11 26. Greg Vittor had worked at Metro since 1996. Prior to
12 that, he worked with his brother Glen at Sovereign.

13 27. Jeff Berwick ("Berwick") was a Canadian who founded
14 and was chief executive officer of StockHouse Media Corp., a
15 Vancouver financial site now controlled by Stockgroup Infor-
16 mation Systems Inc. Berwick is the chief editor of Paradigm
17 Trader, a StockHouse in-house tout feature, in which he had
18 been raving about the stock of HiEnergy since at least Novem-
19 ber 2002. Berwick failed, however, to mention in his glowing
20 predictions for HiEnergy's stock that he owns 44,500 shares
21 of HiEnergy stock, noting only that a significant portion of
22 his personal portfolio is invested in HiEnergy shares.

23 28. HiEnergy's public relations firm also was involved in
24 the scheme to artificially inflate the price of HiEnergy's
25 stock. Primoris Group was the company responsible for
26 HiEnergy's investor and public relations. For their ser-
27 vices, Primoris was granted options on 400,000 shares of
28 HiEnergy stock, at \$2.00 each. Joseph Carusone was president

1 of Primoris and a colleague of Berwick's. Mr. Carusone was
2 head of StockHouse.ca, and based in Toronto.

3 29. Alfred George Marchetti and Craig Summa are both
4 former employees of Sovereign who later went to work with
5 Metro Trading.

6 30. Marchetti and Tavares were both under investigation by
7 the NASD as well. Marchetti was investigated for alleged
8 violation of the affirmative determination rule that guides
9 how market makers can sell stock short. Tavares is under
10 investigation for personal trading in a company's stock on
11 which a research report was written.

12 31. Benil, as a company doing business in the Bahamas,
13 should be registered with the Bahamian company registry, but
14 is not registered in the Bahamas. The address for Benil,
15 listed in other SEC filings shows that it is located at the
16 same address as a number of other offshore companies that
17 were also named in a different matter in which Gurian and
18 others was previously accused of fraudulently obtaining
19 discounted stock that was sold into the market for a profit
20 through Sovereign and Falcon.

21 32. Gregory Gilbert was a former director of HiEnergy who
22 was asked to step down. While he was a director of the
23 Company, however, it was not disclosed to investors that
24 Gilbert had been fined \$100,000 by the SEC and banned from
25 future securities trading for his involvement in a case
26 indirectly involving Barclay Davis, a Las Vegas penny stock
27 promoter who had been described by the SEC as a serial stock
28 manipulator. Both Gurian and Mr. Davis were clients of

1 Vancouver based Pacific International. Mr. Gilbert, Loretta
2 Davis (wife of Barclay) and two other members of the Davis
3 family were charged with manipulating three penny-stock
4 promotions. Mr. Gilbert was also the subject of an SEC
5 investigation into his dealings with Hamilton Biophile. Mr.
6 Gilbert was also convicted and sentenced in October 2002 to
7 thirty months in prison for his role as the mastermind of the
8 1993-1997 securities fraud involving Combined Companies
9 International. Defendants never disclosed that Gilbert was
10 under indictment or had been sentenced to prison in connec-
11 tion with this securities fraud.

12 33. HiEnergy with the specific authorization of Maglich
13 paid for and directed the above mentioned stock analysts to
14 praise and promote the Company's securities.

15 34. In purchasing HiEnergy stock during the Class Period,
16 Plaintiffs and the Class relied on Defendants' misleading
17 statements and omissions of material fact made during the
18 Class Period.

19 35. Defendants' misleading statements and omission to
20 state material facts caused the market price of HiEnergy
21 stock to be artificially inflated during the Class Period.
22 The putative class therefore has suffered many millions of
23 dollars in damages as a result of Defendants' wrongful con-
24 duct.

25 **JURISDICTION AND VENUE**

26 36. This action arises under Sections 10(b) and 20 of the
27 Securities Exchange Act of 1934 (the "Exchange Act"),

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1 15 U.S.C. § 78j(b) and 78t, and Rule 10b-5, 17 C.F.R. §
2 240.10b-5 promulgated thereunder.

3 37. The Court has jurisdiction over the subject matter of
4 this action pursuant to Section 27 of the Exchange Act, 15
5 U.S.C. § 78aa and 28 U.S.C. § 1331.

6 38. Venue is proper in this District pursuant to Section
7 27 of the Exchange Act and 28 U.S.C. § 1391(b). Many of the
8 wrongs alleged in this complaint occurred in substantial part
9 in this District, including the preparation and dissemination
10 of materially false and misleading statements to the invest-
11 ing public. Venue is proper in the Southern Division as
12 Defendant HiEnergy has its principal office in Irvine, Orange
13 County, California.

14 39. In connection with the acts, transactions and conduct
15 alleged herein, Defendants, directly and indirectly, used the
16 means and instrumentalities of interstate commerce, including
17 the United States mails, interstate telephone communications
18 and the facilities of national securities exchanges and
19 markets.

20 **THE PARTIES**

21 40. Plaintiff Chris Stayman purchased shares of HiEnergy
22 stock during the Class Period and was damaged thereby. His
23 certification is attached hereto as Exhibit "A."

24 41. Defendant HiEnergy Technologies, Inc. is a Delaware
25 corporation that at all times relevant hereto had its princi-
26 pal executive offices and place of business at 1601 Alton
27 Parkway in Irvine, CA. HiEnergy claims to develop and

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1 market bomb detectors. HiEnergy's shares are traded on the
2 Nasdaq OTC Bulletin Board under the symbol "HIET.OB".

3 42. Defendant Bogdan Maglich ("Maglich") has been the
4 Chairman of HiEnergy since April 25, 2002. Mr. Maglich has
5 been the Chief Executive Officer, President and Treasurer of
6 HiEnergy from March 2003 until the present. Because of
7 Maglich's positions with HiEnergy and his participation in
8 the drafting of the quarterly and annual SEC filings, form 8-
9 K's, and press releases, he knew or was reckless in not
10 knowing of the misleading and adverse material non-public
11 information contained in, and omitted from, the SEC filings
12 and press releases.

13 43. Defendant Gregory Gilbert ("Gilbert") was a director
14 of HiEnergy from April 25, 2002 until his resignation in
15 March, 2003. Because of Gilbert's positions with HiEnergy
16 and his participation in the drafting of the quarterly and
17 annual SEC filings, form 8-K's, and press releases, he knew
18 or was reckless in not knowing of the misleading and adverse
19 material non-public information contained in, and omitted
20 from, the SEC filings and press releases.

21 44. Defendant Barry Alter ("Alter") was the Chief Execu-
22 tive, President, Treasurer and a director of HiEnergy from
23 February 20, 2002 until his resignation in March, 2003.
24 Because of Alter's positions with HiEnergy and his participa-
25 tion in the drafting of the quarterly and annual SEC filings,
26 form 8-K's, and press releases, he knew or was reckless in
27 not knowing of the misleading and adverse material non-public
28 //

1 information contained in, and omitted from, the SEC filings
2 and press releases.

3 45. Each of Maglich, Alter and Gilbert signed the annual
4 reports on form 10-k, and the registration statements filed
5 during the Class Period, and were each directors of HiEnergy
6 during the relevant time period.

7 46. The defendants are liable, jointly and severally, as
8 direct participants in and co-conspirators of, the wrongs
9 complained of herein. The Individual Defendants were the two
10 top executives responsible for the SEC disclosures during the
11 Class Period. Each was fully aware of the important business
12 issues and events occurring at the Company, especially given
13 the relatively small number of persons employed at the Com-
14 pany during the Class Period.

15 47. The Company and the Individual Defendants are respon-
16 sible for disseminating to the Class members misleading
17 information concerning the Company during the Class Period as
18 described below.

19 **CLASS ACTION ALLEGATIONS**

20 48. Plaintiffs bring this action as a class action pursu-
21 ant to Federal Rules of Civil Procedure 23(a) and (b)(3) on
22 behalf of the Class defined above. Excluded from the Class
23 are the Defendants, members of the immediate family of each
24 of the Individual Defendants, HiEnergy, any subsidiary or
25 affiliate of HiEnergy or any of their subsidiaries or affili-
26 ates, or any entity in which any excluded person has a con-
27 trolling interest, as well as the legal representatives,
28 heirs, successors and assigns of any excluded person.

1 49. While the exact number of Class members is unknown and
2 can only be ascertained through appropriate discovery, plain-
3 tiff believes there are thousands of them. Joinder of all
4 Class members is impracticable. Furthermore, because the
5 damages suffered by the individual Class members may be
6 relatively small, the expense and burden of individual liti-
7 gation make it impossible for the Class members individually
8 to redress the wrongs done to them.

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

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

15 b. whether the Individual Defendants are "control
16 persons" within the meaning of the federal securities laws;

17 c. whether HiEnergy and the Individual Defendants
18 omitted to state material facts necessary in order to make
19 the statements made, in the light of the circumstances
20 under which they were made, not misleading during the Class
21 Period;

22 d. whether the market prices of HiEnergy securities
23 during the Class Period were artificially inflated as a
24 result of the conduct alleged in this complaint; and

25 e. whether Plaintiffs and the other members of the
26 Class have sustained damages and, if so, the proper measure
27 of those damages.

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1 51. Plaintiff's claims are typical of the claims of other
2 Class members. Plaintiff and the other Class members sus-
3 tained damages arising out of Defendants' wrongful conduct.

4 52. Plaintiff will fairly and adequately protect the
5 interests of the members of the Class and has retained coun-
6 sel competent and experienced in class actions and securities
7 litigation. Plaintiff has no interests antagonistic to or in
8 conflict with those of the Class.

9 53. Plaintiff knows of no difficulty that will be encoun-
10 tered in the management of this litigation that would pre-
11 clude its maintenance as a class action.

12 54. The names and addresses of purchasers of HiEnergy
13 stock are available from HiEnergy's transfer agent. Notice
14 can be provided to such record owners via first class mail
15 using technique and form of notice similar to those custom-
16 arily used in class actions.

17 **NO STATUTORY SAFE HARBOR**

18 55. The statutory safe harbor providing for forward-look-
19 ing statements under certain circumstances does not apply to
20 any of the false statements pleaded in this complaint, be-
21 cause none of the statements pleaded herein was identified as
22 "forward-looking" when made. Nor did meaningful cautionary
23 statements identifying important factors that could cause
24 actual results to differ materially from those in the state-
25 ments accompany those statements. To the extent that the
26 statutory safe harbor does apply to any statements pleaded
27 herein and those statements are deemed to be forward-looking,
28 Defendants are liable for those false forward-looking state-

1 ments, because at the time each of those statements were made
2 the speaker actually knew the forward-looking statement was
3 false and/or the statement was authorized and/or approved by
4 an executive officer of the Company, who actually knew that
5 those statements were false when made.

6 **PROOF OF PLAINTIFF'S RELIANCE**

7 56. Plaintiff and members of the Class reasonably
8 relied on the misleading statements set forth above in pur-
9 chasing Flight Safety Stock during the Class Period.

10 57. Plaintiff will rely, in part, on a presumption of
11 reliance under the "fraud on the market" theory because
12 HiEnergy common stock was traded on an efficient market
13 during the Class Period.

14 **DEFENDANTS' CONDUCT CAUSED DAMAGE TO INVESTORS**

15 58. The Plaintiff Class paid an inflated price for the
16 HiEnergy shares because the market price of the stock was
17 artificially high during the Class Period as a result of the
18 above-described misleading statements and omissions causing
19 plaintiffs to suffer damages.

20 **FIRST CLAIM FOR RELIEF**
21 **Against All Defendants For Violation**
22 **of Section 10(b) of the Exchange Act**
and Rule 10b-5 of the Securities
and Exchange Commission

23 59. Plaintiff repeats and realleges each and every allega-
24 tion contained in the foregoing paragraphs as if fully set
25 forth herein.

26 60. This Count is asserted against Defendant HiEnergy, and
27 the Individual Defendants and is based upon Section 10(b) of
28

1 the 1934 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
2 thereunder.

3 61. During the Class Period, Defendants HiEnergy and the
4 Individual Defendants, singly and in concert, directly en-
5 gaged in a common plan, scheme, and unlawful course of con-
6 duct, pursuant to which they knowingly or recklessly engaged
7 in acts, transactions, practices, and courses of business
8 which operated as a fraud and deceit upon Plaintiffs and the
9 other members of the Class, and failed to disclose material
10 information in order to make the statements made, in light of
11 the circumstances under which they were made, not misleading
12 to plaintiffs and the other members of the Class. The pur-
13 pose and effect of said scheme, plan, and unlawful course of
14 conduct was, among other things, to induce plaintiffs and the
15 other members of the Class to purchase HiEnergy common stock
16 during the Class Period at artificially inflated prices.

17 62. Throughout the Class Period, HiEnergy acted through
18 the Individual Defendants, the Company's officers and direc-
19 tors. The willfulness, motive, knowledge, and recklessness
20 of the Individual Defendants are therefore imputed to
21 HiEnergy, rendering the Company primarily liable for the
22 securities law violations of these Defendants committed while
23 performing in their official capacity as Company representa-
24 tives. In the alternative and additionally, HiEnergy is
25 liable for the acts of the Individual Defendants under the
26 doctrine of respondent superior.

27 63. Each of the Defendants had an affirmative duty to
28 disclose the true ownership of HiEnergy securities. In addi-

1 tion, Defendants had a duty to disclose that Gilbert and
2 Alter had prior securities law violations and or were the
3 subject of regulatory proceedings. Defendants' failure to
4 disclose this information was a conscious violation of the
5 securities laws.

6 64. As a result of the failure to disclose material facts,
7 the information that defendant HiEnergy and the Individual
8 Defendants disseminated to the investing public was materi-
9 ally misleading as set forth above, and the market price of
10 HiEnergy common stock was artificially inflated during the
11 Class Period. Plaintiffs and the Class relied on the above-
12 described misleading statements in purchasing and/or retain-
13 ing HiEnergy shares during the Class Period. In ignorance of
14 the misleading nature of the statements described above and
15 the deceptive and manipulative devices and contrivances
16 employed by said defendants, plaintiffs and the other members
17 of the Class relied, to their detriment, on the integrity of
18 the market price of the stock in purchasing HiEnergy common
19 stock. Had Plaintiffs and the other members of the Class
20 known the truth, they would not have purchased said shares or
21 would not have purchased them at the inflated prices that
22 were paid.

23 65. Plaintiff and the other members of the Class have
24 suffered substantial damages as a result of the wrongs herein
25 alleged in an amount to be proved at trial.

26 66. By reason of the foregoing, defendants HiEnergy and
27 the Individual Defendants directly violated Section 10(b) of
28 the Exchange Act and Rule 10b-5 promulgated thereunder in

1 that they: (a) employed devices, schemes, and artifices to
2 defraud; (b) failed to disclose material information; or (c)
3 engaged in acts, practices, and a course of business which
4 operated as a fraud and deceit upon plaintiff and the other
5 members of the Class in connection with their purchases of
6 HiEnergy common stock during the Class Period.

7 67. This action is being brought within two years after
8 the discovery of the untrue statements and omissions and
9 within five years after their issuance.

10 **SECOND CLAIM FOR RELIEF**
11 **Against The Individual Defendants For**
12 **Violation of Section 20(a) of the Exchange Act**

13 68. Plaintiff repeats and realleges each and every allega-
14 tion contained in each of the foregoing paragraphs as if set
15 forth fully herein.

16 69. Each of the Individual Defendants, by virtue of their
17 management positions, directorships, stock ownership and/or
18 specific acts described above, were, at the time of the
19 wrongs alleged herein, controlling persons within the meaning
20 of Section 20(a) of the 1934 Act.

21 70. The Individual Defendants had the power and influence
22 and exercised the same to cause HiEnergy to engage in the
23 illegal conduct and practices complained of herein.

24 71. By reason of the conduct alleged in Count I of the
25 Complaint, the Individual Defendants are liable for the
26 aforesaid wrongful conduct, and are liable to Plaintiffs and
27 to the other members of the Class for the substantial damages
28 which they suffered in connection with their purchases of
HiEnergy common stock during the Class Period.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment as follows:

1. Declaring this action to be a proper plaintiff class action maintainable pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring plaintiff to be a proper representative of the Class;

2. Awarding plaintiff and other members of the Class damages together with interest thereon;

3. Awarding plaintiff and the other members of the Class their costs and expenses in this litigation, including reasonable attorneys' fees and experts' fees and other costs and disbursements; and

4. awarding plaintiff and the members of the Class such other and further relief as may be just and proper under the circumstances.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands trial by jury of all issues so triable.

DATED: October 18, 2004.

Kenneth J. Catanzarite, on behalf of
The Rosen Law Firm, P.A.,
Law Office of Brian Barry and
Catanzarite Law Corporation
Attorneys for Plaintiffs