

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

R. NEIL HEPLER, IRA, AND ALFRED REHM on behalf of themselves and all others similarly situated,	)	
	)	
	)	CIVIL ACTION NO.
	)	[96VS-0115357C]
Plaintiffs,	)	<b>COMPLAINT</b>
	)	
v.	)	<u>CLASS ACTION</u>
	)	
VALUJET AIRLINES, INC., VALUJET, INC., SABRETECH INC., MICHAEL D. ACKS, TIMOTHY FLYNN, ROBERT L. PRIDY, LEWIS A. JORDAN, MAURICE J. GALLAGHER, JR., AND STEPHEN C. NEVIN,	)	
	)	<u>JURY TRIAL DEMANDED</u>
	)	
Defendants.	)	
	)	

Plaintiffs make the following allegations upon information and belief, except as to allegations specifically pertaining to the plaintiff and his counsel, based on the facts alleged below, which are predicated upon the investigation undertaken by plaintiff's counsel, which investigation included analysis of publicly-available news articles, public filings, court documents, press releases and other matters of public record. Plaintiffs believe that further substantial evidentiary support will exist for the allegations set forth below after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a class action on behalf of all persons who purchased the common stock of Valujet, Inc. and/or ValuJet Airlines, Inc. (collectively referred to herein as "Valujet" or

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the "Company") between June 9, 1995 and June 18, 1996, inclusive (the "Class Period"), seeking to pursue remedies under the

Georgia Securities Act of 1973 (the "Georgia Securities Act")

As hereinafter alleged, during the Class Period, Valujet, a low cost, no frills airline, Sabretech, Inc. and the six Individual Defendants, each of whom is an executive officer, and/or director and controlling person of Valujet, knowingly or recklessly failed to disclose the Company's severe and pervasive maintenance and regulatory problems. Defendants, fraudulent scheme and deceptive course of business artificially inflated and maintained the trading price of Valujet securities during the Class Period and thereby injured plaintiff and other purchasers of Valujet securities.

2. On June 18, 1996, Valujet announced that it was temporarily ceasing operations pursuant to an agreement with the United States Federal Aviation Administration (the "FAA"). The FAA had determined that the airline's pervasive and severe maintenance problems, which had plagued the Company throughout the entire class period, had rendered the airline unfit to continue service. One month earlier, a Valujet DC-9 had crashed into the Florida Everglades killing all 110 passengers on board.

3. Investor reaction to the news that the Company was temporarily ceasing operations was swift, and the price of Valujet stock fell \$3.50 per share on June 18, 1996 to close at an all-time low of \$6.50 per share. Similarly, one month earlier -- on the news of the plane crash -- the stock had declined precipitously, falling from \$17.875 per share to \$13.687 per

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share and thereafter continuing its slide to \$10 per share on June 17, 1996 the day before the announcement of the cessation of

Valujet's operations. Prior thereto, during the week of April 8-12, 1996, Valujet common stock declined from \$26.625 to \$20.4375 on the news that the Company was the subject of heightened FAA scrutiny and would be slowing their expansion.

4. At all relevant times, Valujet portrayed itself as a safe, efficient, fast growth airline which could satisfy all regulatory requirements while selling tickets at bargain fares. Its stock price sky-rocketed in reliance of the truth of these representations. In truth and in fact, the Company's safety and regulatory compliance were at all times in disarray and the Company was unable by virtue of its heavy outsourcing of maintenance, which reduced costs, to operate safely and in compliance with FAA requirements. When these facts were finally perceived by the investing public, due to the Florida crash and subsequent extensive public reporting and regulatory scrutiny, the Company's stock price declined precipitously. At the end of the Class Period herein, the Company announced that, due to the impact of these problems it was being forced to suspend operations indefinitely and that, as a result, it had been deprived of future revenues and was rapidly burning its existing cash.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this action pursuant to Ga. Const. Art. 6 § 4 ¶ 1.

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6. Venue is properly laid in this county pursuant to O.C.G.A. Section 10-5-15. Acts performed in furtherance of the transactions complained of in this action, including preparation, issuance and dissemination of materially false and misleading

information to the investing public, occurred in substantial part in this County. In addition, the registered agent for service of process for Sabretech, Inc., is found in this County.

7. In connection with the acts, conduct, combination and conspiracy alleged in this Complaint, defendants, directly or indirectly, used the mails and the means and instrumentalities of interstate commerce, including telephonic communications.

**PARTIES**

8. Plaintiff R. Neil Hepler purchased 100 shares of ValuJet common stock for his IRA account during the Class Period on June 13, 1996, at a price of \$11.125 per share (excluding fees, charges and commissions) and was injured thereby.

9. Plaintiff Alfred Rehm purchased 200 shares of ValuJet common stock during the Class Period on May 13, 1996, at a price of \$12.25 per share (excluding fees, charges and commissions), and was injured thereby.

10. (a) Defendant ValuJet Inc., Nevada corporation, has its principal executive offices at 1800 Phoenix Boulevard, Atlanta, Georgia. Defendant Valujet Airlines is a wholly-owned subsidiary of Valujet Inc., the two entities having merged together in October 1995. At that time, each share of common stock in defendant ValuJet Airlines, Inc. was converted into one share of common stock of defendant ValuJet, Inc. As described

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more specifically below, ValuJet is a low-cost, low-fare passenger airline predominantly serving the Eastern United States.

(b) At all times relevant to this action, the

common stock of ValuJet was actively traded over the NASDAQ National Market ("NASDAQ"), a national securities exchange, under the ticker symbol "VJET" and was registered and made filings pursuant to Section 12 of the Securities Exchange Act (15 U.S.C. § 78e) (the "Exchange Act"). The market for ValuJet securities was open, well-developed and efficient at all relevant times. ValuJet files annual, quarterly and other reports with the SEC as required by the Exchange Act.

(c) During 1995, the Company announced and consummated a two-for-one stock split effected in the form of stock dividends. The stock split was payable on November 21, 1995 to stockholders of record as of the close of business on November 6, 1995. As of December 31, 1995, the Company had outstanding more than 54 million shares of common stock.

11. Defendant Sabretech, Inc. ("Sabretech") is a wholly owned subsidiary of Sabreliner Corporation which has its executive offices at Pierre Laclède Center, Suite 1500, 7733 Forsyth Blvd., St. Louis, Missouri 63105-1821. Sabretech maintains offices at 4900 N.W. 36th Street, Building No. 25, Miami, Florida 33122. At all relevant times, Sabretech was the primary party responsible for the maintenance of Valujet's fleet and conducts significant business in this jurisdiction.

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12. (a) The individual defendants (the "Individual Defendants") served, at times relevant to the claims set forth herein, as directors and/or as senior officers of Valujet in the positions set forth opposite their names as follows:

Name	Position
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Robert L. Priddy	Chief Executive Officer and Chairman of the Board of Directors
Lewis A. Jordan	Director, President and Chief Operating Officer
Maurice J. Gallagher	Vice-Chairman of the Board of Directors, Treasurer and Secretary
.Stephen C. Nevin	Director, Senior Vice- President of Finance, Chief Financial Officer
Timothy Flynn	Co-Founder and Director
Michael D. Acks	Controller and Chief Accounting Officer

(b) Because of their respective positions within the Company, the Individual Defendants had access to the adverse undisclosed information about its business, business practices, regulatory compliance, maintenance problems, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto) conversations and connections with other corporate officers and employees, attendance of management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith. The

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Individual Defendants have received substantial compensation from Valujet in their respective positions.

13. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications

as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers and/or directors of ValuJet, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels, and was privy to confidential proprietary information concerning the Company and its operations, business practices, major pending litigation, finances and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements alleged herein, were aware (or recklessly disregarded) that the false and misleading statements were being issued regarding the Company and approved or ratified these statements, in violation of the federal securities laws.

14. As officers and/or directors and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, traded on the NASDAQ National Market, and governed by the provisions of the federal securities laws and Georgia Securities Act, the individual Defendants each had a duty to disseminate promptly

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accurate and truthful information with respect to the Company's financial condition and performance, operations, business, business practices, regulatory compliance, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful

and accurate information. The Individual Defendants' misrepresentations during the Class Period violated these specific requirements and obligations.

15. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of or recklessly disregarded the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with ValuJet, each of the Individual Defendants had access to the adverse undisclosed information about ValuJet's business prospects and financial condition and performance as particularized herein and knew that these adverse facts rendered the positive representations made by and about ValuJet and its business, business prospects and regulatory compliance issued by the Company materially false and misleading.

16. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the

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various quarterly and annual financial reports, press releases and other public statements pertaining to the Company. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the

public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

17. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of ValuJet securities, by disseminating materially false and misleading statements and/or concealing material, adverse facts. The scheme: (i) deceived the investing public regarding ValuJet's business, its prospects, and the intrinsic value of ValuJet's securities; and (ii) caused plaintiff and other members of the Class to purchase ValuJet securities at artificially inflated prices.

18. Defendant Sabretech is sued herein as an aider and abettor because it knowingly and recklessly rendered substantial assistance to the consummation of the wrongs alleged herein, causing injury to plaintiffs and other members of the Class.

#### **CLASS ACTION ALLEGATIONS**

19. Plaintiffs bring this lawsuit as a class action pursuant to O.C.G.A. Section 9-11-23 on behalf of themselves and a class (the "Class") of persons who purchased or otherwise acquired ValuJet common stock from June 9, 1995 through June 18,

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1996, inclusive (the "Class Period"), and who were damaged thereby. Excluded from the Class are defendants, members of the immediate family of each of the Individual Defendants, any subsidiary or affiliate of ValuJet and the directors, officers and employees of ValuJet or its subsidiaries or affiliates, any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

20. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of members of the Class located throughout the United States. As of December 31, 1995, there were more than 54 million shares of ValuJet common stock outstanding. Throughout the Class Period, ValuJet common stock and other securities were actively traded on public markets. Record owners and other members of the Class may be identified from records maintained by ValuJet and/or its transfer agents and may be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in securities class actions.

21. Plaintiff's claims are typical of the claims of the other members of the Class as all members of the Class were similarly affected by defendants' wrongful conduct in violation of state and common law that is complained of herein.

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22. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

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

(a) Whether the Georgia Securities Act and common law principles were violated by defendants, acts and omissions as

alleged herein;

(b) Whether defendants participated in and pursued the common course of conduct complained of herein;

(c) Whether documents, press releases and other statements disseminated to the investing public and the Company's shareholders during the Class Period misrepresented material facts about the business, regulatory compliance, financial condition, performance, and prospects of ValuJet;

(d) Whether statements made by defendants to the investing public during the Class Period misrepresented and/or omitted to disclose material facts about the business, business practices, regulatory compliance, finances and performance of ValuJet;

(e) Whether the market prices of ValuJet's securities during the Class Period were artificially inflated due to the material misrepresentations and failures to correct the material misrepresentations complained of herein; and

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(f) To what extent the members of the Class have sustained damages and the proper measure of damages.

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

**APPLICABILITY OF PRESUMPTION OF RELIANCE:**

**FRAUD-ON-THE-MARKET DOCTRINE**

25. At all relevant times, the market for ValuJet common stock and other securities was an efficient market for the following reasons, among others:

(a) ValuJet common stock met the requirements for listing, and was listed and actively traded, on the NASDAQ National Market a highly efficient and automated market;

(b) As a regulated issuer, ValuJet filed periodic public reports with the SEC and the NASDAQ; and

(c) ValuJet stock was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace. Among the securities firms that followed the Company during the Class Period were: Alex Brown & Sons, Inc., BT Securities, CS First

Boston, Dillon Read, Gruntal & Co., Lehman Bros., Merrill Lynch, Morgan Stanley & Co., Natwest Securities Corp., PaineWebber, Piper Jaffray and Smith Barney.

26. As a result, the market for ValuJet securities promptly digested current information with respect to ValuJet from all publicly-available sources and reflected such information in ValuJet's securities prices. Under these circumstances, all purchasers of ValuJet securities during the Class Period suffered similar injury through their purchase of securities at artificially inflated prices and a presumption of reliance applies.

**SUBSTANTIVE ALLEGATIONS**

## General Background

27. ValuJet is a low fare, no frills airline providing point-to-point (shorthaul) service principally to leisure travellers. The Company began operations in October 1993 with two planes servicing three Florida cities from Atlanta's Hartsfield Airport and, in a little over two years, has grown to 320 daily flight departures to some 29 cities in 19 states.

28. During this period of explosive growth, ValuJet's reported earnings and revenues have also increased dramatically. In fiscal year 1993, ValuJet reported revenues of \$5,810,791 and a net loss of \$894,091, resulting in a net lose per share of \$.03. In fiscal 1994, the Company's reported revenues grew to \$133,901,310, its net income grew to \$20,731,980 and the Company reported \$.44 in earnings per share. In fiscal 1995, ValuJet's reported revenues grew to \$367,757,378, its net income grew to

\$67,762,598 and the Company reported \$1.13 in earnings per share. In the first quarter of 1996, ValuJet continued this upward trend reporting revenues of \$109,995,007, net income of \$10,666,774 and earnings per share of \$.18.

29. ValuJet's seemingly explosive growth has been the result of the Company's apparent ability to aggressively contain costs and to continually expand into new markets through bargain fares. In an effort to drive costs down, Valujet operates its business in a significantly different and distinct fashion from other airlines. The Company's cost structure focuses on slashing costs in four major areas: ticketing; labor; aircraft operations; and route structure.

30. The Company utilizes an innovative ticketless reservation system which helps lower ticketing costs significantly. A passenger simply calls the Company directly, pays for the flight, and is then issued a confirmation number which is used to board the plane. ValuJet is not listed on any of the computerized reservation systems and the number of bookings made through travel agents is very low, thus saving commission costs (25% vs. industry average 85%).

31. ValuJet's labor costs, including fringe benefits and employee bonuses, comprise 24% of total operating expenses as compared with 38% for the major airlines. ValuJet pays its captains a base salary of \$45,000 per year, and 100% of their paid hours are hard hours, i.e., spent behind the controls of the airplane. In contrast, Delta's least senior captain is paid a salary of approximately \$140,000 per year, with only about 55% of

paid hours being hard hours. Valujet also -- unlike every other major national airline -- requires its prospective pilots to pay for their own training and mandatory federal certifications before putting them on the payroll, and relies exclusively on outside vendors to provide those services. Consequently, ValuJet frequently hires inexperienced pilots who were previously passed over by other carriers. Valujet pilots receive incentive compensation, consisting of stock options and bonuses based on profits. All other staff, i.e., those hired on a permanent basis after a 90 day probationary period, are paid a quarterly bonus also based on Company profits.

32. ValuJet also cuts costs by using independent contractors to perform heavy aircraft maintenance, reservations

and a substantial portion of gate and ground handling activities. While the practice of hiring contractors for heavy airframe maintenance and engine overhauls is widespread in the industry, ValuJet contracts out virtually all of its repairs. According to industry officials, carriers such as ValuJet that outsource maintenance face a difficult task of coordinating work and making sure all the correct maintenance is done.

33. ValuJet's route structure is based on four high density "Focus cities" (currently Atlanta, Boston, Washington, D.C. (Dulles) and Orlando). The Company does not use the hub and spoke system, used by many major larger carriers, instead it utilizes the focus cities system as a means of originating a greater number of short haul flights (approximately 400 miles)

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from the focus city to the destination city within the route network.

34. In addition to the foregoing, ValuJet also cuts costs by utilizing relatively older aircraft. The Company owns all of its aircraft (McDonnell [sic] Douglas DC-9) which it purchases used, with the Company taking delivery of the aircraft after major airframe maintenance and refitting are completed by the previous owners. This enables ValuJet to fly the aircraft for six to twelve months before major scheduled maintenance operations are required.

35. Since Valujet's inception, and throughout the Class Period, the Company continuously trumpeted its profitability, its expansion into new markets and its purchase of additional planes. Against this backdrop of positive business

developments, ValuJet common stock rose precipitously in price. On June 8, 1995, ValuJet traded at \$16.40 per share, subsequently rising to a class period high of \$33.50 (adjusted for a two for one stock split). ValuJet's expansion and its ability to continue that expansion were clearly significant to the market and were reflected in the Company's escalating stock price.

36. ValuJet, however, faced two major obstacles to its continued expansion efforts. First, the Company needed to maintain its low cost structure and that meant continuing its practice of buying heavily used planes and outsourcing all maintenance as well as other functions. Second, the Company needed to assure that it was in compliance with all applicable FAA regulations, as any significant regulatory problems could

stall or block the Company's expansion efforts. Moreover, increased regulatory scrutiny would likely increase the Company's costs and thereby negatively impact the Company's cost structure. Rather than sufficiently addressing both concerns, ValuJet aggressively sought to limit costs at the expense of maintenance and regulatory compliance. As a result, ValuJet's aircraft maintenance record was abysmal, thereby increasing the likelihood that the company would face heightened regulatory scrutiny and resulting limitation on its operations.

37. During the Class Period, ValuJet, Sabretech and the Individual Defendants learned that as a result of the Company's severely inadequate maintenance and the attendant safety problems, the Company would likely be subject to strict FAA scrutiny which would eventually force a slowdown in the Company's expansion and drive up costs. Despite this knowledge,

defendants made numerous statements about ValuJet and its business that failed to disclose the true scope of the Company's severe and pervasive maintenance and regulatory problems and resultant business risks. Eventually, defendants were forced to reveal the true extent of the Company's maintenance, regulatory and safety problems when it agreed to cease operations in the wake of the Florida disaster.

**Materially and False Misleading Statements and Omissions**

38. (a) The Class Period begins on June 9, 1995, the day after the engine of a ValuJet plane burst into flames shortly before takeoff from Atlanta airport, destroying the plane and injuring four passengers and three flight attendants. Following

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that incident, ValuJet vigorously denied that the incident reflected any deficiencies in the Company's maintenance and safety practices. As reported by *The Atlanta Journal* on June 9, 1995, Richard Hillman, Valujet's operating chief, defended the Company's safety procedures, stating: "In no way do we skimp on maintenance. We exceed all standards."

(b) In stark contrast to this affirmative, emphatic statement about Valujet's maintenance, the Company was, at this time and all times relevant to this matter, outsourcing essentially all maintenance functions to Sabretech and other outside contractors in an effort to pare its costs and fuel its expansion. As a direct result of this lack of oversight, the Company was experiencing an inordinately high amount of reported incidents to the FAA and was operating the airline in a hazardous and unsafe manner as later confirmed by various FAA reports

released near the end of the Class Period.

39. Shortly thereafter, during August 1995, the inadequacy of ValuJet's maintenance procedures was further confirmed by an inspection of ValuJet by the United States Department of Defense. In its report, which evaluated all phases of the airline's operation, the Department of Defense gave unsatisfactory evaluations to critically important maintenance manuals, records and quality assurance of the Company. The report noted that the Company had no internal audit program, and had incomplete and disorganized training records of maintenance workers.

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40. (a) On or around August 11, 1995, ValuJet filed its Form 10-Q for the fiscal quarter ended June 30, 1995. The Form 10-Q was signed by defendants Priddy and Acks. The Company reported total assets of \$264,825,021, net income per share of \$0.57 per share and stockholder equity of \$119,445,594.

(b) In the section entitled *Management's Discussion and Analysis of Financial Condition and Results of Operations* defendants purported to comprehensively review the maintenance situation with respect to their aircraft:

Maintenance expenses include all expenses related to the upkeep of the aircraft and ground equipment. Such expenses include maintenance labor, parts and supplies. The cost of engine overhauls and routine maintenance costs for aircraft and engine maintenance are charged to maintenance expense as incurred. Maintenance expenses increased 316% from the second quarter 1994 to the second quarter 1995. Maintenance expenses in prior periods were lower since each aircraft acquired by the Company entered service immediately following a scheduled maintenance check and, as a result, no scheduled maintenance was required during the first few months of each aircraft's operations. Due to the Company's use of a continuous overhaul program, the Company's aircraft are generally scheduled for some

level of overhaul procedures within twelve months of the purchase date. The Company also recorded a \$2,000,000 one time charge to maintenance expense as a result of an airworthiness directive issued by the FAA in response to an engine failure that occurred on June 8, 1995. This airworthiness directive requires the Company to remove certain engines before their normally scheduled service dates. Maintenance expenses, exclusive of this one time charge, increased during the second quarter 1995 to \$390 per block hour as a result of routine and heavy maintenance procedures performed during the quarter. The average fleet size increased from approximately 12 aircraft for the second quarter 1994 to approximately 28 aircraft for the second quarter 1995.

(c) Despite noting the Company's increased maintenance costs associated with the overhaul of certain

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defective engines, the Company implied that this was the extent of the Company's maintenance problems and the primary reason for the rise in maintenance costs (which the Company indicated was only temporary). In truth, ValuJet was faced with mounting maintenance and safety problems which exposed it to the risk of heightened regulatory scrutiny.

41. Not surprisingly, in September 1995, an FAA inspection noted lapses in flight crew and dispatcher training. The FAA report cited *43 instances* of airworthiness where the airline either had no maintenance procedures, or the established procedures were not followed. In addition, the FAA also found that ValuJet did not have an internal auditing program for safety measures such as maintenance. These facts were not disclosed to investors.

42. (a) On or around November 15, 1995, ValuJet filed its Form 10-Q for the fiscal quarter ended September 30, 1995. The Form 10-Q was signed by defendants Priddy and Acks. The Company reported total assets of \$314,834,980, net income of

\$0.76 per share and stockholder's equity of \$142,001,103.

(b) In the section entitled *Management's Discussion and Analysis of Financial Condition and Results of Operations* defendants purported to comprehensively review the maintenance situation with respect to their aircraft:

Maintenance expenses include all expenses related to the upkeep of the aircraft and ground equipment. Such expenses include maintenance labor, parts and supplies. The cost of engine overhauls and routine maintenance costs for aircraft-and engine maintenance are charged to maintenance expense as incurred. Maintenance expenses increased 169% from the third quarter 1994 to

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the third quarter 1995. Maintenance expenses in prior periods were lower since each aircraft acquired by the Company entered service immediately following a scheduled maintenance check and, as a result, no scheduled maintenance was required during the first several months of each aircraft's operations. Due to the Company's use of a continuous overhaul program, the Company's aircraft are generally scheduled for some level of overhaul procedures within twelve months of the purchase date. Maintenance expenses increased during the third quarter 1995 to \$433 per block hour as a result of routine and heavy maintenance procedures performed during the quarter. The average fleet size increased from approximately 15 aircraft for the third quarter 1994 to approximately 31 aircraft for the third quarter 1995.

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Maintenance expenses increased 255% from the nine months ended September 30, 1994 to the nine months ended September 30, 1995. Maintenance expenses in prior periods were lower since each aircraft acquired by the Company entered service immediately following a scheduled maintenance check and, as a result, no scheduled maintenance was required during the first few months of each aircraft's operations. Due to the Company's use of a continuous overhaul program, the Company's aircraft are generally scheduled for some level of overhaul procedures within twelve months of the purchase date. The Company also recorded a \$2,000,000 one time charge to maintenance expense as sa [sic] result of an airworthiness directive issued by the FAA in response to an engine failure that occurred on June 8, 1995. This airworthiness directive requires the Company to remove certain engines before their normally

scheduled service dates. Maintenance expenses, exclusive of this one time charge, increased during the first nine months of 1995 to \$416 per block hour as a result of routine and heavy maintenance procedures performed during this period.

43. On or around February 5, 1996, unbeknownst to investors, the FAA advised the Company in writing that scrutiny of the Company's pilots and their training "have brought to light what appears to be an area of possible concerns. The letter noted that in several cases, the captain was either new or had little experience flying jets or both. The letter ended: "There

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is no doubt that our concerns parallel your own and that you are conducting your own evaluation of the reasons for these events." This letter and its contents were concealed from public scrutiny by defendants.

44. Thereafter, on or around February 6, 1996, ValuJet became the subject of an FAA initiated an intensive surveillance of ValuJet' operations because of a rash of accidents, described below, and concern over the intense growth rate by which the Company was adding additional aircraft, flights and new markets. Prior to commencement of the surveillance, several ValuJet flights were delayed after FAA inspectors pointed out discrepancies, including the failure to perform timely inspection of parts. The extra surveillance by the FAA was followed by a 120-day special emphasis inspection that is still underway. The inspection was conducted because of repeated safety problems and focused on concerns regarding pilot training and the quality of maintenance provided by outside contractors. Investors were not told of these facts at the time.

45. (a) On or around February 8, 1996, ValuJet mailed

its 1995 Annual Report to shareholders. The Company reported total assets of \$346,741,159, net income of \$1.13 per share and stockholders equity of \$162,065,231.

(b) The Annual Report contained a letter from defendant Priddy and Jordan which sought to portray the Company as continuing its expansive growth and satisfying all regulatory standards. The letter stated:

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ValuJet also continued to strengthen its balance sheet during the year. The Company added \$42.9 million in cash to finish the year with \$12.7 million. Stockholders, equity increased 74 percent from 1994 to \$162.1 million. These figures reaffirm ValuJet's increased presence and success within the industry.

Perhaps the most exciting news of the year was the agreement we reached with the McDonnell Douglas Corporation to be the launch customer of the MD-95 aircraft, which will lead ValuJet into the next century. In addition, ValuJet declared two, two-for-one stock splits during the year.

On the operational side, we announced and established our third and fourth focus cities in Boston and Orlando. With the introduction of our new service beginning May 1, 1996 to New York (LaGuardia), Mobile, Alabama, and Fort Walton Beach, Florida, ValuJet will fly to 31 cities in 19 states, offering convenient service with 320 daily departures on peak travel days with our fleet of 44 DC-9 and four MD\_80 jet aircraft.

*By almost any measure, 1995 was a great year for ValuJet, As we moved forward into beyond, ValuJet will continue to utilize the resources and skills of our workforce who are ultimately responsible for the Company's success, Our paramount goal in 1996: sustain our consistent pattern of profitability, while continuing our progress toward excellence in operational integrity.*  
[Emphasis added.]

We look forward to continued growth for

the remainder of 1996 and beyond. Thank you for your confidence and support.

(c) The Annual Report also reported:

Maintenance expense includes all expenses related to the upkeep of the aircraft and ground equipment. Such expenses include maintenance labor, parts and supplies. The cost of engine overhauls and routine maintenance costs for aircraft and engine maintenance are charged to maintenance expense as incurred. Maintenance expense

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increased 218% from 1994 to 1995. Maintenance expense in prior periods was significantly lower since each aircraft acquired by the Company entered service immediately following a scheduled maintenance check and, as a result, no scheduled maintenance was required during the first few months of each aircraft's operations. Due to the Company's use of a continuous overhaul program, the Company's aircraft are generally scheduled for some level of overhaul procedures within twelve months of the purchase date. The Company also recorded a \$2.0 million charge to maintenance expense as a result of an airworthiness directive issued by the FAA in response to an engine failure that occurred on June 8, 1995. This airworthiness directive requires the Company to remove certain engines before their normally scheduled service dates. Maintenance expenses, exclusive of this charge, increased during 1995 by 205% as a result of routine and heavy maintenance procedures performed during this period.

46. On or about February 13, 1996, ValuJet issued a press release announcing its agreements for the purchase of eleven used McDonnell Douglas aircraft, nine DC-9-30's and two DDMD-83's. The February 13 press release further stated that the Company expected delivery of five used aircraft by the end of the first quarter of 1996, and five used aircraft during the second quarter of 1996 (four DC-9's and one MD-83), and further expected the delivery of four additional used DC-9's during the third

quarter of 1996, thereby increasing ValuJet's fleet by more than 20% in slightly more than six months. Lastly, delivery of a final MD-83 aircraft was expected during the first quarter 1997. The press release did not mention the FAA surveillance, underlying operational or maintenance problems or any effect they

might have on the Company's plans to acquire the planes or expand.

47. In an effort to allay any market concerns over the depth and substance of the FAA inspection and the likelihood that it would impact the Company's expansion and growth, on March 7, 1996, as reported by *Aviation Daily*, defendant Jordan called the inspection "*routine*," stating that in some safety areas the FAA concluded that ValuJet was operating beyond FAA requirements.

48. (a) On or around March 29, 1996, ValuJet filed its Form 10-K for the period fiscal year ended 12/31/95 with the SEC. The Form 10-K was signed by defendants Priddy, Jordan, Nevin, Acks, Gallagher and Flynn. The Company reported total assets of \$346,741,159 net income of \$1.13 per share and stockholder's equity of \$162,065,231.

(b) In the Form 10-K the defendants discussed the Company's purportedly low-cost structure as follows:

Low Cost Structure. The Company believes it enjoys a cost advantage over its competitors through its: (i) well defined, low cost aircraft acquisition strategy; (ii) aggressive approach to minimizing operating costs including selectively outsourcing services such as training, airport operations, routine maintenance and major engine and repair overhauls; (iii) highly motivated and generally non-union workforce with a flexible wage structure based upon Company profitability and performance; and (iv) utilization of proprietary technology,

such as its customer-direct ticketless reservation system, to minimize operating and administrative costs.

with respect to the Company's plans to acquire new planes, the Form 10-K reported:

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Fleet Acquisition. The Company has targeted acquisition of low cost aircraft as the basis for its fleet. As of January 31, 1996, the Company operates 43 DC-9 aircraft most of which are equipped with 113 single class seats. All of these aircraft are owned, and fixed aircraft ownership costs (depreciation plus interest expense) represented less than 5% of revenues during the year ended December 31, 1995. This relatively low percentage of fixed costs allows the Company to tailor capacity to demand, permitting the Company to schedule fewer flights during off-peak demand periods. Future plans for aircraft acquisition cost and commonality of parts and training.

ValuJet intends to acquire additional DC-9-30 series aircraft in the future because they are inexpensive to acquire and can be modified to meet Stage 3 noise requirements. ValuJet also intends to acquire a limited number of used MD-80 aircraft beginning in early 1996. These aircraft offer operating commonality to the DC-9 and similar long-life durability and are also attractively priced in the used aircraft market. Equipped with 164 single-class seats, the MD-80 aircraft will be utilized on longer-haul, busier routes where the Company is experiencing high load factors.

The Company has entered into a contract with McDonnell Douglas to purchase 50 new MD-95 aircraft, to be delivered in 1992 to 2002, with options to purchase another 50 aircraft. To accommodate the Company's growth from 1997 through 1999, the agreement also requires McDonnell Douglas to provide up to 15 used DC-9 and MD-80 aircraft each year. The MD-95 aircraft will have 129 seats in a single class configuration.

The Company stated with respect to FAA surveillance:

As a result of certain recent incidents involving the Company's aircraft, as well as

the Company's rapid growth, the FAA recently conducted a special review of the Company's operations and has indicated that it intends to maintain an increased level of scrutiny of the Company for a period of time. This increased regulatory scrutiny could continue

to affect the Company's acquisition program and expansion plans beyond 1996.

With respect to maintenance the Company reported:

Aircraft maintenance and repair of routine daily or "turn-around" maintenance and major overhaul. Routine daily maintenance is performed at Atlanta by the Company's employees or contract employees and by contractors at the other cities served by the Company. Major overhauls or heavy checks are performed by a contractor at the contractor's own maintenance base. The maintenance contractors are either other airlines which operate DC-9-30 series aircraft or other maintenance companies approved by the FAA, who in either case have employees qualified in DC-9-30 series aircraft or other maintenance companies approved by the FAA, who in either case have employees qualified in DC-9-30 series aircraft maintenance. The Company has entered into a contract with a maintenance company for the performance of certain scheduled inspections.

Lastly the Company, in the section entitled "Government Regulations" discussed generally the oversight exercised by the FAA:

The Company has also obtained an operating certificate issued by the FAA pursuant to Part 121 of the Federal Aviation Regulations. The FAA has jurisdiction over the regulations of flight operations generally, including the licensing of pilots and maintenance personnel, the establishment of minimum standards for training and maintenance and technical standards for flight, communications and ground equipment. As required, the Company has effective FAA certificates of airworthiness for all of its aircraft. The Company's flight personnel, flight and emergency procedures, aircraft and maintenance facilities are subject to periodic inspections and tests by the FAA. The Company's director of safety and regulatory compliance acts as a liaison between the Company and the FAA, implementing any changes requested by the FAA with respect

to operating procedures or training program and generally ensuring proper compliance with aviation regulations applicable to the Company.

49. The market reacted negatively to the Company's revelation that the FAA surveillance might inhibit its growth and adversely effect the Company's access to new additional gates at Laguardia Airport and other major airports that it was seeking to access. The week of April 8-12, 1996, the price of Valujet common stock dropped sharply from \$26.625 to \$20.4375 per share, a 23t decrease. This partial corrective disclosure did not inform the market of the full adverse facts regarding Valujet.

50. Valujet and the Individual Defendants moved quickly to calm the markets and assure them that the FAA surveillance was nothing more than a bump in the road and that the Company would shortly resume its expansion. On or around April 11, 1996, the Company issued a press release entitled "ValuJet's President Lewis Jordan Confirms Commitment To Safety And Is Confident About Future Growth". The press release quoted defendant Jordan stating in pertinent part:

The FAA has publicly stated its policy of close scrutiny for all new airlines and ValuJet Airlines has attracted significant attention as the most successful and fastest growing of the group. ValuJet welcomes the highest level of scrutiny from the FAA because additional professional observations enhance our quality improvement process.

\* \* \*

ValuJet's reputation of controlling costs should not be misunderstood. The company willingly and enthusiastically spends whatever is appropriate to achieve the highest level of safety.

\* \* \*

The record shows that ValuJet's programs, policies, procedures and operations have

provided millions of customers safe, pleasant and affordable air transportation. ValuJet's safety record is certifiably among the very best in the airline industry.

51. As part of the April 11, 1996, press release the Company's safety practice was also addressed. Defendants stated:

VALUJET STANDARD PRACTICE STATEMENT OF VALUJET SAFETY AND REGULATORY COMPLIANCE PHILOSOPHY Each ValuJet person is expected to adhere to the following policy at all times. ValuJet Airlines was founded and operates daily upon the principal that SAFETY is by far our most important responsibility. Accordingly, it is the commitment of ValuJet's Board of Directors, its management personnel, and all permanent, temporary, contract and non-contract employees to place safety above all other company objectives. ValuJet requires all of its people to comply strictly with the Federal Aviation Regulations and other laws, policies, and procedures which address directly or indirectly the safety of our operations. Further, it is the policy of ValuJet Airlines to conduct frequent internal audits of its safety and regulatory compliance practices. It is ValuJet's policy to cooperate fully with the FAA. However, we must never forget that safety is primarily our responsibility. For that reason, we should always strive to go beyond mere regulatory compliance. In keeping with these commitments, ValuJet employs a Director of Safety and Regulatory Compliance with direct line authority to the Chairman and President of the company. ValuJet maintains and aggressively monitors a 24-hour, toll free, confidential SAFETY HOT LINE. Finally, at ValuJet the President and C.E.O. maintain an open door policy which allows any individual to discuss any matter affecting safety at the highest level of the company.

52. In the Wall Street Journal article dated April 11, 1996, defendant Jordan was quoted as stating: "We attempt to achieve the highest level of safety and we'll spend any money

necessary to do it."

53 (a) On or around May 3, 1996, ValuJet filed its Form 10-Q from the fiscal quarter ended March 31, 1996. The Form 10-Q was signed by defendant Priddy and Acks. The Form 10-Q reported total assets of \$385,028,496, net income of \$0.18 per share and stockholder's equity of \$174,810,162.

(b) In the section entitled *Management's Discussion and Analysis of Financial Condition and Results of Operations* defendants purported to comprehensively review the maintenance situation with respect to their aircraft:

Maintenance expenses include all expenses related to the upkeep of the aircraft and ground equipment. Such expenses include maintenance labor, parts and supplies. The cost of engine overhauls and routine maintenance costs for aircraft and engine maintenance are charged to maintenance expense as incurred. Maintenance expenses increased 91% from the first quarter 1995 to the first quarter 1996. Maintenance expenses in prior periods were lower as a result of the Company having a fewer number of aircraft and since each aircraft acquired by the Company entered service immediately following a scheduled maintenance check and, as a result, no scheduled maintenance was required during the first several months of each aircraft's operations. Due to the Company's use of a continuous overhaul program, the Company's aircraft are generally scheduled for some level of overhaul procedures within twelve months of the purchase date.

\* \* \*

After 1996, the Company expects to acquire approximately 18 aircraft per year. As of April 26, 1996, the Company taken delivery of seven aircraft and has 9 aircraft currently under contract for delivery during the remainder of 1996. The Company expects to finance at least 70% to 80% of the cost of each aircraft to be acquired and believes that such financing will be available to the Company on acceptable terms. The Company intends to make the 20% to 30% downpayments on such aircraft purchases from its working capital and to make debt service payments from cash generated from operations.

The Company has contracted with McDonnell Douglas for the purchase of 50 Md-95 aircraft, at a cost of approximately \$1.0 billion, for delivery in 1999 to 2002. Approximately \$60, 000, 000 of this amount will be paid in progress payments during 1996 to 1998. The balance of the purchase price after all progress payments will need to be paid financed upon delivery of each aircraft. If the Company exercises its option to acquire up to an additional 50 MD-95 aircraft, additional payments could be required beginning in this period. The Company expects to finance at least 80% of cost of each of these aircraft. Although McDonnell Douglas has agreed to provide assistance with respect to the financing of aircraft to be acquired, the Company will be required to obtain the financing from other sources. The Company believes that aircraft related debt financing, coupled with the assistance to be provided by McDonnell Douglas, should be available on attractive terms.

54. On May 11, 1996, a ValuJet DC-9 passenger aircraft crashed in the Florida Everglades, killing all 110 people on board. The plane was carrying more than 50 oxygen generators as cargo, which used sodium chlorate, a hazardous material that ValuJet is not authorized nor equipped to carry. This prompted intensified public and regulatory scrutiny of ValuJet's operations, causing much negative information to be revealed.

55. On Monday, May 13, 1996, the first trading day after the crash, ValuJet common stock plummeted after concerns about ValuJet's fleet safety were raised. On May 10, 1996, the closing price of the Company's stock was \$17.875 per share, on volume of 638,900 shares. On May 13, 1996, the stock closed at \$13.687 per share on a volume of over 20 million shares, a drop of approximately 23%. As a result of the crash and the adverse information regarding ValuJet's safety record, the United States Department of Defense has banned its employees from using ValuJet airlines. That same day as reported by *The Associated Press* on

May 13, 1996, defendant Jordan said that "[a] properly maintained airplane that is 25, 26, 27 years old is as safe as a brand new airline coming off the line" and that there was nothing "abnormal or shocking" about the history of the plane that crashed. Jordan added that "ValuJet looked at ways we could be creative and build a company that had the highest level of safety..." A ValuJet spokesman, Robert Copeland, further stated: "We welcome the FAA's scrutiny. We will continue to work with the FAA to assure the highest level of safety."

56. On May 17, 1996 the Company announced that it had reduced the number of its flights by 50% due to the ongoing FAA inspection, rating agencies downgraded the Company's debt, and the Company was attempting to appease customers with meal vouchers and free flights.

57. On May 22, 1996, in a conference call with securities analysts, defendant Priddy stated (a) that Valujet probably would never return to the rapid expansion pace that built the Company into a 51 jet airline in 2 1/2 years (b) that Valujet may have to cut more flights from its schedule to allow for increased maintenance and federal inspections (c) that ValuJet paid more than \$4.1 million for customer refunds in the week after the crash, (d) that the Company expected a significant increase in its costs in the current quarter and the near future, due to extraordinary expenses related to the crash, including intensive scrutiny of its maintenance, (e) that the Company's load factor had fallen substantially for the reduced number of flights it was operating, (f) that the Company does not expect to

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return to its pre-crash schedule until the fourth quarter, and (g) that delivery of six additional aircraft would be or were likely to be delayed. Priddy also stated: "We believe that our franchise with the public can be rebuilt."

58. On May 23, 1993, Reuters quoted defendant Priddy as saying "We feel that we operate a fleet which is of superb caliber."

59. On June 11, 1996, Valujet issued a press release discussing an Interim FAA report. The release quoted defendant Jordan as stating:

*Anything less than perfection where safety is concerned is unacceptable to Valujet. While the report includes findings that are, at first reading troubling, it is filled with many items typical of those that would be reported at any established major airline if it were subjected to this extreme level of in depth inspection.*

*It is our policy to voluntarily and enthusiastically correct all legitimate findings immediately and to promptly implement any preventative measures that are indicated. While we have not had the opportunity to review completely the interim findings cited by the FAA, we believe that many of them have already been addressed. [Emphasis added.]*

60. On June 13, 1996, Bloomberg Business News reported that Valujet had confirmed that it was told previously that a criminal investigation had been initiated by the FBI and other federal investigators into the causes and aftermath of the May 11 crash. According to the news story, Valujet said it would be "misleading and incorrect to refer to Valujet as a target" of the investigation. The Company said it understands that the federal authorities are taking a broad look "to determine whether there

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have been any criminal violations" but have not launched the

probe "with any prior conclusions that any party is a target."

61. On June 14, 1996, ValuJet filed a Form S-4 registration statement with the SEC for an offer to exchange \$150 million 10 1/4% Senior Notes for similar notes. The registration statement noted several consequences of the crash and the FAA inspections, including but not limited to: (i) the Company has refunded fares paid by customers affected by the Company's changing schedules; (ii) the Company's load factors have decreased significantly and the accident will likely affect future load factors; (iii) the Company's costs will likely increase to reflect the cost of additional maintenance inspections and lower aircraft utilization levels; (iv) the Company has sought to defer acceptance of certain aircraft presently under contract; and (v) the Company's expansion will likely be subject to FAA approval for an indefinite period of time.

62. On June 18, 1996, ValuJet shocked the public markets by announcing that the Company was temporarily ceasing operations under an agreement with the FAA. "We asked them to cease operations and they agreed to do so," said David Hinson, the head of the FAA. According to Bloomberg Business News, ValuJet's agreement with the FAA calls for the airline's shutdown to last until it can pass federal safety standards.

63. ValuJet common stock immediately slumped to an all-time low of \$6.50 per share on trading volume of 23 million.

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64. On June 20, 1996, *The New York Times* reported that ValuJet and the FAA had entered into a consent decree wherein the

Company agreed to cease operations, pay the FAA \$500,000 immediately and \$1.5 million within 60 days or within 10 days of when it returns to service, whichever comes sooner to cover the agency's investigation costs. The consent decree provides for over three pages of improvements that Valujet needs to make before it can return to business, including but not limited to, standardizing maintenance manuals and revising training curriculums.

65. Defendants' positive statements during the Class Period set forth above were materially false and misleading when made because they failed to disclose, at least the following:

(a) ValuJet's extensive outsourcing of maintenance provided the Company with virtually no oversight of maintenance and, accordingly, the Company's fleet was likely to require increased maintenance in the future, exposing the Company to significant costs, regulatory and safety concerns and halting the Company's fast expansion and growth;

(b) ValuJet would not be able to maintain its low cost structure because it would be forced to upgrade its maintenance and slow its expansion, thereby permitting its costs to drag on its profitability and earnings;

(c) Valujet would not be able to sustain its expansion as the Company's pervasive safety and maintenance problems would subject the Company to increased FAA and

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regulatory scrutiny, resultant suspension of operations and spiraling costs;

(d) Contrary to ValuJet's representations that it was operating safely, and as set forth in a consent decree

between the Company and the FAA, (i) the Company was experiencing a rash of safety incidents many of which were not even reported to the FAA (ii) ValuJet's mechanics were not qualified to perform their jobs; and (iii) the Company failed to complete some inspections that the FAA ordered nationally after accidents on other airlines;

(e) FAA records, which do not include all incidents, indicate that since ValuJet's inception in October 1993, the Company has encountered a total of 284 service difficulties. The service difficulty reports list, in part, the following: (i) 8 in-flight engine shutdowns; (ii) 13 flights returned to the originating airport; (iii) 28 landing gear problems; (iv) 16 cabin pressure problems; and (v) 4 unlatched exits;

(f) In August 1995, the Department of Defense inspected ValuJet and issued a report evaluating all phases of the airline's operation, and giving unsatisfactory evaluations to critically important maintenance manuals, records and quality assurance;

(g) According to FAA records of service difficulty reports for 1995, ValuJet experienced an inordinate number of unscheduled landings and other disruptions of flights. By comparison, TWA's unscheduled landings and flight disruptions

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for its DC-9 fleet were nearly four times less than the total reported by ValuJet, even though TWA had, on average, more planes deployed during 1995;

(h) On May 2, 1996 -- nine days before the plane

crash -- the FAA received an internal report singling out ValuJet as more accident-prone than nearly all its low-cost competitors, including AmeriJet, Air South, American Trans Air, Frontier, Kiwi, Morris, Reno, Tower Air, Spirit, Vanguard, Western Pacific and Southwest Airlines;

(i) In September 1995, an FAA report found numerous lapses in flight crew and dispatcher training. The report cited 43 instances of airworthiness where the airline either had no maintenance procedures or the established procedures were not followed. The FAA also found that ValuJet did not have an internal auditing program for safety matters such as maintenance.

(j) As of April 11, 1996, the FAA had 21 separate investigations of ValuJet underway;

(k) ValuJet's pilots lack sufficient training and are generally not considered seasoned enough to get a specific rating for DC-9s;

(l) Contrary to defendants, materially false and misleading statements that the February 1996 FAA investigation was routine and involved close scrutiny of all new airlines, the investigation focused specifically on Valujet and its severe and persistent maintenance and safety problems and fast expansion. Indeed, the FAA investigation was prompted by numerous safety

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incidents, including the following: (i) On June 8, 1995, a ValuJet DC-9 engine caught on fire at Hartsfield International Airport. The engine which caught on fire was purchased from a Turkish airline and failed to meet FAA requirements. In response, the FAA issued an airworthiness directive requiring

ValuJet to disassemble and inspect all 24 engines purchased from the Turkish airline and wrote to ValuJet, telling it to develop safeguards to ensure that it does not again acquire "questionable assets." This plane had been involved in three prior incidents involving two unscheduled landings and the failure of a fuel transfer pump. Inquiries after the engine fire found that ValuJet had not provided hands-on tail exit evacuation training for more than 400 flight attendants. FAA documents show that ValuJet admitted the lack of training under a FAA self-disclosure provision that allows airlines to correct infractions without fear of public disclosure; (ii) On January 7, 1996, a ValuJet plane stalled as it approached the Nashville airport and hit the runway hard, severely damaging the tail and front landing gear; (iii) On January 12, 1996, a ValuJet flight in Washington-Dulles skidded off a taxiway into a snow bank; (iv) On January 26, 1996, a Valujet plane landing at Hartsfield International skidded off a runway; and (v) On February 1, 1996, a right landing gear that had touched down in Nashville collapsed on the runway, damaging the wing. The intense nature of the investigation was confirmed on May 13, 1996, by Transportation Secretary Federico Pena who stated that the inspection was "very unusual";

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(m) The FAA letter to Valujet, dated February 5, 1996, stated that its scrutiny of pilots and their training "have brought to light what appears to be an area of possible concern." The letter highlighted Valujet's inept and inexperienced flight crews. In the January 7, 1996, Nashville accident, the ValuJet pilot had only 24.7 hours of experience as a captain, and the co-

pilot had 204 hours as a first officer. FAA inspectors sitting in the cockpit during flight checks at times had to keep ValuJet pilots from breaking rules. Investors were not told of these facts at the time.

(n) Unknown to investors, in a February 14, 1996 memo, the FAA cited inadequacies with ValuJet's safety and maintenance operations, indicating that ValuJet did not have sufficient procedures for maintenance personnel, data-monitoring trends with engine issues or an adequate air-worthiness-maintenance programs. The memo also cited problems with the FAA inspection of ValuJet's operations, including its manuals and maintenance procedures. The memo also indicated that FAA staff members recommended that the agency immediately consider a "recertification" of ValuJet, which usually indicates that an airline has not been complying with all the operating requirements necessary to run an airline, and entails going over all aspects of an airline's operations to make sure it meets regulations. The memo noted that ValuJet had 46 violations in its 2 1/2 years of operations and that 20 violations remained uncorrected;

(o) On March 15, 1996, an FAA internal memo indicated that the FAA had found "a significant decrease in the experience level of new pilots being hired by ValuJet, as well as other positions such as mechanics, dispatchers, etc.";

(p) The March 15, 1996 FAA memo detailed numerous problems with ValuJet's operations uncovered by FAA inspectors, including (i) planes being flown with inoperative mandatory equipment, (ii) decision-making by cockpit crews that resulted in

incidents such as going off runways, (iii) continuous changes in key management personnel, and (iv) an increase in maintenance discrepancies found by FAA inspectors; and

(q) ValuJet employees were discouraged from reporting infractions of federal safety rules. In fact, a ValuJet flight attendant was fired for reporting a violation of a federal child restraint safety rule (FAR 121-311) to the FAA. The rule was violated by requiring parents of a five-year-old child on their lap, in order to make room for an off-duty ValuJet pilot who was traveling for pleasure.

#### **SCIENTER ALLEGATIONS**

66. As alleged herein, defendants acted with scienter in that defendants knew or recklessly disregarded that the public documents and statements issued or disseminated by and in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated-or-acquiesced in the issuance or dissemination of such statements or documents as primary

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violators of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding ValuJet, and its severe and persistent maintenance problems, regulatory compliance, their control over and/or receipt of ValuJet's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning ValuJet,

participated in the fraudulent scheme alleged herein. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public.

67. As alleged herein Defendants acted with scienter in that defendants knew: (i) that ValuJet's maintenance was wholly inadequate; (ii) that the Company was subject to strict FAA scrutiny; (iii) that the Company had experienced an inordinate amount of safety violations; and that (iv) the foregoing was not adequately disclosed in the Company's public documents and statements -- in fact, not disclosed at all.

68. The Individual Defendants engaged in such a scheme to inflate the price of ValuJet securities in order to: (i) protect and enhance their executive positions and the substantial compensation and prestige they obtained thereby; and (ii) enhance the value of their personal holdings of ValuJet securities and options.

69. Sabretech knowingly or recklessly substantially assisted in the consummation of the fraud by its extensive

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outsourcing activities provided to Valujet, its knowledge of Valujet's maintenance and safety problems resulting from, among other things, its heavy reliance on outsourcing to Sabretech and others, and its knowledge of the fact that Valujet was portraying itself as a fast-growth, low-cost airline which could continue to maintain such fast growth in the future. Sabretech was motivated to conceal these facts, in which it was intimately involved, because it did not want to endanger its lucrative outsourcing relationship with Valujet or adversely effect Valujet's high-

flying stock price, which permitted Valujet access to capital markets to fuel its continued expansion and large-scale business with Valujet.

**DEFENDANTS' INSIDER SELLING**

70. While defendants were issuing favorable statements about Valujet's business, in a blatant effort to cash in before the bubble burst, defendant Flynn, a co-founder and director of the Company, sold, on or around May 20, 1996, just weeks before the Company's announcement that it would be ceasing operations, 1.5 million shares of Valujet stock for proceeds in excess of \$19,000,000, thus profiting from the artificial inflation of the price of Valujet's stock which was the result of defendants, fraudulent scheme.

71. Similarly, defendants Acks and Nevin sold Valujet stock during the Class Period, thereby profiting from the artificial inflation of the price of Valujet's stock which was the result of defendants, fraudulent scheme. On October 27, 1995, defendant Acks sold 50,000 shares of Valujet for proceeds

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of approximately \$2,263,500. On October 31, 1995, defendant Nevin sold 3,000 shares of Valujet for proceed of approximately \$156,000.

**FIRST CLAIM**

**[Against All Defendants For Violations  
Of O.C.G.A. Section 10-5-12 (a)(2)]**

72. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

73. This Count is brought by plaintiffs pursuant to O.C.G.A. Section 10-5-12(a)(2) on behalf of plaintiffs and the

Class against all defendants.

74. In connection with the acts complained of herein all defendants violated subsection (a) of O.C.G.A. Section 10-5-12 by directly or indirectly: i) employing devices, schemes and artifices to defraud; ii) making untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and iii) engaging in acts, practices and/or a course of business that operated as a fraud or deceit upon plaintiffs and the Class.

75. Plaintiffs and the other members of the Class bought the common stock of Valujet during the time defendants were i) employing devices, schemes and artifices to defraud; ii) making untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and iii) engaging in acts, practices and/or a course

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of business that operated as a fraud or deceit upon plaintiffs and the Class.

76. At the time they purchased Valujet common stock, plaintiffs and other members of the Class did not know of the untrue statements of material fact or omissions of statements of material fact alleged in this action, and, in the exercise of reasonable diligence, could not have known such facts.

77. The defendants, in the exercise of reasonable care, could have known of the untrue statements or misleading omissions alleged in this action.

78. Plaintiffs and other members of the Class have sustained injury and suffered damages.

**SECOND CLAIM**

**[Against Individual Defendants  
Pursuant To O.C.G.A. Section 10-5-14 (a)]**

79. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

80. This Count is brought by plaintiffs pursuant to O.C.G.A. Section 10-5-14(c) on behalf of the Class against the Individual Defendants.

81. Valujet is liable to plaintiffs and the Class under O.C.G.A. Section 10-5-14 (a).

82. The Individual Defendants were executive officers and/or directors of the Company at all relevant times, and directly or indirectly controlled Valujet through both their positions as executive officers and/or as a directors of the Company.

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83. As a result, the Individual Defendants are jointly and severally liable under O.C.G.A. Section 10-5-14(c) for Valujet's violations of O.C.G.A. Section 10-5-14(a).

**THIRD CLAIM**

**[Common Law Fraud And Deceit Against All Defendants]**

84. Plaintiffs repeat and reallege each and every allegation contained above.

85. Defendants' representations were materially misleading or were likely to mislead because they failed to disclose and materially misrepresented certain facts as described herein. Such representations were made with the intent to

defraud purchasers of Valujet common stock and induce plaintiffs' and other class members, reliance by purchasing Valujet's common stock.

86. Plaintiffs and other class members, unaware of defendants, fraudulent misrepresentations and concealment of said material facts, purchased or paid for Valujet securities detrimentally relying upon defendants, false representations.

87. As a proximate result of defendants' misrepresentations, plaintiffs and other class members have been damaged.

#### **FOURTH CLAIM**

##### **[Negligent Misrepresentation Against All Defendants]**

88. Plaintiff repeats and realleges each and every allegation contained above.

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89. This Count is brought by plaintiff against all the defendants based upon common law principles of negligent misrepresentation.

90. Defendants made and participated in the making of representations of fact to plaintiff and other members of the Class by means of various documents and statements as alleged herein.

91. In making said misrepresentations and statements, as alleged above, defendants failed to state material facts necessary (i) in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (ii) in order that prospective investors in Valujet stock would have all of the material facts necessary for an informed decision. Among the direct and proximate causes of said

misrepresentations and omissions to state material facts was the negligence and carelessness of defendants, and the absence of any reasonable basis for belief in the truth of such statements.

92. At the time of said misrepresentations and omissions, plaintiff and the other members of the Class were ignorant of their falsity, and believed them to be true. In reliance, directly and/or indirectly, on said misrepresentations and in reliance upon the superior knowledge and expertise of defendants, plaintiff and the other members of the Class were induced to and did purchase Valujet stock. Had plaintiff and the other members of the Class known the truth, they would not have taken such action. By reason thereof, plaintiff and the other members of the Class have been damaged.

**JURY DEMAND**

93. Plaintiff hereby demands a trial by jury.

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action under O.C.G.A. Section 9-11-23, and certifying plaintiff as class representative and his counsel as class counsel;

(b) Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding plaintiff and the Class their

reasonable costs and expenses incurred in this action, including  
counsel fees and expert fees; and

(d) Such other and further relief as the Court  
may deem just and proper.

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**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: July 3, 1996

**BELL & JAMES**

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