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ATTORNEYS FOR KNIGHT TRADING
GROUP, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BY ITS SUPER PREFERRED STOCK)
HOLDER/COMMON SHAREHOLDER)
GARY W. WALTERS, AND AS AN)
INDIVIDUAL;)

CASE NO.: CV-S-04-1308-KJD-PAL

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2004 SEP 24 P 3:33
BY: [Signature]

**SUPPLEMENTAL DOCUMENTATION IN SUPPORT OF DEFENDANT KNIGHT
TRADING GROUP, INC.'S NOTICE OF REMOVAL**

Defendant Knight Trading Group, Inc. hereby supplements its Notice of Removal filed on September 20, 2004 as follows:

1. The original Notice of Removal was filed on September 20, 2004 and attached a copy of the Complaint filed by the Plaintiff in the Eighth Judicial District Court on August 30, 2004 in Case No. A491236; and the Court has requested that an additional copy of the Complaint be filed and attached hereto as Exhibit A is a copy of the Complaint served on Defendant.

2. The Court has further requested that a copy of the Summons be provided, however, to Defendant's best knowledge and belief, Defendant was only served with a copy of the Complaint and was never served with a copy of the Summons.

DATED this 24th day of September, 2004.

JOLLEY URGA WIRTH WOODBURY &
STANDISH

By: William R. Urga
WILLIAM R. URGA, ESQ. # 1195
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Of counsel:

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ATTORNEYS FOR KNIGHT TRADING
GROUP, INC.

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Jolley Urga Wirth Woodbury & Standish, 3800 Howard Hughes Parkway, Suite 1600, Las Vegas, Nevada 89109.

On September 24, 2004, I served the within **SUPPLEMENTAL DOCUMENTATION IN SUPPORT OF DEFENDANT KNIGHT TRADING GROUP, INC.'S NOTICE OF REMOVAL** on the parties in said action or proceeding by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Gary W. Walters	Gary W. Walters
1804 Plantea Court	1804 Plantea Court
Las Vegas, Nevada 89107	Las Vegas, Nevada 89109
Plaintiff in Proper Person	Plaintiff in Proper Person

Gary W. Walters
1804 Plantea Court
Las Vegas, Nevada 89117
Plaintiff in Proper Person

And placing the envelope in the mail bin at the firm's office.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. Postal Service on the same day it is placed in the mail bin, with postage thereon fully prepared at Las Vegas, Nevada, in the ordinary course of business.


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1 I certify under penalty of perjury that the foregoing is true and correct, and that this
2 Certificate of Service by Mail was executed by me on September 24, 2004 at Las
3 Vegas, Nevada.

4
5 
6 An employee of JOLLEY URGA WIRTH
7 WOODBURY & STANDISH
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ORIGINAL

GARY W. WALTERS
1804 Plantea Court
Las Vegas NV, 89107 702-375-8807

FILED

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Shirley B. Langston
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PRO SE / IN FORMA PAUPERIS
SECOND JUDICIAL DISTRICT COURT
COUNTY OF CLARK, STATE OF NEVADA

----- X

BY ITS SUPER PREFERRED STOCK HOLDER/Common
SHAREHOLDER GARY W. WALTERS, AND AS AN
INDIVIDUAL;

Plaintiffs,

- against -

THE DEPOSITORY TRUST AND CLEARING
CORPORATION; THE DEPOSITORY TRUST COMPANY;
KNIGHT TRADING GROUP, INC., (SYMBOL: NITE) AND
THE NATIONAL SECURITIES CLEARING CORPORATION,

Defendants.

CASE NO. A491236

DEPT. NO. IV

COMPLAINT

BUSINESS COURT REQUESTED

REQUEST EXEMPTION FROM
ARBITRATION "Damages Excess of
\$40,000.00"

Plaintiff Super Preferred stock holder. ("stockholder"), and Common Shareholder of 9,000,000 million shares Gary W. Walters and as an individual (collectively, "Walters") the ("Plaintiff") for their complaint against Defendant Depository Trust and Clearing Corporation ("DTCC") and its subsidiaries, Defendant Depository Trust Company ("Depository Trust"), and Defendant National Securities Clearing Corporation ("NSCC") and Knight Securities inc, trading symbol (nite) (collectively, the "Defendants"), alleges and set forth as follows:

RECEIVED
AUG 30 2004
CLARK COUNTY

I.

SUMMARY

1.

The Stock Borrow Program (as described below, commencing at paragraph 48) was purportedly created to address SHORT TERM delivery failures by sellers of securities in the stock market. However, the end result of the program has been to create tens of millions of unissued and unregistered shares to be traded in the public market. Further, in some instances, the Stock Borrow Program has resulted in two or more shareholders who purchase shares in separate transactions to own the same shares.

In the securities marketplace, sellers advertise asking prices and buyers advertise offering prices. When the two prices match, a trade occurs. Clearance is the process of verifying and confirming the terms of the trade, such as the number of shares, price, buyer and seller. After a trade clears, it settles on the date prescribed by regulation, which means that the seller delivers the shares and the buyer delivers payment. Sometimes the seller is unable to deliver the shares at settlement. When shares are not delivered on settlement day (the "Settlement Day"), the seller is said to have "failed to deliver" the shares. This event is referred to in the securities industry as a "fail to deliver".

Prior to 1981, when a fail to deliver occurred, the buyer held back his payment and waited for the seller to deliver the shares. If the buyer got tired of waiting for the seller to deliver the shares, the buyer went into the market and bought the shares from another seller. This process of going back to the market to buy shares to replace the ones which were not delivered is called "buying in" or a "buy-in." If the price of the shares increased between the time that the buyer originally bought the shares and the time the buyer went into the market to replace them, the buyer charged the additional cost to the seller who failed to deliver. Until 1981, there were only two alternatives available to a buyer whose seller failed to deliver: either wait for the shares to be delivered or go back into the market and buy-in the shares.

In an effort to streamline the back office operations of the securities industry, the clearance and settlement functions for virtually all securities trades in the United States were consolidated in the Depository Trust and the NSCC. In 1981, the NSCC created the Stock Borrow

Program, purportedly to improve the efficiency of the clearance and settlement function by addressing temporary fail to deliver situations. Under the Stock Borrow Program, if a seller fails to deliver the shares on time, the NSCC borrows the shares from willing lenders¹ and gives the shares to the buyer in settlement of the trade. The Stock Borrow Program operates through a computer process and now represents the only way that a buyer can cure a fail to deliver by a seller. However, in reality, the Stock Borrow Program does not cure the fail to deliver. The seller still owes the shares. The only change is that the party waiting for the shares is no longer the buyer. Now, it is the NSCC.

Since the NSCC instituted the Stock Borrow Program, there is little incentive for the NSCC to require sellers to cure fail to deliver positions once the loan has been made. The Stock Borrow Program has become a reliable source of income for the Depository Trust, the NSCC and willing lenders who have shares on deposit at the Depository Trust. For the year ended December 31, 2003, the Depository Trust reported revenues from services of \$425,416,000 and the NSCC reported revenues from services of \$293,133,000.

“The failure of participants to deliver securities to NSCC on settlement date, and the corresponding failure of NSCC to redeliver the securities, results in open positions. ... At the close of business on December 31, 2003, open positions due to NSCC approximated \$3,025,467,000 ..., and open positions due by NSCC to participants approximated \$2,303,717,000 ... for unsettled positions and \$721,750,000 ... for securities borrowed through the NSCC's Stock Borrow Program.”² Because these open positions represent shares borrowed by the NSCC and given to buyers, the NSCC has subjected itself to the risk of significant financial loss if the sellers who failed to deliver are unable to honor their obligation to deliver the shares. In an attempt to reduce this exposure, the Defendants have participated in a scheme to manipulate downward the price of the affected securities, thereby reducing the market value of the open fail to deliver positions with respect to these affected securities. Consequently, fails to deliver, particularly in trades of small capitalization companies such as Plaintiff NanoSignal, are no longer temporary, and frequently remain uncured for months and even years.

¹ Willing lenders are brokers and clearing firms who lend their customers' shares to the NSCC. These shares are ultimately held at the Depository Trust through a chain of custody that begins with the customers delivering share certificates to brokers who then deliver the certificates to the Depository Trust.

² National Securities Clearing Corporation Annual Financial Statements (2003).

The Defendants have permitted sellers to maintain open fail to deliver positions of tens of millions of shares for periods of a year and even longer. This course of conduct by the Defendants has had the effect of creating millions of unregistered illegal free trading shares of the issuer, artificially (1) increasing the supply of an issuer's shares in the marketplace; (2) driving down the price of the stock of the issuer; (3) decreasing the value of the shareholders' holdings in an issuer's stock; and (4) causing multiple owners who purchased shares in separate transactions to own the same shares. Neither the Depository Trust nor the NSCC has authority to issue or create shares. Only the issuer of the (Plaintiff) has authority to do so NANOSIGNAL CORPORATION a Nevada Domicile.

The abuses of the Stock Borrow Program have been recognized by the National Association of Securities Dealers ("NASD") and measures have been proposed to address them. "Concerns have been raised by members, issuers, investors and other interested parties about potentially abusive short selling activities occurring in the marketplace. In particular, naked short selling, or selling short without borrowing securities to make delivery, can result in long term failures to deliver, including aggregate failures to deliver that exceed the total float of a security. NASD believes such extended failures to deliver can have a negative effect on the market. Among other things, by not having to deliver securities, naked short sellers can take on larger short positions than would otherwise be permissible, which can facilitate manipulative activity."³ It is believed and can be shown and proven by direct tests of order flow system and the NOBO, and via through the DTC, that Knight Trading Group, Inc. has (operated outside the scope) of the Stock Loan Program, in this case of which shall be proven operating outside the Stock Loan Program would show enough cause to point to the facts that this is theft and fraud by deceptive practices, The simple question is, when the corporation only has 200million shares total issued and outstanding, the total free trading float is 135million shares, the short position of Knight Securities is 447million shares short, one does not have to be a rocket scientist to determine the quality of the short and theft, they may argue that it is not illegal to sell or go short, and this may be somewhat true given that benefit, how ever it is highly illegal if you cannot give delivery, and it is this type of unwarranted inrichment and theft that these thieves using the system to steal multimillions of dollars and "AT THE

³ NASD Proposed Amendments Relating to Short Sale Delivery Requirements (SR-NASD-2004-044) (emphasis added).

EXPENSE OF THE NANOSIGNAL CORP. SHAREHOLDERS, THE CORPORATION AND THE SUPER PREFERRED SHAREHOLDER” .

ii.

PARTIES, JURISDICTION, AND VENUE

3.

Plaintiff Gary W. Walters common stock holder of 9 million shares is a Nevada Resident Las Vegas, Clark County, Nevada.

4.

Plaintiffs Gary Walters is an individual SUPER PREFERRED shareholder of NanoSignal who resides in Las Vegas, Nevada.

5.

Defendant DTCC is a New York corporation and may be served at its principal place of business at 55 Water Street, New York, New York 10041-0099, Attention: General Counsel.

6.

Defendant NSCC is a New York Corporation and may be served at its principal place of business at 55 Water Street, New York, New York 10041-0099, Attention: General Counsel.

7.

Defendant Knight Trading Group, Inc. is a Delaware corporation and may be served at its principal place of business at 525 Washington Boulevard, Jersey City, New Jersey 07310, Attention: General Counsel.

8.

Defendant Depository Trust is a limited purpose trust company formed under the Banking laws of New York and may be served at 55 Water Street, New York, New York 10041-0099, Attention: General Counsel.

9.

This Court has subject matter jurisdiction.

10.

This Court has personal jurisdiction over the Defendants.

Venue is lodged in this Court pursuant to NRS 13.040.

VII.

GENERAL ALLEGATIONS

A.

PLAINTIFF GARY W WALTERS

2.

Shares of NanoSignal CORP. are traded on Over-the-Counter-Market under the symbol "NNOS". These shares are eligible to be held in book-entry form at the Depository Trust. According to its Articles of Incorporation and amendments thereto filed with the Nevada Secretary of State, NanoSignal is authorized to issue 500,000,000 shares of common stock. currently there is approx, 203,401 million shares issued in NANOSIGNAL CORP.

information and belief, the price of NanoSignal stock fell because the operation of the Stock Borrow Program by Defendants allowed the manipulation of NanoSignal stock by various sellers who failed to deliver NanoSignal shares and in the timely manner as prescribed by all regulatory requirements both state and federal all of which repeatedly were violated going beyond the reach of scope of any safe harbors and outright committing crimes of a criminal nature when reviewed and examined..

3.

The Defendants permitted sellers to maintain significant open fail to deliver positions of millions of shares of NanoSignal stock for extended periods of time by implementing the Stock Borrow Program to cover these open positions.

4.

By covering open fail to deliver positions with shares borrowed through the Stock Borrow Program and delivering the borrowed shares to the buyers, the Defendants artificially created unregistered, free trading NanoSignal shares and increased the supply of NanoSignal shares in the marketplace without authority.

5.

By trading NNOS stock on four exchanges, i.e. OTC BB, PINK SHEETS, BERLIN and Frankfort Exchanges and causing to short the stock back through the Berlin and Frankfort Exchanges with out any approval to make such markets.

The artificially increased supply of NanoSignal shares in the marketplace created by Defendants' borrowing of NanoSignal shares through the Stock Borrow Program caused a dramatic devaluation of NanoSignal stock. As a result , Plaintiff Gary W Walters is damaged in an amount to be proven at trial .However it is estimated that the short could be in the 100 to 500 million dollars and is 447million shares short at Knight Trading in the securities.

E.

PLAINTIFFS WALTERS

6.

Plaintiff's Walters is individual shareholder of NanoSignal.

7.

During the period between March 2003 and August 2004, Defendant Knight Trading Group, Inc. purchased and sold NanoSignal shares at various prices ranging from a high of \$.24 to a low of \$.04

8.

Upon information and belief, when Knight Trading Group, Inc. purchased and sold NanoSignal shares, these transactions were cleared and settled by the Defendants herein.

9.

Upon information and belief, the Defendants borrowed NanoSignal shares through the Stock Borrow Program to cover open fail to deliver positions in NanoSignal stock created by sellers who failed to deliver by Settlement Day.

10.

Upon information and belief, the price of NanoSignal stock fell because the Defendants' operation of the Stock Borrow Program facilitated or permitted the manipulation of NanoSignal stock by various sellers who failed to deliver NanoSignal shares by Trade Date and Settlement Day 1 plus 3.

11.

The Defendants permitted certain sellers to maintain significant open fail to deliver positions of millions of shares of NanoSignal stock for extended periods of time well beyond Settlement Day by implementing the Stock Borrow Program to cover these open positions. However, we believe that Knight Trading Group, Inc. acted on many occasions outside the scope of the Loan Stock Program.

12.

By covering open fail to deliver positions with shares borrowed through the Stock Borrow Program and delivering the borrowed shares to the buyers, the Defendants have artificially created unregistered, free trading NanoSignal shares and increased the supply of NanoSignal shares in the marketplace without authority.

13.

The artificially increased supply of NanoSignal shares in the marketplace created by Defendants' borrowing of NanoSignal shares through the Stock Borrow Program has significantly decreased the value of NanoSignal stock and Plaintiffs Walters' holdings in NanoSignal stock. As a result, Plaintiff Walter has been damaged in an amount to be proven at trial in excess of 100 to 500 million dollars.

N.

DTC

15.

DTCC is a holding company which consists of four subsidiaries (one depository and three clearing corporations): the Depository Trust, the NSCC, the Fixed Income Clearing Corporation and the Emerging Markets Clearing Corporation.

16.

DTC, through its subsidiaries, provides clearance, settlement and information services for equities, corporate and municipal bonds, government and mortgage backed securities, over-the-counter credit derivatives and emerging market debt trades.

17.

In 2003, the value of securities cleared and settled through the DTC was stated to be \$923.4 trillion. The DTC's total revenue for 2003 was stated to be \$947 million.

18.

Upon information and belief, the DTCC, through its subsidiaries, provides its services to Nevada corporations and residents.

S.

DEPOSITORY TRUST

20.

Depository Trust is a subsidiary of the DTCC. It is the world's largest securities depository and a clearinghouse for settlement of securities trading activity.

21.

Depository Trust was formed 30 years ago to eliminate the physical movement of securities among brokerage firms on Wall Street to satisfy delivery requirements.

22.

Financial organizations deliver securities on behalf of their customers through computerized bookkeeping records (also known as book-entry deliveries) at the Depository Trust without ever physically transferring the securities. In 2003, the value of book-entry deliveries processed by the Depository Trust was stated to be \$105.7 trillion.

23.

Depository Trust records the transfer of securities by book-entry by debiting the transferor's Depository Trust account and crediting the transferee's Depository Trust account.

24.

Depository Trust also retains physical custody of stock certificates on behalf of its members. Stock certificates for registered securities deposited with the Depository Trust are held in the name of Cede & Co., Depository Trust's nominee name. As of December 31, 2003, the value of securities on deposit at the Depository Trust was stated to be \$24.6 trillion and the number of depository-eligible securities issues was stated to be 2,227,000.

25.

Upon information and belief, the Depository Trust provides its services to Nevada corporations and residents.

Z.

NSCC

27.

NSCC was created in 1976 as a result of the merger of three major clearing corporations (NYSE, AMEX, and NASD). In 2003, the total number of transactions processed by the NSCC was stated to be 4.7 billion with a value of \$81.2 trillion.

28.

NSCC, in conjunction with the Depository Trust, provides centralized clearance, settlement and information services for virtually all broker-to-broker equity, corporate bond and municipal bond, exchange-traded funds and unit investment trust trades that occur in the United States.

29.

Upon information and belief, the NSCC provides its services to Nevada corporations and residents.

KNIGHT TRADING GROUP, INC.

30. Knight Trading Group, Inc. is an independent Stock brokerage firm with market making and trading system activities headquartered in Jersey City, New Jersey.

DD.

CONTINUOUS NET SETTLEMENT SYSTEM

31.

Transactions processed by the NSCC clear and settle through the Continuous Net Settlement System ("CNS System"). Sellers and buyers who clear and settle through the CNS System are required to be members of the NSCC and the Depository Trust ("Members").

32.

NSCC guarantees completion of the transactions it processes through the CNS System by assuming (i) the obligation of the buyers to make payment to the sellers upon delivery of the shares, and (ii) the obligation of the sellers to deliver shares to the buyers.

33.

Each day during the daytime allocation cycle, the CNS System continually nets all trades of its Members by security to net long (purchase) and net short (sale) positions which are then further netted with closing positions carried forward from the previous trading day. The resulting net positions represent the quantity of each security due for settlement by the Members. A long position represents the quantity owed to the Members by the NSCC and a short position represents the quantity owed to the NSCC by the Members. After determination of a Member's long and short positions at the end of the daytime allocation cycle, the positions are passed to the Depository Trust for processing over the evening allocation cycle.

34.

The short positions are compared to the Member's Depository Trust account to determine if the number of shares on deposit is sufficient to settle the short positions. If so, the shares are transferred from the Member's Depository Trust account to the NSCC's Depository Trust account. Shares received from Members in settlement of short positions are placed in the NSCC's Depository Trust account awaiting instructions from NSCC for delivery to the Depository Trust accounts of Members in long positions.

35.

Based on instructions from the NSCC, as shares are received by the NSCC from Members with short positions, they are automatically allocated from the NSCC's Depository Trust accounts to the Depository Trust accounts of Members with long positions.

36.

Early morning on the next business day, after regular evening allocation processing, the NSCC determines which open short positions are high-priority obligations. The NSCC then attempts to borrow shares through the Stock Borrow Program to satisfy these open positions.

KK.

STOCK BORROW PROGRAM

38.

The Stock Borrow Program allows the NSCC to borrow available stocks from participating Members to cover short positions that remain open after a day's trade. These short positions are created by priority requests for allocation, buy-ins submitted by Members, the need to deliver against omnibus positions with other clearing corporations and by sellers' fails to deliver.

39.

As provided in Addendum C-1 of the Rules and Procedures of the National Securities Clearing Corporation, (effective December 26, 2003), the process of the Stock Borrow Program is as follows:

(a)

On a daily basis, Members who wish to participate in the Stock Borrow Program inform NSCC of the number of shares of each security that are available to be borrowed in their general unpledged account at the Depository Trust.

(b)

Each morning, after the evening allocation cycle, the NSCC determines which short positions still remain open.

(c)

If a short position remains open, the NSCC attempts to borrow securities from its Members to satisfy these open positions.

(d)

The NSCC uses a formula to determine the order in which it will borrow securities from its Members and utilizes the full amount of shares available from one Member before borrowing from the next Member in sequence.

(e)

When the shares are borrowed, the lending Member's Depository Trust account is debited by the number of borrowed shares. The borrowed shares are then credited to the NSCC's Depository Trust account and transferred to the buyer's Depository Trust account. The buyer acquires all right, title and interest in the borrowed shares, including the right to vote, receive dividends and resell the shares, without encumbrance or any reservation of rights.⁴

(f)

The NSCC records the borrowing of the shares as a long position in a special CNS sub-account set up specifically for the lending Member's stock borrow activity.

⁴ As noted in NASD Proposed Amendments Relating to Short Sale Delivery Requirements (SR-NASD-2004-044), "significant failures to deliver can impact certain rights of buyers, such as the right to vote shares or the treatment of dividends".

QQ.

THE DILUTIVE EFFECTS OF THE STOCK BORROW PROGRAM

44.

One of the effects of the Stock Borrow Program is to allow sellers to continue to fail to deliver because the NSCC can borrow shares from the Stock Borrow Program to cover the fail to deliver positions.

45.

If the seller fails to deliver the sold shares on Settlement Day, a short position for that seller is created in the CNS System which is ultimately covered by the Stock Borrow Program either directly through the NSCC's daily allocation cycle or indirectly through a buy-in executed with shares borrowed through the Stock Borrow Program.

46.

In the case of a buy-in, as set forth in the Rules and Procedures of the National Securities Clearing Corporation (effective December 26, 2003), when a seller fails to deliver, the buyer notifies the NSCC that it intends to buy-in the seller's fail to deliver position. However, instead of executing the buy-in by going into the market, the NSCC executes the buy-in by borrowing shares from lending Members of the Stock Borrow Program.

47.

As a result, the Stock Borrow Program allows sellers to continue to fail to deliver because the Stock Borrow Program has effectively obviated the sellers' obligation to deliver and the buyers' right to buy-in through the market.

48.

By borrowing shares through the Stock Borrow Program to cover fails to deliver, the Defendants have created tens of millions of unregistered illegal free trading shares of the issuer, artificially (1) increasing the supply of an issuer's shares in the marketplace; (2) driving down the price of the stock of the issuer; (3) devaluing the shareholders' holdings in an issuer's stock; and (4) causing multiple owners who purchase shares in separate transactions to own the same shares.

49.

(g)

The NSCC credits the lending Member's regular CNS account with funds equivalent to the total current market value of the borrowed shares which the lending Member may invest to earn interest overnight.

(h)

The NSCC also receives a fee from the Member who created the short position requiring the NSCC to borrow the shares through the Stock Borrow Program.

40.

Shares borrowed by the NSCC are only returned when regular short deliveries from sellers for that day exceed priority needs in a particular security.

41.

Through normal allocation to the CNS sub-account of the lending Members, borrowed shares which are returned are allocated to the lending Members' accounts at current market prices and the returned shares are transferred from the NSCC's Depository Trust account to the lending Member's Depository Trust account. The NSCC distributes reports to the lending Members each morning, reflecting stock borrow activity.

42.

Membership in both the NSCC and Depository Trust is required in order to be a lender in the Stock Borrow Program. Lenders are selected based on a certain formula. Each day the lending Members are assigned a random allocation number for each security made available. A factor is developed for each lending Member by dividing the percentage of each lending Member's average loans as they relate to total NSCC borrowings by the percentage of each lending Member's average fees paid for trade comparison, trade recording and clearance as they relate to the total fees for all Members. Each random allocation number is then multiplied by the factor to produce an adjusted random number per position for each lending Member. The lending Member with the lowest number will receive the first priority for borrowing.

For example, assume that on April 1, Issuer has 100,000 issued and outstanding shares. On April 1, Seller S sells 1,000 shares of Issuer's stock to Buyer B. Seller S fails to deliver the 1,000 shares for settlement by April 4, which is Settlement Day. The NSCC then borrows 1,000 shares from Lender L through the Stock Borrow Program and delivers the 1,000 shares to Buyer B's Depository Trust account on April 4. Buyer B's Depository Trust account now reflects that Buyer B owns 1,000 shares. At the same time, since Lender L's loan of 1000 shares to the NSCC is not reported or visible to the marketplace, Lender L's NSCC account still reports that it owns the 1,000 shares that it lent to the NSCC. As a result, the marketplace now indicates that Issuer has 101,000 issued and outstanding shares, when in fact Issuer has NOT issued or authorized the additional 1,000 shares. These shares were artificially created by the NSCC when it borrowed 1,000 shares through the Stock Borrow Program and delivered them to Buyer B. Furthermore, two people now own the same 1,000 shares – Lender L and Buyer B.

50.

Since the 1,000 shares received by Buyer B in the paragraph 58 illustration is now held in Buyer B's Depository Trust account, Buyer B can now lend the 1,000 shares to the NSCC through the Stock Borrow Program, thus, repeating the process and resulting in multiple shareholders owning the same shares. For example, assume that in a subsequent transaction on April 5, Seller S sells 750 shares of Issuer's stock to Buyer C. Seller S fails to deliver the 750 shares on April 8, Settlement Day. Therefore, the NSCC borrows 750 shares from Buyer B through the Stock Borrow Program and delivers the shares to Buyer C's Depository Trust account on April 8, which account now reflects that Buyer C owns 750 shares. In addition, since Buyer B's loan of 750 shares to the NSCC is not reported or visible to the marketplace, Buyer B's NSCC account still indicates that Buyer B owns the 750 shares which the NSCC borrowed for delivery to Buyer C. In sum, the marketplace now indicates that Issuer has 101,750 issued and outstanding shares, when in fact Issuer has NOT issued or authorized the additional 1,750 shares. These shares were artificially created by the NSCC when it borrowed 1,000 shares through the Stock Borrow Program for delivery to Buyer B and then borrowed 750 shares from Buyer B for delivery to Buyer C. Furthermore and most remarkably, three people now own the same 750 shares-- Lender L, Buyer B and Buyer C.

51.

This process of recycling borrowed shares amounts to stock-kiting in that the same borrowed shares can continuously be transferred from a buyer and loaned to the NSCC for delivery to the next buyer who then loans the same shares to the NSCC and so forth. Thus, the same shares can be recycled repeatedly through the Stock Borrow Program to satisfy multiple delivery requirements.

52.

The Stock Borrow Program allows the borrowed shares to be recycled repeatedly, resulting in the number of borrowed shares exceeding the number of shares issued and authorized by the issuer. In addition, upon information and belief, the number of borrowed shares exceeds the total number of issuer's shares actually on deposit at the Depository Trust.⁵ Thus, upon information and belief, the Depository Trust owns and holds a significantly fewer number of lendable shares than the NSCC has borrowed through the Stock Borrow Program.

53.

This recycling of borrowed shares through the Stock Borrow Program could potentially result in a "run-on-the-bank" situation. If every shareholder (including shareholders who received borrowed shares) were to demand delivery of stock certificates by the Depository Trust, the custodian of the physical shares, there would be insufficient shares available for delivery because the Stock Borrow Program has artificially generated more shares than are physically held by the Depository Trust.

54.

There is little incentive for the Defendants to force sellers to cure fail to deliver positions once the loan has been made because the Stock Borrow Program has become such a reliable source of income for the Defendants. For the year ended December 31, 2003, the Depository Trust reported revenues from services of \$425,416,000 and the NSCC reported revenues from services of \$293,133,000. In addition, open fail to deliver positions present a potential risk of loss to the Defendants because the NSCC covers these positions by borrowing shares through the Stock Borrow Program. At the close of business on December 31, 2003, the value of securities borrowed through the Stock Borrow Program was stated to be approximately \$721,750,000. As a

⁵ As set forth in the letter from Ralph A. Lambaise, President, North American Securities Administrators Association, Inc., to Jonathan Katz, Secretary, Securities and Exchange Commission (January 5, 2004), the Securities and Exchange "Commission should explicitly prohibit the [Depository Trust] from lending more shares of a security than it actually holds."

result, the NSCC, as borrower, has subjected itself to the possibility of significant financial losses if the seller is ultimately unable to honor its delivery obligations to the NSCC.

55.

Through the Stock Borrow Program, the Defendants have permitted sellers to maintain fail to deliver positions of millions of shares for periods of a year and even longer. This course of conduct by the Defendants has had the effect of creating tens of millions of additional unregistered illegal free trading shares of the issuer, artificially increasing the supply of shares in the marketplace and driving down and manipulating the price of the stock of numerous issuers, including Plaintiff NanoSignal.

**AS AND FOR A FIRST CLAIM FOR RELIEF FOR VIOLATION
OF NEVADA REVISED STATUTES 90.570 AND 90.660
MISREPRESENTATIONS AS TO THE NATURE OF THE STOCK BORROW PROGRAM**

56.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 64 of the Complaint as if fully set forth herein.

57.

Defendants have each misrepresented to the Plaintiffs that the NSCC is borrowing shares from lending Members of the Stock Borrow Program to cover fail to deliver positions in the clearing and settlement process, when, in fact, the transfer of shares from lending Members to the NSCC to cover such fail to deliver positions is actually a "sale" of securities. This transaction is actually a sale because the NSCC delivers the borrowed shares to the buyer who acquires all right, title and interest in the shares, including the right to vote, receive dividends and resell the shares, without further encumbrance or any reservation of rights.⁶

58.

The misrepresentations and omissions by the Defendants alleged above were false and misleading when made.

59.

⁶ As noted in NASD Proposed Amendments Relating to Short Sale Delivery Requirements (SR-NASD-2004-044), "significant failures to deliver can impact certain rights of buyers, such as the right to vote shares or the treatment of dividends".

The misrepresentations and omissions of the Defendants as alleged above were material.

60.

In making the misrepresentations and omissions, the Defendants acted with scienter. The Defendants have a major financial motivation to make the misrepresentations and omissions alleged herein because they have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public since questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

61.

The misrepresentations and omissions by the Defendants were made in their Annual Statements, on their websites and various press releases issued to the investing public, which include the Plaintiffs.

62.

In reliance upon these misrepresentations and omissions by Defendants, Plaintiffs traded NanoSignal shares, which trades were cleared and settled by and through the Defendants without knowledge of Defendants' violation of Nevada securities laws.

63.

Alternatively, Plaintiffs relied on the Defendants' material and public misrepresentations and omissions and traded NanoSignal shares in the stock market without knowledge of Defendants' fraud-on-the-market through the clearing and settlement services they provided.

64.

DTCC, through its subsidiary, the NSCC and the Depository Trust, offers to sell and actually sells securities by means of communications which contain material misrepresentations and omissions, in violation of Nevada Revised Statutes 90.570 and NRS 90.660.

65.

During the relevant period, the Defendants carried out a plan, scheme and course of conduct which was intended to, and throughout the period, did (i) deceive Plaintiffs; and (ii) cause Plaintiffs to purchase and/or sell NanoSignal shares at artificially depressed prices. In furtherance

of this unlawful scheme, plan and course of conduct, Defendants each took the actions set forth herein which are in violation of Nevada Revised Statutes 90.570 and NRS 90.660.

66.

The misrepresentations and omissions by the Defendants detailed above have damaged and injured Plaintiffs, which relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

67.

As a result of the Defendants' violation of Nevada Revised Statutes 90.570 and NRS 90.660 and the wrongs herein alleged, Plaintiffs have suffered substantial damages in an amount to be proven at trial.

**AS AND FOR A SECOND CLAIM FOR RELIEF FOR VIOLATION
OF NEVADA REVISED STATUTES 90.570 AND 90.660
MISREPRESENTATIONS REGARDING THE CLEARING AND SETTLEMENT OF TRADES**

68.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 76 of the Complaint as if fully set forth herein.

69.

The Defendants have each represented to Plaintiffs that they efficiently clear and settle trades. In fact, the DTCC, the NSCC and the Depository Trust are not clearing and settling trades that result in open fail to deliver positions because these trades are processed through the Stock Borrow Program and therefore remain unsettled for extended periods of time.

70.

In connection with its services to the marketplace, the DTCC, itself and by and through the NSCC and the Depository Trust, made the following representations to Plaintiffs on its Annual Statements, its websites and various press releases:

- (i) that through the CNS System, it maintains an orderly flow of security and money balances;

(ii) that through the Stock Borrow Program, Members lend NSCC stock from their accounts at the Depository Trust to cover temporary shortfalls in the CNS System; and

(iii) that securities loaned to the NSCC through the Stock Borrow Program enable the NSCC to satisfy CNS delivery obligations not filled through normal deliveries.

71.

Notwithstanding these representations, upon information and belief, the Defendants are each aware that sellers routinely fail to deliver securities and that unfulfilled obligations to deliver securities can have negative effects on the market when fails to deliver persist for an extended period of time.

72.

Further, the Defendants are each aware that open fail to deliver positions covered by shares borrowed through the Stock Borrow Program actually increase the supply of shares in the marketplace by the number of shares borrowed, resulting in the artificial inflation of the issued and outstanding shares of issuers.

73.

By utilizing the Stock Borrow Program to cover open fail to deliver positions in NanoSignal stock and consequently creating artificial NanoSignal shares, the Defendants have misrepresented to Plaintiffs that these artificial shares are issued and outstanding shares of NanoSignal, when in fact these shares have not been issued or authorized by NanoSignal. This misrepresentation by the Defendants adversely affected the sale of NanoSignal stock and was relied upon by Plaintiffs when deciding to purchase and/or sell NanoSignal shares.

74.

The representations and omissions by the Defendants alleged above were false and misleading when made.

75.

In making the misrepresentations and omissions, the Defendants acted with scienter. The Defendants have a major financial motivation to make the misrepresentations and omissions alleged herein because they have a significant economic incentive to keep knowledge of the fail

to deliver problem away from the investing public since questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

76.

Defendants' misrepresentations and omissions, as alleged above were material.

77.

In reliance upon these misrepresentations and omissions by Defendants, Plaintiffs traded NanoSignal shares, which trades were cleared and settled by and through the Defendants without knowledge of Defendants' violation of Nevada securities laws.

78.

Alternatively, Plaintiffs relied on Defendants' material and public misrepresentations and omissions and traded NanoSignal shares in the stock market without knowledge of Defendants' fraud-on-the-market through statements they made about the clearing and settlement services they provided.

79.

The Plaintiffs have suffered substantial damages from the Defendants' misrepresentation that they use the Stock Borrow Program to efficiently clear and settle trades, when in fact they are not using the Stock Borrow Program to clear and settle trades efficiently but rather to mask inefficiencies in their clearance and settlement process by covering open fail to deliver positions with borrowed shares for millions of shares and extended periods of time. As a result, the Defendants have created additional unregistered and unauthorized NanoSignal shares and artificially increased the supply of NanoSignal shares in the marketplace and decreased the stock's value.

80.

The misrepresentations and omissions by the Defendants detailed above are in violation of Nevada Revised Statutes 90.570 and NRS 90.660 and have damaged and injured Plaintiffs, which relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

81.

As a result of the Defendants' violation of Nevada Revised Statutes 90.570 and NRS 90.660 and the wrongs herein alleged, Plaintiffs have suffered substantial damages in an amount to be proven at trial.

**AS AND FOR A THIRD CLAIM FOR RELIEF FOR VIOLATION
OF NEVADA REVISED STATUTES 90.570 AND 90.660
MISREPRESENTATIONS AS TO THE NUMBER OF SHARES HELD IN LENDING MEMBERS'
NSCC AND DEPOSITORY TRUST ACCOUNTS**

82.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 90 of the Complaint as if fully set forth herein.

83.

The Defendants have misrepresented to Plaintiffs the number of NanoSignal shares actually held by the lending Members at the Depository Trust by providing misleading information in the lending Members' Depository Trust and NSCC account statements.

84.

When shares are borrowed by the NSCC from a lending Member, the lending Member's Depository Trust account reflects a debit of the number and value of the shares borrowed and a balance which is minus the borrowed shares. The borrowed shares are credited to a separate account that reflects all the shares loaned by the lending Member. However, because the Depository Trust records the borrowing by balancing the aforementioned two accounts, the lending Member's total Depository Trust account is not reduced to exclude the number and value of the loaned shares. Therefore, when shares are borrowed, the lending Member's Depository Trust account misleadingly reflects an amount and value of shares that are not actually held by the lending Member at the Depository Trust.

85.

Further, the NSCC records the borrowing of the shares by balancing the lending Member's CNS sub-accounts,⁷ so that the net change in holdings of the lending Member is not reduced to exclude

⁷ The NSCC records the borrowing of the shares by creating a miscellaneous activity entry in the lending Member's CNS sub-accounts. The number of shares borrowed is journaled in the lending Member's CNS sub-account as a short position to show the delivery obligation of the lending Member to the NSCC for the number and value of the borrowed shares. This short position is automatically covered by taking the shares on deposit in the lending Member's Depository Trust account. A separate journal entry is made in another sub-account of the lending Member as a long position to show the number and value of the shares due to be returned by the NSCC to the

the number and value of the loaned shares. Therefore, when shares are borrowed, the lending Member's NSCC account statement misleadingly reflects an amount and value of shares that are not actually held by the lending Member at the Depository Trust.

86.

But for Defendants' inaccurate and misleading accounting of the borrowed shares, the number of shares borrowed would not exceed the number of lendable shares on deposit with the Depository Trust.

87.

The representations and omissions by the Defendants alleged above were false and misleading when made.

88.

In making the misrepresentations and omissions, the Defendants acted with scienter. The Defendants have a major financial motivation to make the misrepresentations and omissions alleged herein because they have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public since questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

89.

The misrepresentations and omissions of the Defendants, as alleged above, were material.

90.

In reliance upon these misrepresentations and omissions by Defendants, Plaintiffs traded NanoSignal shares, which trades were cleared and settled by and through the Defendants and without knowledge of Defendants' violation of Nevada securities laws.

91.

Alternatively, Plaintiffs relied on Defendants' material and public misrepresentations and omissions and traded NanoSignal shares in the stock market without knowledge of Defendants' fraud-on-the-market through the clearing and settlement services they provided.

lending Member. The long position is adjusted daily to reflect the market value of the borrowed shares.

92.

The misrepresentations and omissions by the Defendants detailed above are in violation of Nevada Revised Statutes 90.570 and NRS 90.660 and have damaged and injured Plaintiffs, which relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

93.

As a result of the Defendants' violation of Nevada Revised Statutes 90.570 and NRS 90.660 and the wrongs herein alleged, Plaintiffs have suffered substantial damages in an amount to be proven at trial.

**AS AND FOR A FOURTH CLAIM FOR RELIEF FOR VIOLATION
OF NEVADA REVISED STATUTES 90.570 AND 90.660
MISREPRESENTATIONS AS TO THE OPERATION OF THE STOCK BORROW PROGRAM**

94.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 102 of the Complaint as if fully set forth herein.

95.

The Defendants have represented to Plaintiffs that open fail to deliver positions will be cured by buying in the open positions with shares purchased from the marketplace, when in fact, these open positions are actually cured with shares borrowed from lending Members through the Stock Borrow Program.

96.

As set forth in the Rules and Procedures of the National Securities Clearing Corporation (effective December 26, 2003), when a seller fails to deliver, the buyer notifies the NSCC that it intends to buy-in the seller's fail to deliver position. Instead of executing the buy-in by going into the market, the NSCC executes the buy-in by borrowing shares from lending Members of the Stock Borrow Program to satisfy the buyer's buy-in request and to cover the seller's fail to deliver position.

97.

The representations and omissions by the Defendants alleged above were false and misleading when made.

98.

In making the misrepresentations and omissions, the Defendants acted with scienter. The Defendants have a major financial motivation to make the misrepresentations and omissions alleged herein because they have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public since questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

99.

The misrepresentations and omissions of the Defendants, as alleged above, were material.

100.

In reliance upon these misrepresentations and omissions by Defendants, Plaintiffs traded NanoSignal shares, which trades were cleared and settled through Defendants without knowledge of Defendants' violation of Nevada securities laws.

101.

Alternatively, Plaintiffs relied on Defendants' material and public misrepresentations and omissions and traded NanoSignal shares in the stock market without knowledge of Defendants' fraud-on-the-market through the clearing and settlement services they provided.

102.

The misrepresentations and omissions by the Defendants detailed above are in violation of Nevada Revised Statutes 90.570 and NRS 90.660 and have damaged and injured Plaintiffs, which relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

103.

As a result of the Defendants' violation of Nevada Revised Statutes 90.570 and NRS 90.660 and the wrongs herein alleged, Plaintiffs have suffered substantial damages in an amount to be proven at trial.

**AS AND FOR A FIFTH CLAIM FOR RELIEF FOR VIOLATION
OF NEVADA REVISED STATUTES 90.580 AND 90.660
MARKET MANIPULATION**

104.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 112 of the Complaint as if fully set forth herein.

105.

Prior to the establishment of the Stock Borrow Program, the Defendants executed buy-ins by purchasing shares from the open market to cover open fail to deliver positions. These transactions involved a change in beneficial ownership of the affected shares and constituted a purchase and sale of securities which was reported and visible to the marketplace.

106.

Since the institution of the Stock Borrow Program and as set forth in Addendum C-1, Rules and Procedures of the National Securities Clearing Corporation (effective December 26, 2003), instead of executing buy-ins by purchasing shares from the open market, the NSCC now executes buy-ins by borrowing shares through the Stock Borrow Program. When a buy-in is executed using shares borrowed through the Stock Borrow Program, the transaction is not reported or visible to the marketplace. This is because the transaction characterized by the NSCC as a loan under the Stock Borrow Program does not involve a change in beneficial ownership, since borrowed shares are not deducted from a lending Member's total Depository Trust and NSCC account holdings.

107.

The purpose of executing buy-ins by borrowing shares through the Stock Borrow Program instead of purchasing shares from the open market is to create a false and misleading appearance with respect to the market for NanoSignal stock.

108.

By lending shares to sellers who have failed to deliver, the Defendants have manipulated the market by effecting a transaction in NanoSignal securities which involves no change in the beneficial ownership of the security for the purpose of creating a false or misleading appearance with respect to the market for NanoSignal stock.

109.

The Defendants' execution of buy-ins with shares borrowed through the Stock Borrow Program is in violation of Nevada Revised Statutes 90.580 and NRS 90.660 and has damaged and injured the Plaintiffs.

110.

As a result of the Defendants' violation of Nevada Revised Statutes 90.580 and NRS 90.660 and the wrongs herein alleged, Plaintiffs have suffered substantial damages in an amount to be proven at trial.

**AS AND FOR A SIXTH CLAIM FOR RELIEF FOR VIOLATION
OF SECTION 598A.060 OF THE NEVADA UNFAIR TRADE PRACTICES ACT**

111.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 119 of the Complaint as if fully set forth herein.

112.

DTCC, through its subsidiaries, the NSCC and the Depository Trust, provides clearance and settlement services for its members.

113.

The Stock Borrow Program purportedly improves the efficiency of the clearance and settlement function by addressing temporary fail to deliver situations. Under the Stock Borrow Program, if a seller fails to deliver shares on Settlement Day, the NSCC borrows the shares from willing lenders and gives the shares to the buyer in settlement of the trade. Membership in both the NSCC and Depository Trust is required in order to be a lender in the Stock Borrow Program.

114.

The clearance and settlement services provided by the Defendants are completely separate and distinct from the functions of the Stock Borrow Program, and there is a separate market and demand for each of them.

115.

The Defendants have illegally tied the Stock Borrow Program to the separate and distinct functions of clearing and settling stock trades by requiring that open fail to deliver positions be

covered with shares borrowed through the Stock Borrow Program, either directly through the NSCC's daily allocation cycle or indirectly through a buy-in executed with shares borrowed through the Stock Borrow Program.

116.

The purpose and effect of this tying arrangement is to prevent buyers from entering the stock market to purchase shares to buy in open fail to deliver positions at competitive market prices, and instead requiring buyers to execute buy-ins through the Stock Borrow Program.

117.

The conduct of the Defendants is anticompetitive since they have prevented buyers from entering the stock market to purchase shares to cover open fail to deliver positions, thereby unreasonably restraining competition in the market and violating the Nevada Unfair Trade Practices Act.

118.

The tying arrangement is anticompetitive because it diverts to the Defendants the buyers' demand for shares to cover open fail to deliver positions by requiring buy-ins for open fail to deliver positions to be filled with shares borrowed through the Stock Borrow Program instead of allowing the demand to be filled by all market participants through buying in from the stock market.

119.

The value of NanoSignal shares on the open market has been reduced by the Defendants' anticompetitive behavior because the supply of shares from buy-ins executed through the Stock Borrow Program is limited to lending Members rather than the open market of securities sellers as a whole. A buy-in executed by entering the stock market includes all market participants and is based on the natural supply and demand for the borrowed security.

120.

If the clearance and settlement functions of the Defendants were not tied to the Stock Borrow Program, buyers would be able to buy-in open fail to deliver positions by going into the stock market instead of having to execute their buy-in request through the Stock Borrow Program.

121.

In addition, the transaction which underlies the Stock Borrow Program is actually a "sale" of securities by a member to the NSCC. This transaction is a sale because the NSCC delivers the borrowed shares to the buyer who acquires all right, title and interest in the shares, including the right to vote, receive dividends and resell the shares, without further encumbrance or any reservation of rights.⁸ The Defendants have intentionally mischaracterized this transaction as a "loan" in order to disguise the anticompetitive nature of the transaction.

122.

As a result of the Defendants' anticompetitive conduct in tying the Stock Borrow Program to the separate and distinct functions of clearing and settling stock trades, upon information and belief, buyers of NanoSignal shares in trades which resulted in open fail to deliver positions were prevented from entering the stock market to buy-in shares to cover these positions. Instead, these fail to deliver positions were required to be covered by shares borrowed through the Stock Borrow Program.

123.

By requiring that buyers buy-in open fail to deliver positions with shares borrowed through the Stock Borrow Program and accepting delivery of the borrowed shares, the Defendants have artificially created unregistered, free trading NanoSignal shares and have increased the supply of NanoSignal shares in the marketplace without authority.

124.

The artificially increased supply of NanoSignal shares in the marketplace created by the Defendants' anticompetitive conduct in tying the Stock Borrow Program to the separate and distinct functions of clearing and settling stock trades has significantly decreased the value of NanoSignal stock and Plaintiffs' holdings in NanoSignal stock.

125.

The foregoing acts and practices, and the continuing course of the Defendants' anticompetitive conduct, have harmed the Plaintiffs.

126.

⁸ As noted in NASD Proposed Amendments Relating to Short Sale Delivery Requirements (SR-NASD-2004-044), "significant failures to deliver can impact certain rights of buyers, such as the right to vote shares or the treatment of dividends".

The Defendants' conduct is anticompetitive. There are no procompetitive effects of this tying arrangement that might outweigh the harm to competition in the stock market.

127.

As a direct result of the Defendants' illegal conduct, competition in the stock market has been restrained and suppressed.

128.

Defendants' anticompetitive and exclusionary conduct has directly and proximately caused injury to Plaintiff NanoSignal's businesses and property and Plaintiffs Walters's property as set forth above. Plaintiffs' injuries are the type the Nevada Unfair Trade Practices Act is intended to prevent and thus constitute unfair trade practice injuries.

129.

As a result of the Defendants' violation of the Nevada Unfair Trade Practices Act and the wrongs herein alleged, Plaintiffs have suffered substantial damages in an amount to be proven at trial.

**AS AND FOR A SEVENTH CLAIM FOR RELIEF FOR
NEGLIGENT MISREPRESENTATIONS AS TO THE NATURE OF THE STOCK BORROW
PROGRAM**

130.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 138 of the Complaint as if fully set forth herein.

131.

Defendants have misrepresented to Plaintiffs that the Stock Borrow Program is a "loan" of shares from participating members of the Stock Borrow Program to cover fail to deliver positions in the clearing and settlement process.

132.

Defendants have failed to exercise reasonable care or competence in communicating to Plaintiffs that the NSCC is borrowing shares from lending Members through the Stock Borrow Program to cover fail to deliver positions in the clearing and settlement process, when, in fact, the transfer of shares from lending Members to the NSCC to cover such fail to deliver positions is actually a "sale" of securities. This transaction is a sale because the NSCC delivers the borrowed shares to

the buyer who acquires all right, title and interest in the shares, including the right to vote, receive dividends and resell the shares, without further encumbrance or any reservation of rights.⁹

133.

The representations and omissions by the Defendants alleged above were false and misleading when made.

134.

The misrepresentations and omissions by Defendants to Plaintiffs were made in their Annual Statements, on their websites and in various press releases.

135.

The Defendants have a major financial motivation to make the misrepresentations and omissions. The Defendants have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public because questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

136.

The misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which justifiably relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

137.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

**AS AND FOR AN EIGHTH CLAIM FOR RELIEF FOR
NEGLIGENT MISREPRESENTATIONS REGARDING THE
CLEARING AND SETTLEMENT OF TRADES**

138.

⁹ As noted in NASD Proposed Amendments Relating to Short Sale Delivery Requirements (SR-NASD-2004-044), "significant failures to deliver can impact certain rights of buyers, such as the right to vote shares or the treatment of dividends".

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 146 of the Complaint as if fully set forth herein.

139.

The Defendants have failed to exercise reasonable care or competence in communicating to Plaintiffs that they efficiently clear and settle trades. In fact, the Defendants are not clearing and settling those trades which result in open fail to deliver positions, because these trades are processed through the Stock Borrow Program and remain unsettled for extended periods of time.

140.

In connection with its services to the marketplace, the DTCC, itself and by and through the NSCC and the Depository Trust, have further communicated to Plaintiffs the following representations on its Annual Statements, its websites and various press releases:

(i) that through the CNS System, it maintains an orderly flow of security and money balances;

(ii) that through the Stock Borrow Program, Members lend NSCC stock from their accounts at the Depository Trust to cover temporary shortfalls in the CNS System; and

(iii) that securities loaned to the NSCC through the Stock Borrow Program, enable the NSCC to satisfy CNS delivery obligations not filled through normal deliveries.

141.

Notwithstanding these representations, upon information and belief, the Defendants are aware that sellers routinely fail to deliver securities on Settlement Day and that unfulfilled obligations to deliver securities can have negative effects on the market when fails to deliver persist for an extended period of time.

142.

Further, the Defendants are aware that open fail to deliver positions covered by shares borrowed through the Stock Borrow Program actually increase the supply of shares in the marketplace by the number of shares borrowed, resulting in the artificial inflation of the issued and outstanding shares of the issuer.

143.

By utilizing the Stock Borrow Program to cover open fail to deliver positions in NanoSignal stock and consequently creating artificial NanoSignal shares, the Defendants have negligently misrepresented to Plaintiffs that these artificial shares are issued and outstanding shares of NanoSignal, when in fact these shares have not been issued or authorized by NanoSignal. This misrepresentation by the Defendants adversely affected the sale of NanoSignal stock and was justifiably relied upon by Plaintiffs when deciding to purchase and/or sell NanoSignal shares.

144.

The representations and omissions by the Defendants alleged above were false and misleading when made.

145.

Defendants have a major financial motivation to make the misrepresentations and omissions alleged above. Defendants have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public because questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

146.

The Plaintiffs have suffered substantial damages from the Defendants' misrepresentation that they use the Stock Borrow Program to efficiently clear and settle trades, when in fact they are not using the Stock Borrow Program to clear and settle trades efficiently but rather to mask inefficiencies in their clearance and settlement process by covering open fail to deliver positions with borrowed shares involving millions of shares for extended periods of time. As a result, the Defendants have created additional unregistered and unauthorized NanoSignal shares and have artificially increased the supply of NanoSignal shares in the marketplace and decreased the value of said stock.

147.

The negligent misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which justifiably relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

148.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

**AS AND FOR A NINTH CLAIM FOR RELIEF FOR
NEGLIGENT MISREPRESENTATIONS AS TO THE NUMBER OF SHARES HELD IN LENDING
MEMBERS' NSCC AND DEPOSITORY TRUST ACCOUNTS**

149.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 157 of the Complaint as if fully set forth herein.

150.

Defendants have failed to exercise reasonable care or competence in communicating to Plaintiffs the number of NanoSignal shares actually held by the lending Members at the Depository Trust by providing misleading information in the lending Members' Depository Trust and NSCC account statements.

151.

When shares are borrowed by the NSCC from a lending Member, the lending Member's Depository Trust account reflects a debit of the number and value of the shares borrowed and a balance which is minus the borrowed shares. The borrowed shares are credited to a separate account that reflects all the shares loaned by the lending Member. However, because the Depository Trust records the borrowing by balancing the aforementioned two accounts, the lending Member's total Depository Trust account is not reduced to exclude the number and value of the loaned shares. Therefore, when shares are borrowed, the lending Member's Depository Trust account misleadingly reflects an amount and value of shares that are not actually held by the lending Member at the Depository Trust.

152.

Further, the NSCC records the borrowing of the shares by balancing the lending Member's CNS sub-accounts,¹⁰ so that the net change in holdings of the lending Member is not reduced to

¹⁰ The NSCC records the borrowing of the shares by creating a miscellaneous activity entry in the lending Member's CNS sub-accounts. The number of shares borrowed is journaled in the lending Member's CNS sub-account as a short position to show the delivery obligation of the lending Member to the NSCC for the number and value of the borrowed shares. This short position is automatically covered by taking the shares on deposit in the

exclude the number and value of the loaned shares. Therefore, when shares are borrowed, the lending Member's NSCC account statement misleadingly reflects an amount and value of shares that are not actually held by the lending Member at the Depository Trust.

153.

But for Defendants' inaccurate and misleading accounting of the borrowed shares, the number of shares borrowed would not exceed the number of lendable shares on deposit with the Depository Trust.

154.

The representations and omissions by the Defendants alleged above were false and misleading when made.

155.

Defendants have a major financial motivation to make the misrepresentations and omissions alleged above.

156.

Defendants have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public because questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

157.

The negligent misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which justifiably relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

158.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

lending Member's Depository Trust account. A separate journal entry is made in another sub-account of the lending Member as a long position to show the number and value of the shares due to be returned by the NSCC to the lending Member. The long position is adjusted daily to reflect the market value of the borrowed shares.

AS AND FOR A TENTH CLAIM FOR RELIEF FOR NEGLIGENT MISREPRESENTATIONS AS TO THE OPERATION OF THE STOCK BORROW PROGRAM

159.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 167 of the Complaint as if fully set forth herein.

160.

Defendants have failed to exercise reasonable care or competence in communicating to Plaintiffs that open fail to deliver positions will be cured by buying in the open positions with shares purchased from the marketplace, when in fact, these open positions are actually cured with shares borrowed from lending Members through the Stock Borrow Program.

161.

As set forth in the Rules and Procedures of the National Securities Clearing Corporation (effective December 26, 2003), when a seller fails to deliver, the buyer notifies the NSCC that it intends to buy-in the seller's fail to deliver position. Instead of executing the buy-in by going into the market, the NSCC executes the buy-in by borrowing shares from lending Members of the Stock Borrow Program to satisfy the buyer's buy-in request and to cover the seller's fail to deliver position.

162.

The representations and omissions by the Defendants alleged above were false and misleading when made.

163.

Defendants have a major financial motive to allow the misrepresentations and omissions to be made.

164.

Defendants have a major economic incentive to keep knowledge of the fail to deliver problem out of the awareness of the investing public because questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

165.

The negligent misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which justifiably relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

166.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

**AS AND FOR A ELEVENTH CLAIM FOR RELIEF FOR
INTENTIONAL MISREPRESENTATIONS AS TO THE NATURE OF THE STOCK BORROW
PROGRAM**

167.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 175 of the Complaint as if fully set forth herein.

168.

Defendants have willfully and/or recklessly represented to Plaintiffs that the NSCC is borrowing shares from lending Members of the Stock Borrow Program to cover fail to deliver positions in the clearing and settlement process, when, in fact, the transfer of shares from lending Members to the NSCC to cover such fail to deliver positions is actually a "sale" of securities. This transaction is a sale because the NSCC delivers the borrowed shares to the buyer who acquires all right, title and interest in the shares, including the right to vote, receive dividends and resell the shares, without further encumbrance or any reservation of rights.¹¹

169.

The representations and omissions by Defendants alleged above were false and misleading when made.

170.

The misrepresentations and omissions by Defendants were willfully and/or recklessly made in their Annual Statements, on their websites and in various press releases issued to the investing public, which include the Plaintiffs.

¹¹ As noted in NASD Proposed Amendments Relating to Short Sale Delivery Requirements (SR-NASD-2004-044), "significant failures to deliver can impact certain rights of buyers, such as the right to vote shares or the treatment of dividends".

171.

Defendants have a major financial motivation to make the misrepresentations and omissions. Defendants have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public because questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

172.

The intentional misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which justifiably relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

173.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

**AS AND FOR AN TWELFTH CLAIM FOR RELIEF FOR
INTENTIONAL MISREPRESENTATIONS REGARDING THE
CLEARING AND SETTLEMENT OF TRADES**

174.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 182 of the Complaint as if fully set forth herein.

175.

Defendants have willfully and/or recklessly misrepresented to Plaintiffs that they efficiently clear and settle trades. In fact, the Defendants are not clearing and settling those trades which result in open fail to deliver positions because these trades are processed through the Stock Borrow Program and remain unsettled for extended periods of time.

176.

In connection with its services to the marketplace, the Defendants have further willfully and/or recklessly represented to Plaintiffs the following representations on its Annual Statements, its websites and various press releases:

(i) that through the CNS System, it maintains an orderly flow of security and money balances;

(ii) that through the Stock Borrow Program, Members lend NSCC stock from their accounts at the Depository Trust to cover temporary shortfalls in the CNS System; and

(iii) that securities loaned to the NSCC through the Stock Borrow Program, enable the NSCC to satisfy CNS delivery obligations not filled through normal deliveries.

177.

Notwithstanding these representations, upon information and belief, the Defendants are aware that sellers routinely fail to deliver securities on required Settlement Days and that unfulfilled obligations to deliver securities can have negative effects on the market when fails to deliver persist for an extended period of time.

178.

Further, the Defendants are aware that open fail to deliver positions covered by shares borrowed through the Stock Borrow Program actually increase the supply of shares in the marketplace by the number of shares borrowed, resulting in the artificial inflation of the issued and outstanding shares of the issuer.

179.

By utilizing the Stock Borrow Program to cover open fail to deliver positions in NanoSignal stock and consequently create artificial NanoSignal shares, the Defendants have misrepresented to the Plaintiffs that these artificial shares are issued and outstanding shares of NanoSignal, when in fact these shares have not been issued or authorized by NanoSignal. This misrepresentation by the Defendants adversely affected the sale of NanoSignal stock and was justifiably relied upon by Plaintiffs when making decisions to purchase and/or sell NanoSignal shares.

180.

The representations and omissions by Defendants alleged above were false and misleading when made.

181.

Defendants have a major financial motivation to make the misrepresentations and omissions. Defendants have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public because questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

182.

The Plaintiffs have suffered substantial damages from the Defendants' willful and/or reckless misrepresentation that they use the Stock Borrow Program to efficiently settle and clear trades, when in fact they are not using the Stock Borrow Program to clear and settle trades efficiently but rather to mask inefficiencies in their clearance and settlement process by covering open fail to deliver positions with borrowed shares for millions of shares and extended periods of time. As a result, the Defendants have created additional unregistered and unauthorized NanoSignal shares artificially increasing the supply of NanoSignal shares in the marketplace and decreasing the value of the stock.

183.

The intentional misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which justifiably relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

184.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

**AS AND FOR A THIRTEENTH CLAIM FOR RELIEF FOR
INTENTIONAL MISREPRESENTATIONS AS TO THE NUMBER OF SHARES HELD IN LENDING
MEMBERS' NSCC AND DEPOSITORY TRUST ACCOUNTS**

185.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 193 of the Complaint as if fully set forth herein.

186.

Defendants have willfully and/or recklessly misrepresented to Plaintiffs the number of NanoSignal shares actually held by the lending Members at the Depository Trust by providing misleading information in the lending Members' Depository Trust and NSCC account statements.

187.

When shares are borrowed by the NSCC from a lending Member, the lending Member's Depository Trust account reflects a debit of the number and value of the shares borrowed and a balance which is minus the borrowed shares. The borrowed shares are credited to a separate account that reflects all the shares loaned by the lending Member. However, because the Depository Trust records the borrowing by balancing the aforementioned two accounts, the lending Member's total Depository Trust account is not reduced to exclude the number and value of the loaned shares. Therefore, when shares are borrowed, the lending Member's Depository Trust account misleadingly reflects an amount and value of shares that are not actually held by the lending Member at the Depository Trust.

188.

Further, the NSCC records the borrowing of the shares by balancing the lending Member's CNS sub-accounts,¹² so that the net change in holdings of the lending Member is not reduced to exclude the number and value of the loaned shares. Therefore, when shares are borrowed, the lending Member's NSCC account statement misleadingly reflects an amount and value of shares that are not actually held by the lending Member at the Depository Trust.

189.

But for Defendants' willful and/or reckless inaccurate and misleading accounting of the borrowed shares, the number of shares borrowed would not exceed the number of lendable shares on deposit with the Depository Trust.

190.

¹² The NSCC records the borrowing of the shares by creating a miscellaneous activity entry in the lending Member's CNS sub-accounts. The number of shares borrowed is journaled in the lending Member's CNS sub-account as a short position to show the delivery obligation of the lending Member to the NSCC for the number and value of the borrowed shares. This short position is automatically covered by taking the shares on deposit in the lending Member's Depository Trust account. A separate journal entry is made in another sub-account of the lending Member as a long position to show the number and value of the shares due to be returned by the NSCC to the lending Member. The long position is adjusted daily to reflect the market value of the borrowed shares.

The representations and omissions by Defendants alleged above were false and misleading when made.

191.

Defendants have a major financial motivation to make the misrepresentations and omissions. Defendants have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public because questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

192.

The intentional misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which justifiably relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

193.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

AS AND FOR A FOURTEENTH CLAIM FOR RELIEF FOR INTENTIONAL MISREPRESENTATIONS AS TO THE OPERATION OF THE STOCK BORROW PROGRAM

194.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 202 of the Complaint as if fully set forth herein.

195.

Defendants have willfully and/or recklessly misrepresented to Plaintiffs that open fail to deliver positions will be cured through buy-ins, when in fact, these fail to deliver positions are actually cured by borrowing shares from lending Members through the Stock Borrow Program.

196.

As set forth in the Rules and Procedures of the National Securities Clearing Corporation (effective December 26, 2003), when a seller fails to deliver, the buyer notifies the NSCC that it intends to buy-in the seller's fail to deliver position. Instead of executing the buy-in by going into the market, the NSCC executes the buy-in by borrowing shares from lending Members of the

Stock Borrow Program to satisfy the buyer's buy-in request and to cover the seller's open fail to deliver position.

197.

The representations and omissions by Defendants alleged above were false and misleading when made.

198.

Defendants have a major financial motive to allow the misrepresentations and omissions to be made. Defendants have a major economic incentive to keep knowledge of the fail to deliver problem out of the awareness of the investing public because questions or doubts as to the efficiency of the DTCC, NSCC, Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

199.

The intentional misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which justifiably relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

200.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

**AS AND FOR A FIFTEENTH CLAIM FOR RELIEF FOR
FRAUDULENT MISREPRESENTATIONS AS TO THE NATURE OF THE STOCK BORROW
PROGRAM**

201.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 209 of the Complaint as if fully set forth herein.

202.

Defendants have fraudulently represented to Plaintiffs that the NSCC is borrowing shares from lending Members of the Stock Borrow Program to cover fail to deliver positions in the clearing and settlement process, when, in fact, the transfer of shares from lending Members to the NSCC to cover such fail to deliver positions is actually a "sale" of securities. This transaction is a sale

because the NSCC delivers the borrowed shares to the buyer who acquires all right, title and interest in the shares, including the right to vote, receive dividends and resell the shares, without further encumbrance or any reservation of rights.¹³

203.

The representations and omissions by Defendants alleged above were false and misleading when made.

204.

The misrepresentations and omissions by Defendants were made in their Annual Statements, on their websites and in various press releases issued to the investing public, which include the Plaintiffs.

205.

Defendants have a major financial motivation to make the misrepresentations and omissions. Defendants have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public because questions or doubts as to the efficiency of the DTCC, the NSCC, the Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

206.

The fraudulent misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

207.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

**AS AND FOR AN SIXTEENTH CLAIM FOR RELIEF FOR
FRAUDULENT MISREPRESENTATIONS REGARDING THE
CLEARING AND SETTLEMENT OF TRADES**

208.

¹³ As noted in NASD Proposed Amendments Relating to Short Sale Delivery Requirements (SR-NASD-2004-044), "significant failures to deliver can impact certain rights of buyers, such as the right to vote shares or the treatment of dividends".

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 216 of the Complaint as if fully set forth herein.

209.

Defendants have fraudulently represented to Plaintiffs that they efficiently clear and settle trades. In fact, Defendants are not clearing and settling those trades which result in open "fail to deliver," positions because those trades are processed through the Stock Borrow Program and therefore remain unsettled for extended periods of time.

210.

In connection with its services to the marketplace, the Defendants have further falsely represented to Plaintiffs the following representations on its Annual Statements, its websites and various press releases:

(i) that through the CNS System, it maintains an orderly flow of security and money balances;

(ii) that through the Stock Borrow Program, Members lend NSCC stock from their accounts at the Depository Trust to cover temporary shortfalls in the CNS System; and

(iii) that securities loaned to the NSCC through the Stock Borrow Program, enable the NSCC to satisfy CNS delivery obligations not filled through normal deliveries.

211.

Notwithstanding these representations, upon information and belief, the Defendants are aware that sellers routinely fail to deliver securities on required Settlement Days and that unfulfilled obligations to deliver securities can have negative effects on the market when fails to deliver persist for an extended period of time.

212.

Further, the Defendants are aware that open fail to deliver positions covered by shares borrowed through the Stock Borrow Program actually increase the supply of shares in the marketplace by the number of shares borrowed, resulting in the artificial inflation of the issued and outstanding shares of the issuer.

213.

By utilizing the Stock Borrow Program to cover open fail to deliver positions in NanoSignal stock and consequently create artificial NanoSignal shares, the Defendants have misrepresented to the Plaintiffs that these artificial shares are issued and outstanding shares of NanoSignal, when in fact these shares have not been issued or authorized by NanoSignal. This misrepresentation by the Defendants adversely affected the sale of NanoSignal stock and was relied upon by Plaintiffs when making decisions to purchase and/or sell NanoSignal shares.

214.

The representations and omissions by Defendants alleged above were false and misleading when made.

215.

Defendants have a major financial motivation to make the misrepresentations and omissions. Defendants have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public because questions or doubts as to the efficiency of the DTCC, NSCC, Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

216.

The Plaintiffs have suffered substantial damages as a result of the Defendants' misrepresentation that they use the Stock Borrow Program to efficiently settle and clear trades, when in fact they are not using the Stock Borrow Program to clear and settle trades efficiently but rather to mask inefficiencies in their clearance and settlement process by covering open fail to deliver positions with borrowed shares for millions of shares and extended periods of time. As a result, the Defendants have created additional unregistered and unauthorized NanoSignal shares and have artificially increased the supply of NanoSignal stock in the marketplace and decreased the value of the stock.

217.

The fraudulent misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

218.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

**AS AND FOR A SEVENTEENTH CLAIM FOR RELIEF FOR
FRAUDULENT MISREPRESENTATIONS AS TO THE NUMBER OF SHARES HELD IN LENDING
MEMBERS' NSCC AND DEPOSITORY TRUST ACCOUNTS**

219.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 227 of the Complaint as if fully set forth herein.

220.

Defendants have fraudulently represented to Plaintiffs the number of NanoSignal shares actually held by the lending Members at the Depository Trust by providing misleading information in the lending Members' Depository Trust and NSCC account statements.

221.

When shares are borrowed by the NSCC from a lending Member, the lending Member's Depository Trust account reflects a debit of the number and value of the shares borrowed and a balance which is minus the borrowed shares. The borrowed shares are credited to a separate account that reflects all the shares loaned by the lending Member. However, because the Depository Trust records the borrowing by balancing the aforementioned two accounts, the lending Member's total Depository Trust account is not reduced to exclude the number and value of the loaned shares. Therefore, when shares are borrowed, the lending Member's Depository Trust account misleadingly reflects an amount and value of shares that are not actually held by the lending Member at the Depository Trust.

222.

Further, the NSCC records the borrowing of the shares by balancing the lending Member's CNS sub-accounts,¹⁴ so that the net change in holdings of the lending Member is not reduced to

¹⁴ The NSCC records the borrowing of the shares by creating a miscellaneous activity entry in the lending Member's CNS sub-accounts. The number of shares borrowed is journaled in the lending Member's CNS sub-account as a short position to show the delivery obligation of the lending Member to the NSCC for the number and value of the borrowed shares. This short position is automatically covered by taking the shares on deposit in the lending Member's Depository Trust account. A separate journal entry is made in another sub-account of the lending Member as a long position to show the number and value of the shares due to be returned by the NSCC to the

exclude the number and value of the loaned shares. Therefore, when shares are borrowed, the lending Member's NSCC account statement misleadingly reflects an amount and value of shares that are not actually held by the lending Member at the Depository Trust.

223.

But for Defendants' false and misleading accounting of the borrowed shares, the number of shares borrowed would not exceed the number of lendable shares on deposit with the Depository Trust.

224.

The representations and omissions by Defendants alleged above were false and misleading when made.

225.

Defendants have a major financial motivation to make the misrepresentations and omissions. Defendants have a significant economic incentive to keep knowledge of the fail to deliver problem away from the investing public because questions or doubts as to the efficiency of the DTCC, NSCC, Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC and Knight Securities would jepordise there capital account and other undetermined amounting into the millions of dollars in US .

226.

The fraudulent misrepresentations and omissions by the Defendants detailed above have damaged and injured Plaintiff, which relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

227.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

lending Member. The long position is adjusted daily to reflect the market value of the borrowed shares.

AS AND FOR A EIGHTEENTH CLAIM FOR RELIEF FOR FRAUDULENT MISREPRESENTATIONS AS TO THE OPERATION OF THE STOCK BORROW PROGRAM

228.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 236 of the Complaint as if fully set forth herein.

229.

Defendants have fraudulently represented to Plaintiffs that open fail to deliver positions will be cured by buying in the open positions with shares purchased from the marketplace, when in fact, these open positions are actually cured with shares borrowed from lending Members through the Stock Borrow Program.

230.

As set forth in the Rules and Procedures of the National Securities Clearing Corporation (effective December 26, 2003), when a seller fails to deliver, the buyer notifies the NSCC that it intends to buy-in the seller's fail to deliver position. Instead of executing the buy-in by going into the market, the NSCC executes the buy-in by borrowing shares from lending Members of the Stock Borrow Program to satisfy the buyer's buy-in request and to cover the seller's open fail to deliver position.

231.

The representations and omissions by Defendants alleged above were false and misleading when made.

232.

Defendants have a major financial motive to allow the misrepresentations and omissions to be made. Defendants have a major economic incentive to keep knowledge of the fail to deliver problem out of the awareness of the investing public because questions or doubts as to the efficiency of the DTCC, NSCC, Depository Trust and their systems would jeopardize the \$947 million fee-based revenues generated by the DTCC.

233.

The fraudulent misrepresentations and omissions by Defendants detailed above have damaged and injured Plaintiffs, which relied on those misrepresentations and omissions in connection with the purchase and/or sale of NanoSignal shares.

234.

Plaintiffs have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proven at trial.

AS AND FOR A NINETEENTH CLAIM FOR RELIEF FOR CONVERSION

235.

Plaintiffs Walters repeat and reallege each and every allegation contained in paragraphs 1 through 243 of the Complaint as if fully set forth herein.

236.

Upon information and belief, the Defendants, through the Stock Borrow Program, borrowed shares of NanoSignal stock from lending Members in order to cover open fail to deliver positions. The NSCC then delivered these NanoSignal shares to buyers. Upon delivery, the buyer acquired all right, title and interest in the NanoSignal shares, including the right to vote, receive dividends and resell the shares, without encumbrance or any reservation of rights.¹⁵ This transaction was actually a sale of NanoSignal shares and not a loan. As a result, the Defendants exercised a wrongful and unauthorized dominion and control over the aforesaid borrowed NanoSignal shares, since the Defendants do not own the shares and have no right to transfer them.

237.

Further, the Defendants have not obtained consent of the beneficial owners of the shares borrowed and transferred through the Stock Borrow Program.

238.

Upon information and belief, Plaintiffs Walters's shares were borrowed and transferred by the DTCC, the NSCC and the Depository Trust through the Stock Borrow Program without their consent. By borrowing shares without Plaintiffs Walters's consent, the Defendants have exerted a

¹⁵ As noted in NASD Proposed Amendments Relating to Short Sale Delivery Requirements (SR-NASD-2004-044), "significant failures to deliver can impact certain rights of buyers, such as the right to vote shares or the treatment of dividends".

wrongful dominion and control over the borrowed shares which is inconsistent with the rights of Plaintiffs Walters and therefore constitutes a conversion of the borrowed shares.

239.

The Defendants, through the implementation of the Stock Borrow Program, allowed an unlimited number of shares to be borrowed for an unlimited period of time. Because of this, the Stock Borrow Program actually increased the supply of shares of NanoSignal stock in the marketplace by the number of shares borrowed.

240.

As a result, the Defendants have created additional unregistered and unauthorized NanoSignal shares and artificially increased the supply of NanoSignal shares in the marketplace and decreased the value of the stock.

241.

The Defendants' conversion of Plaintiffs Walters's shares through borrowing in the Stock Borrow Program decreased the value of NanoSignal stock and thus damaged the value of NanoSignal shares held by Plaintiffs Walters.

242.

As a result of the wrong alleged herein, Plaintiffs Walters have suffered damages in an amount representing the value of the stock prior to the conversion minus the value of the stock after the conversion.

AS AND FOR A TWENTIETH CLAIM FOR RELIEF FOR INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS BETWEEN NANOSIGNAL AND ITS SHAREHOLDERS

243.

Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 251 of the Complaint as if fully set forth herein.

244.

The operation of the Stock Borrow Program by the Defendants is an intentional interference with NanoSignal's contractual relationships with its shareholders, including but not limited to Plaintiffs Walters.

245.

The Articles of Incorporation of NanoSignal constitute a contract between NanoSignal and its shareholders which sets forth the number of shares NanoSignal is authorized to issue.

246.

The Defendants are aware of the existence and terms of this contract, since the Articles of Incorporation of NanoSignal are public records on file with the Nevada Secretary of State. Further, NanoSignal is a public company that is required to make public filings to the Securities and Exchange Commission and consequently information regarding NanoSignal is widely available.

247.

The operation of the Stock Borrow Program by Defendants is an intentional interference with the contractual relationship between NanoSignal and its shareholders.

248.

The operation of the Stock Borrow Program by the Defendants has interfered with and contravened the terms of NanoSignal's Articles of Incorporation because by covering open fail to deliver positions with shares borrowed through the Stock Borrow Program and delivering the borrowed shares to the Buy Side Members, the NSCC has artificially created unauthorized, unregistered, free trading NanoSignal shares. This constitutes a clear contravention of NanoSignal's Articles of Incorporation and contractual relationship with its shareholders, including but not limited to Plaintiffs Walters.

249.

By covering open fail to deliver positions with shares borrowed through the Stock Borrow Program, the NSCC, as borrower, has subjected itself to the possibility of significant financial losses if the sellers are ultimately unable to honor their delivery obligations. Therefore, the Defendants have motive to continue to operate the Stock Borrow Program in order to manipulate downward the price of Nanopiere's stock and reduce the market value of the open fail to deliver positions created by sellers.

250.

The interference with NanoSignal's Articles of Incorporation by Defendants' creation of artificial additional NanoSignal shares through the Stock Borrow Program has damaged NanoSignal and its shareholders. The creation of unauthorized NanoSignal shares has caused an increase in the

supply of such NanoSignal shares in the marketplace, which has significantly decreased the value of NanoSignal shares held by its shareholders, including but not limited to Plaintiffs Walters.

251.

As a result, NanoSignal and its shareholders, including but not limited to Plaintiffs Walters have suffered substantial damages in an amount to be proven at trial.

AS AND FOR A TWENTY-FIRST CLAIM FOR RELIEF FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

252.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 260 of the Complaint as if fully set forth herein.

253.

NanoSignal stock certificates constitute a contract between NanoSignal and the shareholder named on the stock certificate.

254.

The Depository Trust is a shareholder of NanoSignal Corp (See nansignalcop.com)full corp info.

255.

Upon information and belief, as of April 5, 2004, Depository Trust held, in trust, in its nominee name, Cede & Co., 53,503,305 shares of NanoSignal stock.

256.

As a trustee and shareholder of NanoSignal shares, the Depository Trust is required to lawfully hold NanoSignal's shares.

257.

NanoSignal relied on the Depository Trust, as shareholder and trustee of its shares, to act in good faith when holding its shares.

258.

By permitting shares of NanoSignal to be diluted through the operation of the Stock Borrow Program, the Depository Trust has breached the implied covenant of good faith and fair dealing.

259.

As a result, NanoSignal has suffered substantial damages in an amount to be proven at trial.

AS AND FOR A TWENTY-SECOND CLAIM FOR RELIEF FOR CONSPIRACY

260.

Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 268 of the Complaint as if fully set forth herein.

261.

The DTCC, the NSCC and the Depository Trust acted in concert to operate the Stock Borrow Program for the purpose of manipulating the price of NanoSignal stock.

262.

By permitting shares of NanoSignal to be borrowed through the Stock Borrow Program, the DTCC, the NSCC and the Depository Trust have conspired to drive down the price of NanoSignal stock.

263.

Upon information and belief, the price of NanoSignal stock fell because the operation of the Stock Borrow Program by the Defendants allowed the manipulation of NanoSignal stock by various NSCC and Depository Trust members sellers who failed to deliver NanoSignal shares. |

264.

The Defendants conspired to maintain significant open fail to deliver positions of millions of shares of NanoSignal stock for extended periods of time by implementing the Stock Borrow Program to cover these open and unsettled positions.

265.

By covering open fail to deliver positions with shares borrowed through the Stock Borrow Program and delivering the borrowed shares to the buyers, the Defendants artificially created unregistered, free trading NanoSignal shares and increased the supply of NanoSignal shares in the marketplace without authority.

266.

The artificially increased supply of NanoSignal shares in the marketplace created by the NSCC's and Depository Trust's borrowing of NanoSignal shares through the Stock Borrow Program to cover open fail to deliver positions caused a dramatic devaluation of NanoSignal stock that would not have occurred absent the actions of Defendants as described herein.

267.

As a result, Plaintiffs have suffered substantial damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in its favor and against the Defendants as follows:

a.

Damages in an amount in excess of \$40,000 in favor of each Plaintiff and against each Defendant;

b.

Treble damages under the Nevada Unfair Trade Practices Act;

c.

An accounting of all profits which inured to Defendants as a result of their scheme and disgorgement of those profits to Plaintiffs;

d.

Attorneys' fees, expert witness fees, and costs, as allowed by law;

e.

Pre-judgment and post-judgment interest at the maximum rate allowed by law;

f.

Exemplary, special and punitive damages from all Defendants;

g.

Costs incurred; and

h.

Such other and further relief the Court deems just and proper.

Dated: August 31, 2004

Respectfully submitted,

By: 

GARY W WALTERS/Shareholder
1804 PLANTEA COURT
LAS VEGAS NV, 89109

PROSE/IN FORMA PAPERAS