IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CENTRAL LABORERS' PENSION FUND, Plaintiff, v. SIRVA, INC., BRIAN P. KELLEY, JOAN E. RYAN, JAMES W. ROGERS, RICHARD J. SCHNALL, CARL T. STOCKER, CREDIT SUISSE FIRST BOSTON LLC, GOLDMAN, SACHS & CO., DEUTSCHE BANK SECURITIES INC., CITIGROUP GLOBAL MARKETS INC., J.P. MORGAN SECURITIES INC., BANC OF AMERICA SECURITIES LLC, MORGAN STANLEY & CO. INCORPORATED, PRICEWATERHOUSECOOPERS LLP, and CLAYTON DUBILIER & RICE, INC. Defendants.	)	**No. 04 C-7644** **Judge Ronald A. Guzman**

CONSOLIDATED SECOND AMENDED CLASS ACTION COMPLAINT

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I. NATURE OF THE ACTION

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the stock of SIRVA Incorporated ("SIRVA" or the "Company") between November 25, 2003 and January 31, 2005 (the "Class Period") under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). The Securities Act Claims are set forth in sections IV-V. These claims allege that Defendants issued materially false statements, including false financial results, in connection with an Initial Public Offering ("IPO") on November 25, 2003, and a Secondary Public Offering ("SPO") on June 10, 2004. Under the Securities Act, Defendants are strictly liable for the material misstatements in the Registration Statements for these two public stock offerings, and these claims specifically exclude any allegations of knowledge or scienter.

2. The Exchange Act claims allege that Defendants engaged in a fraudulent scheme and committed accounting fraud. Indeed, since its public offering in 2003, SIRVA has now admitted that it issued false financial results in every single quarter during the Class Period. These claims are set forth in sections VI-XVIII.

II. PRELIMINARY STATEMENT

3. Back in late 2003, those on the outside of the Company had every reason to think everything was fine. The Company, known as the newly formed SIRVA, was a giant among moving companies. An investment firm called Clayton, Dubilier & Rice, Inc. ("CD&R") had scoured the globe since 1998, acquiring movers from the United States, the United Kingdom, France, and Scandinavia. CD&R didn't just choose any moving companies, they chose companies with household names in the U.S. and Europe. Names like North American Van Lines, Allied, Pickfords, Maison Huet, and Scanvan, and a large insurance company called TransGuard were now all part of the SIRVA empire. CD&R had

everything in place, and in November 2003, CD&R sold 30% of SIRVA to investors for $390 million in an Initial Public Offering.

4. Over the next fourteen months, with Defendants issuing excellent financial report after excellent report, and positive discussion after positive discussion, everything seemed to be running smoothly at SIRVA. SIRVA's stock increased to the $21-$23 dollar range within less than six months after the IPO, even soaring to over $25 in April 2004, an incredible 42% gain. Things were going so well, SIRVA was able to conduct another Offering, this time selling another 26% of SIRVA to investors in June 2004 for over $400 million. Defendants kept the good reports coming, with SIRVA meeting analysts' estimates quarter after quarter throughout the class period.

5. Of course, what no one on the outside of SIRVA -- not the analysts, not the financial experts, not the media, and certainly not investors -- knew, or could have known, was that SIRVA had serious and systemic problems in its European Operations, an important segment of SIRVA that makes up more than 25% of its revenues. What they also didn't know is that SIRVA's Network Services segment, which constitutes another 25% of SIRVA's revenues, was materially under reserved. And finally, investors did not know that Defendants were using the reserves and other illegal accounting manipulations to manage SIRVA's earnings and meet SIRVA's estimates.

6. Even worse, Defendants knew all about these problems as far back as *before* the IPO, but they hid them from investors at all costs. Indeed, former employees at SIRVA from every level, and located both here and in Europe, have confirmed that Defendants knew the truth, yet continually refused to tell investors. For example, for months SIRVA's European executives personally explained the serious problems in Europe to SIRVA's top

management, and multiple high level employees confirm and describe meetings where insurance reserves were manipulated, and reveal how and why Defendants knew about it.

7. Eventually however, the massive fraud caught up to them, and Defendants were forced to announce that SIRVA had serious problems in Europe, that they would take a multi-million dollar charge to SIRVA's insurance reserves, and that much of the prior information they had provided to investors could no longer be relied upon. By the time the smoke cleared, SIRVA was in shambles, with investors losing over $650 million of their money, their Company forced to restate every financial report it ever issued, a formal SEC investigation at their doorstep, their CFO bailing out at the height of the fraud, a sell off of their entire insurance business, and an internal review that can't even rule out intentional accounting misstatements.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1331. The claims asserted herein arise under Sections 11, 12(a)(2) and 15 of the Securities Act, 15 U.S.C. §§77k and 77o, and Sections 10(b), 20(a) and 20A of the Exchange Act, 15 U.S.C. §§78j(b), 78t(a) and 78t-1, and the rules and regulations promulgated thereunder by the SEC, including Rule 10b-5, 17 C.F.R. §240.10b-5; and Section 304 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. §7243.

9. Venue is proper in this District pursuant to Section 22 of the Securities Act and Section 27 of the Exchange Act, 28 U.S.C. §1391(b). Many of the acts and transactions giving rise to the violations of law complained of herein, including the preparation and dissemination to the investing public of false and misleading information, occurred in this District. In addition, SIRVA maintains its principal executive offices in this District.

10. In connection with the acts, conduct and other wrongs complained of herein, Defendants used the means and instrumentalities of interstate commerce, including the mails, telephone communications and the facilities of national securities exchanges.

IV. THE SECURITIES ACT CLAIMS

A. <u>The Parties</u>

1. <u>Lead Plaintiff</u>

11. The Central Laborers' Pension Fund is a Taft-Hartley Trust Fund headquartered in Jacksonville, Illinois. The Fund provides benefits for approximately 14,000 active and inactive vested union laborers. The Pension Fund was established in 1965 to help provide financial security to laborers during retirement. The Fund currently has more than 5,300 pensioners and beneficiaries receiving over $54 million each year in pension benefits, and is financed entirely by employer contributions negotiated through the collective bargaining process and investment income.

12. Plaintiff Central Laborers Pension Fund was appointed Lead Plaintiff by Order of the Court on March 29, 2005. Lead Plaintiff purchased SIRVA common stock during the Class Period and traceable to SIRVA's IPO, and pursuant to the Company's SPO, and has been damaged thereby.

2. <u>Securities Act Defendants</u>

a. The Company

13. Defendant SIRVA, INC. ("SIRVA") is organized under the laws of Delaware with its principal executive offices located at 700 Oakmont Lane, Westmont, Illinois 60559. According to its most recent Form 10-Q, which was filed with the Securities and Exchange Commission ("SEC") on November 15, 2004, SIRVA is a leader in the global relocation industry, including transferring corporate and government employees and moving individual consumers. SIRVA operates in more than 40 countries under well-recognized brand names

including SIRVA®, Allied®, northAmerican®, Global® and SIRVA Relocation in North America, Pickfords® in the United Kingdom, Maison Huet® in France, Kungsholms in Sweden, ADAM in Denmark, Majortrans Flytteservice in Norway, Rettenmayer in Germany and Allied Pickfords in the Asia Pacific region.

14. SIRVA's business is divided into four operating segments: (1) Relocation Solutions –North America; (2) Relocation Solutions – Europe and Asia Pacific; (3) Network Services; and (4) Transportation Solutions. The Company collectively refers to "Relocation Solutions-North America," and "Relocation Solutions - Europe and Asia Pacific," as "Global Relocation Solutions."

a. *Global Relocations Solutions,* provides a comprehensive suite of relocation services to corporate and government customers, offering a wide variety of services to employees including relocation services, household goods moving services, and specialized transportation. Relocation services include assistance with the sale of employees' homes, purchase of their new homes, mortgage services and provision of destination services. Specialized transportation includes moving services for products that require special handling and constant monitoring due to their high value.

b. *Network Services* provides a range of services to moving and storage agents, independent owner operators and small fleet operators to assist them in the daily operation of their business, including insurance products, fleet maintenance programs, equipment and fuel purchase packages, breakdown and road services, as well as technology, legal and tax services. Network Services includes the Company's TransGuard General Insurance Agency, Inc. ("TransGuard"), and the National Association of Independent Truckers ("NAIT").

c. *Transportation Solutions* is part of the third-party logistics industry, providing outsourcing services for supply chain functions, including order fulfillment, freight bill auditing and payment, cross-docking, produce marking, labeling and packaging, inventory and warehouse management, parts return and repair and the physical movement of goods.

b. Officer and Director Defendants

15. The following Defendants served as SIRVA's officers and/or directors during the Class Period, and are strictly liable under the Securities Act for endorsing the Company's false statements in the IPO and/or SPO Prospectus.

Brian P. Kelley

16. Defendant Brian P. Kelley ("Kelley") was, at all relevant times, SIRVA's Chief Executive Officer and President. Defendant Kelley became SIRVA's President and Chief Executive Officer, and a director, in August 2002. Kelley signed the Form S-1 Registration Statement for both the IPO and SPO, as well as all subsequent Form S-1/A amendments before the Prospectuses were declared effective.

Joan E. Ryan

17. Defendant Joan E. Ryan ("Ryan") was, at all relevant times, SIRVA's Chief Financial Officer and Senior Vice President. Defendant Ryan served as a member of the Audit Committee until she resigned from the Board in February 2003 to become the Company's Senior Vice President and Chief Financial Officer. Ryan resigned from her position as Chief Financial Officer on January 21, 2005. Ryan signed the Form S-1 Registration Statement for both the IPO and SPO, as well as all subsequent Form S-1/A amendments.

James W. Rogers

18. Defendant James W. Rogers ("Rogers") was, at all relevant times, SIRVA's Chairman of the Board and a director. Defendant Rogers became a director of SIRVA in February of 1999 and has served as the Chairman of the Board since November of 1999.

Subsequently, from April of 2001 until August of 2002, Defendant Rogers served as SIRVA's President and Chief Executive Officer throughout 2003. Defendant Rogers is a principal of Defendant CD&R, a limited partner of CD&R Associates V Limited Partnership and CD&R Associates VI Limited Partnership, and a stockholder and director of CD&R Investment Associates II, Inc. and CD&R Investment Associates VI, Inc. Rogers signed the Form S-1 Registration Statement for both the IPO and SPO, as well as all subsequent Form S-1/A amendments.

Richard J. Schnall

19. Defendant Richard J. Schnall ("Schnall") was, at all relevant times, a director of SIRVA. Defendant Schnall became a director of SIRVA in March of 2002, and is a principal of CD&R. Schnall signed the Form S-1 Registration Statement for both the IPO and SPO, as well as all subsequent Form S-1/A amendments.

Carl T. Stocker

20. Defendant Carl T. Stocker ("Stocker") became a director of SIRVA in May of 2000. Stocker signed the Form S-1 Registration Statement for both the IPO and SPO, as well as all subsequent Form S-1/A amendments.

21. Defendants Kelley, Ryan, Rogers, Stocker and Schnall are collectively referred to herein as the "Individual Defendants." These Individual Defendants all signed the Company's IPO and SPO Registration Statements which included materially false financial results, as well as omitted material facts which rendered them false and misleading.

c. The Underwriter Defendants

22. Defendant Credit Suisse First Boston LLC ("Credit Suisse") is an investment bank, incorporated in Delaware. Its businesses include securities underwriting, sales and trading, investment banking, private equity, alternative assets, financial advisory services,

investment research, and asset management. Defendant Credit Suisse served as a representative underwriter and joint book running manager for SIRVA's IPO and SPO.

23. Defendant Goldman, Sachs & Co. ("Goldman Sachs") is an investment banking, securities and investment management firm, incorporated in New York. Its underwriting component consists of public offerings and private placements of equity, equity-related and debt instruments. Defendant Goldman Sachs served as a representative underwriter and joint book running manager for SIRVA's IPO and SPO.

24. Defendant Deutsche Bank Securities Inc. ("Deutsche Bank") is a financial services provider, with services that include corporate banking and securities, transaction banking, asset management and wealth management. Defendant Deutsche Bank is incorporated in Delaware, and served as an underwriter for SIRVA's IPO and SPO.

25. Defendant Citigroup Global Markets Inc. ("Citigroup") provides investment banking services, including a wide range of strategic and financial advisory services, such as acquisitions, mergers, divestitures, financial restructurings, underwriting and distributing equity, debt and derivative securities. Defendant Citigroup is incorporated in New York, and served as an underwriter for SIRVA's IPO and SPO.

26. Defendant J.P. Morgan Securities Inc. ("JP Morgan") is a financial services firm, providing services in investment banking, financial services for consumers and businesses, financial transaction processing, asset and wealth management, and private equity. Defendant JP Morgan is incorporated in Delaware, and served as an underwriter for SIRVA's IPO and SPO.

27. Defendant Banc of America Securities LLC ("Banc of America") is an investment bank and brokerage firm, incorporated in Delaware. Defendant Banc of America served as an underwriter for SIRVA's IPO and SPO.

28. Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") provides investment banking services, specifically in mergers and acquisitions, underwriting of equity and equity-related transactions, high-yield debt financing, and corporate debt issuance. Defendant Morgan Stanley is incorporated in Delaware and served as a representative underwriter and joint book running manager for SIRVA's SPO.

d. The Auditor Defendant

29. Defendant PricewaterhouseCoopers LLP ("PwC") is a limited liability partnership of certified public accountants, auditors and consultants that provides audit and assurance services, advisory services and tax and human resource services. It maintains its headquarters at 300 Madison Avenue, New York, New York, 10017. Defendant PwC served as SIRVA's auditor and principal accounting firm throughout the Class Period. Defendant PwC is liable under Section 11 of the Securities Act for its role in certifying the financial statements included in Defendants' IPO and SPO Prospectuses.

e. Controlling Shareholder

30. Clayton, Dubilier & Rice, Inc. ("CD&R") is named as a Defendant under Section 15 of the Securities Act by virtue of its status as a majority shareholder and control person of SIRVA. CD&R is a private investment firm organized as a Delaware corporation, which manages a series of investment funds, including Clayton, Dubilier & Rice Fund V Limited Partnership ("CD&R Fund V") and Clayton, Dubilier & Rice Fund VI Limited Partnership ("CD&R Fund VI"). CD&R assists corporations such as SIRVA in structuring, arranging financing for and negotiating transactions. After the consummation of such transactions, CD&R provides management and financial consulting services to the companies, including helping companies to establish effective banking, legal and other business relationships and assisting management in developing and implementing strategies

for improving their operational, marketing and financial performance. As discussed in more detail below, CD&R had such an agreement with SIRVA throughout the Class Period. CD&R, through CD&R Fund V, organized SIRVA in 1998 to acquire North American Van Lines. Throughout the Class Period, CD&R, through CD&R Fund V and CD&R Fund VI, exercised control over the Company, through majority ownership of the Company's common stock, and the consulting agreement in place between the Company and CD&R. In addition, two of the Company's directors, Defendants Rogers and Schnall, are principals of CD&R.

B. Claims Against Defendants Related to SIRVA's IPO

1. Background to the Section 11 Claims

31. CD&R is a private equity investment firm and manages the private investment funds CD&R Fund V and CD&R Fund VI. CD&R Fund V organized SIRVA in 1998 to acquire North American Van Lines, with the idea to build a one-stop shop for global relocation services, and sell it to the public.

32. Between 1998 and the 2003, CD&R principals operated SIRVA. For example, CD&R principal James W. Rogers has been a SIRVA Director since February 1999, and served as SIRVA's Chairman of the Board of Directors since November 1999. Rogers also served as SIRVA's President and Chief Executive Officer from April 2001 until August 2002, when Mr. Brian Kelley became SIRVA's President, Chief Executive Officer, and a Director. Prior to this time, both Kelley and Rogers were executives at General Electric subsidiaries from 1995 to 1998. In addition, CD&R principal Richard J. Schnall has been a SIRVA Director since March 2002.

33. From 1998 to 2003, SIRVA acquired other moving related companies in the United States and Europe (*See* ¶¶3, 211-215), including companies in France, the United

Kingdom, and Scandanavia. SIRVA also acquired an insurance company called TransGuard, a company that SIRVA would later essentially label as its Network Services Segment.

2. The November 25, 2003 Initial Public Offering

34. On November 25, 2003, two days before Thanksgiving, SIRVA conducted an Initial Public Offering, with investors putting up approximately $390 million to purchase approximately 21 million of SIRVA's 70.5 million shares outstanding, or about 30% of SIRVA. In connection with the IPO, SIRVA filed and the SEC declared effective, SIRVA's Prospectus and Registration Statement dated November 24, 2003 in connection with the Company's IPO of 21,052,632 shares at a price of $18.50. Defendants Kelley, Ryan, Rogers, Schnall and Stocker, among others, signed the Registration Statement. The Offering, which was undertaken by Underwriter Defendants Credit Suisse, Goldman Sachs, Deutsche Bank, Citigroup, JP Morgan, and Banc of America, was completed on November 25, 2003. A total of 13,513,514 shares were sold by the Company and 7,539,118 shares were sold by certain selling shareholders.

35. One key to SIRVA's success would most certainly be its apparent continued success in its European Operations. Indeed, Defendants told investors in the Prospectus that the European market opportunities are considerable, as the market is large, the corporate outsourcing trend is at an earlier stage of development, and SIRVA is approaching this international opportunity from a position of strength, with a leading market share position in Europe.

36. The other key to SIRVA's success would be its insurance business, also known as TransGuard or the Network Services segment. As Defendants also told investors in the Prospectus, SIRVA intends to continue to grow its Network Services business, and that

SIRVA has "an advantage in bringing value-added services, like our insurance programs, to this historically underserved market."

3. <u>Omissions and False Statements in the IPO Prospectus</u>

37. The IPO Prospectus failed to disclose to investors that SIRVA's European operations were substantially impaired. While the Prospectus highlights the 20% contribution to Operating Income by SIRVA's European Operations, it fails to discuss the many problems SIRVA was experiencing in Europe, including: declining demand, revenue shortfalls, an inability to further cut costs, and the inability of acquisitions to perform up to expectations. Because of the aforementioned problems, SIRVA's European operations were struggling just to maintain previous year's revenue levels, never mind meet the unattainable projections set by Defendants Kelley and Ryan.

38. The IPO Prospectus stated as one of its goals:

> *Expand Geographically.* We intend to increase our market share internationally as we continue to develop our global relocation solutions platform. We believe that the European and Asian market opportunities are considerable, as the markets are large and the corporate outsourcing trend is at an earlier stage of development. We are approaching this international opportunity from a position of strength, with a leading market share position in Europe, Australia and Asia.

39. The IPO Prospectus contains certain disclosures intended to advise investors as to the risk inherent in SIRVA's business operations, but these disclosures did more to mislead investors than educate them because at the time these risks were discussed, the very thing at risk had already occurred. For example, the IPO Prospectus states:

> **Our success depends in part on our relatively new and unproven strategy of offering a global comprehensive relocation solution to customers**[1]

[1] Unless otherwise indicated, emphasis is added.

> Historically, a majority of our operating revenues and income from operations was derived from our moving services businesses. A significant element of our growth model, however, is our new and unproven strategy of offering a global comprehensive relocation solution to customers by combining our higher margin relocation services with our proprietary moving services network. *We embarked on this strategy less than two years ago with the acquisition of the business of Cooperative Resources Services, Ltd., and have not yet proven that it will succeed in the long-term, especially in Europe and Asia*.

40. The IPO Prospectus also contained numerous false and misleading material statements concerning the Company's financial results, including:

a. Improperly failing to take a timely charge to accrue additional liabilities related to SIRVA's multiple-line property and commercial liability insurance;

b. improperly overstating premium revenue;

c. improperly overstating commission income;

d. improperly accounting for accrued expenses, including, but not limited to, claim expenses, ceded insurance premiums, insurance broker profit sharing, customer incentives, and agent commissions liability;

e. improperly accelerated revenue related to both Corporate fees and referral fees;

f. improperly accounted for home inventory valuation reserve; and

g. failing to establish and maintain adequate internal accounting controls.

41. The IPO Prospectus included the Company's audited financial statements for the years ending December 31, 2001 and 2002, as well as the unaudited financial statements for the nine months ending September 30, 2003.[2] The financial statements contained

[2] SIRVA's fiscal years runs with the calendar year, January 1 through December 31.

assurances by Defendants that the financial statements depicted a fair presentation of the financial condition and results of operations of the Company.

42. The financial statements included in the IPO Prospectus include an assurance by PwC that the financial statements fairly present the financial position of SIRVA and the results of operations and cash flows are in conformity with GAAP:

Report of Independent Accountants

> The Board of Directors and Stockholders of SIRVA, Inc.:
>
> In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of SIRVA, Inc. and its subsidiaries at December 31, 2002 and December 31, 2001, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, **the financial statement schedule listed in the index appearing under Item 16(b) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements.** These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. **We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America,** which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

43. In the IPO Prospectus, Defendants praise SIRVA's financial growth by comparing it to previous periods:

> Our financial results reflect our ability to improve our operating results even in a difficult economic environment. For the twelve months ended September 30, 2003, we had operating revenues and income from operations of $2.3 billion and $114.1 million,

> respectively. **These represent increases of 9% and 37% over our operating revenues and income from operations for the twelve-month period ended September 30, 2002, respectively, resulting from a combination of internally generated and acquisition growth**.

44. The Notes to Consolidated Financial Statements explain the Company's Insurance and Claims Reserves as follows:

> The Company has purchased first dollar insurance coverage, subject to specified deductibles, for principally all insurable business risks except cargo damage, delay claims and the insurance services business loss reserves. The Company estimates costs relating to cargo damage and delay claims based principally on actuarial methods applied to historical trends**. The Company's multiple-line property and commercial liability insurance group sets its reserve rates based on a percentage of earned premium. The percentage is based on historical data, run rates and actuarial methods.**
>
> A cargo claims analysis is performed each quarter comparing open and closed claim costs, as well as estimates for incurred but not reported claim costs, to the original estimates, and **changes to those estimates are recorded as appropriate.** The Company recognized favorable accrual adjustments related to prior year estimates of $5,356[,000] for the year ended December 31, 2002. These favorable adjustments were a result of improved experience, when compared to historical trends and estimates, for claims made in policy years 2001 and prior that were finalized in 2002. This improved claims experience was attributable to a combination of reduced shipment volumes that reduced the frequency of claims and new quality control initiatives implemented by the Company during 2001.
>
> The impact, net of taxes, of the favorable accrual adjustments was $3,436, or $0.07 per share-basic, or $0.07 per share-diluted.

45. Management's Discussion and Analysis in the IPO Prospectus also disclosed the same insurance reserves policies as part of the Company's critical accounting policies, and further explained with regard to claims reserves:

> *Claims reserves.* We estimate costs relating to cargo damage based principally on actuarial methods applied to historical trends. Both the frequency of claims and the severity of claims influence claim costs…These historical metrics are used to record a provision in the current period for the cost to settle claims that

> have been incurred, but will be settled in future periods… An analysis is performed each quarter comparing open and closed claim costs, as well as estimates for incurred but not reported claim costs, to the original estimates, and changes to those estimates are recorded as appropriate. Cargo claims expense was $43.1 million, $39.2 million and $26.1 million for the years ended December 31, 2000, 2001 and 2002, respectively and $21.6 million and $25.9 million for the nine months ended September 30, 2002 and 2003, respectively. Claim frequency and severity improved in 2001 and 2002 as compared to historical trends…At December 31, 2002 and September 30, 2003, our claims reserves totaled $27.2 million and $25.8 million respectively, however actual results may be materially different from our current estimates.

46. The Notes to Consolidated Financial Statements further explained, in relevant part, the Company's revenue recognition policy which is the same as Management's Discussion and Analysis section of the IPO Prospectus:

> In the relocation services operations, fees are paid to the Company by corporate customers at either a fixed price per transferred employee or based upon a fixed percentage of the home's selling price. **In either case, revenue is recognized when a home sale contract with the ultimate buyer is signed. However, if the Company purchases a property from the transferee when no outside buyer has been located and the property enters the Company's inventory, revenue is not recognized on that property until the closing of a sale to an outside buyer**. Additionally, fees are paid to the Company by Company-qualified real estate agents for the listing or home purchase referral of a transferred employee and are recognized as revenue when a home sale contract with the ultimate buyer is signed.
>
> In addition, within relocation services, the Company recognizes gains or losses on the sale of mortgage loans at the date the loans are funded by purchasers pursuant to the existing sales commitment. The gain or loss equals the difference between the basis in the loan and the net proceeds received and are included in operating revenues in the consolidated statement of operations. Sales of loans are made without recourse, provided the loans meet predetermined specifications, as defined in the agreements with investors. The Company does not currently service mortgage loans.
>
> The Company, within the Network Services segment in the insurance services unit, recognizes revenue evenly over a twelve-month period when an annual insurance policy is written.

4. <u>Reasons for Falsity of the IPO Prospectus's False Statements</u>

47. As set forth in SIRVA's Form 8-K issued on September 21, 2005, SIRVA intends to restate its reported financial statements for the years 2000 through 2003 and the first nine months of 2004 because it had, among other things: (a) improperly failed to take a timely charge to accrue additional liabilities related to SIRVA's multiple-line property and commercial liability insurance; (b) improperly overstated premium revenue; (c) improperly overstated commission income; (d) improperly accounted for accrued expenses, including, but not limited to, claim expenses, ceded insurance premiums, insurance broker profit sharing, customer incentives, and agent commissions liability; (e) improperly accelerated revenue related to both Corporate fees and referral fees; (f) improperly accounted for home inventory valuation reserve; and (g) failed to establish and maintain adequate internal accounting.

48. SIRVA's financial statements were materially false and misleading and violated GAAP because the Company improperly accounted for accrued expenses, including but not limited to, claim expenses, ceded insurance premiums, insurance broker profit-sharing, customer incentives, and agent commissions liability during the Class Period. (*See* ¶¶375-376 below.)

49. The Company improperly accelerated revenue related to both Corporate fees and referral fees. (*See* ¶¶377-379 below.) The Company's improper accounting resulted in an overstatement of operating income of $1 million over the period 2002 through 2004.

50. As the Company admitted in its Form 8-K issued on September 21, 2005, Defendants violated GAAP by improperly recognizing revenue when the Company entered into a contract, rather than prior to the closing, thus overstating operating income by $1 million over the period 2002 through 2004. (*See* ¶¶373-374 below.)

51. Furthermore, SIRVA disclosed in its Form 8-K, that "the Company's pre-tax income from continuing operations will be reduced by a total of $34 million for the periods 2000 through the first nine months of 2004." Through the Company's own admission, all financial statements incorporated into the IPO Prospectus are materially false and misleading and must be restated for the reasons stated above.

52. Throughout the IPO Prospectus, the Company provides year over year comparisons to evidence its growth, but those statements are false and misleading because the IPO Prospectus failed to disclose that the Company's income from operations growth was, in part, achieved by the changes in accounting methodologies. Indeed, changes in the Company's methodologies could effectively change the perception as to how fast the company is growing. In addition, SIRVA failed to disclose that it lacked internal controls necessary to prevent the Defendant's improper failure to disclose the changes in methodologies, that the absence of such internal controls was reasonably likely to have a material adverse effect on the Company operating results, and disclosure of which was necessary for a proper understanding, evaluation, and informed investment decision of the Company's operating performance.

53. SIRVA also made the following changes that affected its financial results incorporated into the IPO Prospectus: (a) its estimating methodology related to purchased transportation expenses; (b) its cargo claims reserve methodology for several units within Moving Services North America in the fourth quarter of 2002 that increased income by approximately $2.4 million; (c) its cargo claims reserve methodology for two divisions within Moving Services North America in the second quarter of 2003 that increased income by approximately $771,000; and (d) the Moving Services North America segment inappropriately took approximately $502,000 into income as a lump sum in the third quarter

of 2003. SIRVA failed to disclose the changes and the effects of the change on reported earnings as required by GAAP.

C. False Statement in Connection with SPO

1. Background of the SPO

54. On June 10, 2004, SIRVA's Registration Statements and incorporated Prospectus for the SPO ("SPO Prospectus") became effective and the selling shareholders sold 18,500,000 shares of SIRVA common stock at $22 per share. The SPO Registration Statement was signed by Defendants Kelley, Ryan, Rogers, Schnall and Stocker, among others.

55. The total proceeds from the sale of 18,500,000 shares of SIRVA stick was $407 million. The Company did not sell any shares in the SPO, and, therefore, did not receive any of the proceeds from the SPO. The Underwriters received $15,262,500, and the selling shareholders, consisting of CD&R Fund V, CD&R Fund VI, and Exel, received $391,737,500.

2. False and Misleading Statements in the SPO Prospectus

56. The SPO Prospectus contained much of the same materially false and misleading statements contained in the IPO Prospectus regarding adequacy of insurance reserves, revenue recognition policies, and adequacy of internal controls, as well as materially false and misleading historical financial data. It also omitted necessary material information about the problems existing in SIRVA's European Operations, as discussed above, to render it not false and misleading.

57. In the SPO Prospectus, Defendants again praised the Company's financial growth:

> Our financial results reflect our ability to grow market share and improve our operating performance even in a difficult economic

> environment. For the twelve months ended March 31, 2004, we had operating revenues and income from operations of $2.4 billion and $129.8 million, respectively. **These represent increases of 8% and 28% over our operating revenues and income from operations, respectively, for the twelve-month period ended March 31, 2003, resulting from a combination of internally generated and acquisition growth**. We would also expect our future financial results to benefit from an improving economy as corporations increase spending on relocation.

58. The SPO Prospectus repeated Defendants' goal of expanding geographically. (*See* ¶38 above.)

59. The SPO Prospectus included audited consolidated financial statements for the fiscal years ended December 31, 2001, 2002, and 2003 as well as unaudited consolidated financial statements for the three months ended March 31, 2003 and 2004. The financial statements contained assurances by Defendants that the financial statements depicted a fair presentation of the financial condition and results of operations of the Company.

60. The financial statements included in the SPO Prospectus included an assurance by PwC that the financial statements fairly present the financial position of SIRVA and the results of operations and cash flows are in conformity with GAAP, in substantially the same language as that in the IPO Prospectus. Specifically, PwC assured investors that:

> In our opinion, **the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of SIRVA, Inc. and its subsidiaries at December 31, 2003 and December 31, 2002, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2003 in conformity with accounting principles generally accepted in the United States of America.**
>
> **We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States).** Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing

> the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

61. In the SPO Prospectus, Defendants again explained the Company's accounting policies for insurance reserves and claims reserves (*see* ¶¶44-45 above), and added that, at March 31, 2004 and December 31, 2003, the Company's insurance reserves totaled $51.7 million and $53.7 million, respectively, and at March 31, 2004 and December 31, 2003, the Company's claims reserves totaled $19.6 million and $22.4 million, respectively.

62. The SPO Prospectus also repeated the revenue recognition policy detailed in the IPO Prospectus. (*See* ¶46 above.)

63. Plaintiff also incorporates those allegations of false and misleading statements in paragraphs 37 through 46 above, as well as the reasons for falsity stated in paragraphs 47 through 53, because the same statements Plaintiff alleges to be false in the IPO Prospectus were contained in the SPO Prospectus.

V. COUNTS AGAINST DEFENDANTS RELATED TO THE OFFERINGS

COUNT I

FOR VIOLATIONS OF SECTION 11 OF THE 1933 ACT ARISING FROM THE COMPANY'S IPO AND SPO AGAINST SIRVA, THE INDIVIDUAL DEFENDANTS, PWC AND THE UNDERWRITER DEFENDANTS

64. This Count is brought on behalf of persons who purchased SIRVA stock issued pursuant or traceable to the November 25, 2003 IPO and/or June 10, 2004 SPO.

65. Lead Plaintiff Central Laborers, incorporates the allegations contained above pertaining to the false Registration Statements and Prospectuses for the IPO and SPO (the "Offering Documents"), and for purposes of Counts I, II, & III, Lead Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional

or reckless misconduct, as these counts are based solely on claims of strict liability and/or negligence under the Securities Act of 1933.

66. This Count is brought against registrant and issuer SIRVA; signatories to the Prospectuses, the Individual Defendants; PwC; and the Underwriter Defendants on behalf of Lead Plaintiff and all purchasers of SIRVA securities pursuant or traceable to the Offering Documents. The Offering Documents were inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed adequately to disclose material facts as described above.

67. Defendants are strictly liable for the misstatements and omissions and for the damages that Lead Plaintiff and other members of the Class have sustained thereby. All Defendants are responsible for the contents and dissemination of the Offering Documents, and did not conduct a reasonable investigation or possess reasonable grounds for the belief that the statements contained in the Offering Documents were true and without omissions of any material facts and were not misleading.

68. Defendants issued, caused to be issued and participated in the issuance of materially false and misleading written statements to the investing public that were contained in the Offering Documents, which misrepresented or failed to disclose, among other things, the facts set forth above. By reasons of the conduct herein alleged, each Defendant violated, and/or controlled a person who violated, Section 11 of the Securities Act.

COUNT II

FOR VIOLATIONS OF SECTION 12(A)(2) OF THE 1933 ACT ARISING FROM THE COMPANY'S IPO AND SPO AGAINST SIRVA AND THE UNDERWRITER DEFENDANTS

69. Lead Plaintiff incorporates all the allegations contained above pertaining to the false offering documents, except that for purposes of this count, Lead Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional or reckless misconduct, as this count is based solely on claims of strict liability and/or negligence under the Securities Act.

70. This Count is brought by Lead Plaintiff against Defendants SIRVA and the Underwriter Defendants, for violation of Section 12(a)(2) of the Securities Act on behalf of all class members that purchased SIRVA securities pursuant to the IPO and SPO.

71. The Defendants named in this Count were sellers and offerors and/or solicitors of the sales of SIRVA shares offered pursuant to the Offering Documents.

72. The Offering Documents contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. Defendants' actions of solicitation included participating in the preparation and dissemination of the false and misleading Offering Documents.

73. The Defendants named in this Count owed to the purchasers of SIRVA shares, including Lead Plaintiff, the duty to make a reasonable and diligent investigation of the statements contained in the Offering Documents, ensure that such statements were true and ensure that there was no omission of material fact required to be stated in order to make the statements contained therein not misleading. The Defendants named in this Count, knew of, or in the exercise of reasonable care should have known of, the misstatements and omissions contained in the Offering Documents as set forth above.

74. Lead Plaintiff purchased or otherwise acquired SIRVA shares pursuant to the defective Offering Documents. Lead Plaintiff did not know, or in the exercise of reasonable

diligence could not have known, of the untruths and omissions contained in the Offering Documents.

75. The Underwriters offered for sale and sold the shares purchased by members of the Class and received substantial fees and other compensation in connection with the Offerings. The Underwriter Defendants invested substantial time and effort in the Offerings and were committed to purchase all of the Company's shares and accordingly bore a substantial risk of loss if the Offerings were not consummated. Accordingly, the Underwriter Defendants had a clear financial interest in consummating the Offerings.

76. Each Defendant named in this Count solicited and/or was a substantial factor in leading purchasers to acquire SIRVA shares. But for the participation by these Defendants, including the solicitation as set forth above, the Offering could not and would not have been accomplished. These Defendants were motivated, at least in part, by a desire to serve their own financial interests. Said Defendants did the following acts in furtherance of the sale of SIRVA shares:

a. They actively and jointly drafted, revised, and approved the Offering Documents by which the Offerings were made to the investing public. These written materials were "selling documents," calculated by these Defendants to create interest in SIRVA shares and were widely distributed by Defendants for that purpose;

b. These Defendants finalized the Offering Documents and caused them to become effective. But for these Defendants having drafted, filed, and/or signed the Offering Documents, the Offering of SIRVA shares could not have been made; and

c. These Defendants conceived and planned the Offerings and together jointly orchestrated all activities necessary to effect the sale of these securities to the investing public, by issuing the SIRVA shares, supervising their distribution and ultimate sale to the investing public.

77. By reason of the conduct alleged herein, these Defendants violated § 12(a)(2) of the Securities Act. As a direct and proximate result of this violation, Lead Plaintiff sustained substantial damage in connection with the purchase of SIRVA shares. Lead Plaintiff seeks recissory damages. Accordingly, Lead Plaintiff seeks to obtain a right to rescind and recover the consideration paid for their SIRVA shares and to permit such purchasers to rescind and to tender their SIRVA shares to the Defendants sued herein.

COUNT III

FOR VIOLATIONS OF SECTION 15 OF THE 1933 ACT ARISING FROM THE COMPANY'S IPO AND SPO AGAINST THE INDIVIDUAL DEFENDANTS AND CD&R

78. Lead Plaintiff incorporates the allegations contained above pertaining to the false Offering Documents. This Count is brought against the Individual Defendants and CD&R, each of whom was a controlling person of SIRVA by virtue of their position as directors and/or senior officers of SIRVA and/or by virtue of their status as a major shareholder of the Company.

79. These Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors and/or officers and/or major shareholders of SIRVA. By reason of their positions within the Company and/or their stock ownership and/or because of their positions on SIRVA's Board of Directors, these Defendants had the requisite power to directly or indirectly control or influence the specific corporate policy that resulted in the unlawful acts and conduct alleged in Count I.

80. Each of these Defendants was a culpable participant in the violations of Sections 11 of the Securities Act alleged in Count I above, based on their having signed the

Offering Documents and having otherwise participated in the process that allowed the IPO and SPO to be successfully completed.

VI. CLAIMS AGAINST DEFENDANTS UNDER THE EXCHANGE ACT

A. The Parties

1. Lead Plaintiff

81. Central Laborers Pension Fund also serves as Lead Plaintiff for claims arising under the Exchange Act.

2. Officer and Director Defendants

82. In addition to being named as Defendants in the preceding Securities Act claims, Defendants SIRVA, Kelley, Ryan, Rogers, Schnall, Stocker, CD&R, and PwC are named as Defendants in the claims arising under the Exchange Act.

a. Brian P. Kelley: The "Spin Doctor"

83. Defendant Brian P. Kelley ("Kelley") was, at all relevant times, SIRVA's Chief Executive Officer and President. Defendant Kelley became SIRVA's President and Chief Executive Officer, and a director, in August 2002. According to a Former SIRVA Relocation Business Development Executive, Kelley was a "very egotistical" and a "very hands on manager." According to a Former SIRVA International Division Executive, Kelley and Rogers operated SIRVA with a "management of fear." This former employee characterized Kelley as "a spin doctor" due to his ability to twist negative information about SIRVA.

84. During the Class Period, Defendant Kelley signed SIRVA's IPO and SPO Registration Statements and Form 10-K for the fiscal year ended December 31, 2003. Defendant Kelley also certified the Form 10-K for fiscal year 2003, and Forms 10-Q for the first, second and third quarters of fiscal year 2004. In addition, Kelley participated in several conference calls with analysts, including calls on February 10, 2004, February 11, 2004,

April 27, 2004, August 5, 2004, September 13, 2004, November 9, 2004, and January 31, 2005.

b. Joan E. Ryan

85. Defendant Joan E. Ryan ("Ryan") was, at all relevant times, SIRVA's Chief Financial Officer and Senior Vice President. Defendant Ryan served as a member of the Audit Committee until she resigned from the Board in February 2003 to become the Company's Senior Vice President and Chief Financial Officer. During the Class Period, Defendant Ryan signed SIRVA's IPO and SPO Registration Statements, Form 10-K for the fiscal year ended December 31, 2003, and Forms 10-Q for the first, second and third quarters of fiscal year 2003. Ryan also certified the Form 10-K for fiscal year 2004, in addition to Forms 10-Q for the first, second and third quarters of fiscal year 2004. In addition, Ryan participated in several conference calls with analysts, including calls on February 10, 2004, April 27, 2004, August 5, 2004, September 13, 2004, and November 9, 2004.

86. Defendant Ryan resigned as CFO of the Company just ten days before it announced that it may be required to issue a restatement; that it would take not just the $15.2 million charge to increase insurance reserves announced November 9, 2004, but also charges relating to its European operations and that it was reviewing whether its accounting had any material weaknesses. Although the timing alone of Ryan's resignation adds to an inference of scienter, her later confessions support that inference even stronger.

87. On September 21, 2005 the Company filed a Form 8-K which included a Summary Report of Cleary Gottlieb, a law firm which had been engaged by the Audit Committee to conduct an independent review of SIRVA's accounting problems. The 8-K stated that counsel for Ryan had sent a letter to the Company "alleging that she had been asked to resign from the Company because of her insistence on accurate financial reporting."

Ryan's letter further "commented adversely on the 'tone at the top' set by senior management of the Company and its insistence on meeting earnings targets." Ryan's letter also suggested that the Company had misused material non-public information.

c. James W. Rogers: The "Autocrat"

88. Defendant James W. Rogers ("Rogers") was, at all relevant times, SIRVA's Chairman of the Board and a director. Defendant Rogers became a director of SIRVA in February of 1999 and has served as the Chairman of the Board since November of 1999. Subsequently, from April of 2001 until August of 2002, Defendant Rogers served as SIRVA's President and Chief Executive Officer. Defendant Rogers is a principal of Defendant CD&R, a limited partner of CD&R Associates V Limited Partnership and CD&R Associates VI Limited Partnership, and a stockholder and director of CD&R Investment Associates II, Inc. and CD&R Investment Associates VI, Inc. Rogers signed the following false SEC filings issued to the investing public during the Class Period: SIRVA's IPO and SPO Registration Statements and Form 10-K for the fiscal year ended December 31, 2003. According to the Former SIRVA International Division Executive, Rogers was much more than a "hands-on" executive, he was "very autocratic." Rogers focused on meeting earnings goals to the detriment of long term growth and stability, commonly telling top executives "you're here to earn my dime, not learn on my dime."

d. Richard J. Schnall

89. Defendant Richard J. Schnall ("Schnall") was, at all relevant times, a director of SIRVA. Defendant Schnall became a director of SIRVA in March of 2002, and is a principal of CD&R. Schnall served on the Audit Committee until October 2003, and served on the Governance Committee during the Class Period. In addition to his specifically delineated roles as an Audit and Governance Committee member, Schnall is responsible for

the following false statements issued during the Class Period: SIRVA's IPO and SPO Registration Statements and Form 10-K for the fiscal year ended December 31, 2003.

e. Carl T. Stocker: Chairman of the Audit Committee

90. Defendant Carl T. Stocker ("Stocker") became a director of SIRVA in May of 2000 and from at least 2003 to present has served as the Chairman of the Audit Committee of SIRVA's Board of Directors. Stocker is responsible for the following false statements during the Class Period: SIRVA's IPO and SPO Registration Statements and Form 10-K for the fiscal year ended December 31, 2003, as well as the Audit Committee Report issued in the 2004 Proxy Statement.

3. <u>Control Person Defendant: CD&R</u>

91. Prior to the Company's IPO, CD&R Fund V and CD&R Fund VI owned approximately 56.6% and 23.5% of the Company's outstanding stock, respectively, and continued to own 39.3% and 16.4%, respectively, following the completion of the IPO. As stated in the Company's IPO Prospectus, CD&R Fund V and CD&R Fund VI continued "to exercise control over matters requiring stockholder approval, and control over the Company's policy and affairs, for example, by being able to direct the use of proceeds received from the IPO and future security offerings." In addition, pursuant to a consulting agreement in place between SIRVA and CD&R, CD&R continued to provide the Company "with financial advisory and management consulting services" following the completion of the IPO and SPO, and thus was "entitled to receive fees, including financial advisory fees," from the Company. The IPO Prospectus also stated that CD&R Fund V was the only shareholder that had the right to initiate a public offering by itself. Following the IPO, the Company was considered a "controlled company" under applicable New York Stock Exchange governance requirements because CD&R Fund V and CD&R Fund VI continued,

in the aggregate, to own a majority of the Company's outstanding voting stock. CD&R Fund V also had the right to designate all but one of the members of the Company's board of directors, and was entitled to consult with the Company with respect to the Company's operations at any time, to have observers attend meetings of the Company's Board of Directors and those of certain of the Company's subsidiaries, and to receive all of the Company's quarterly and annual financial reports and budgets, as well as other documents.

92. As stated in the Company's SPO Prospectus dated June 10, 2004, CD&R Fund V and CD&R Fund VI owned 39.32% and 16.34% of the Company's outstanding common stock, respectively, and following the SPO, the holdings of CD&R Fund V and CD&R Fund VI were reduced to 23.34% and 9.70% of the Company's outstanding common stock, respectively. According to the SPO Prospectus, as a result, CD&R Fund V and CD&R Fund VI "will continue to exercise significant influence over matters requiring stockholder approval, and over the Company's policy and affairs. In addition, CD&R, which manages CD&R Fund V and CD&R Fund VI will continue to provide the Company with financial advisory and management consulting services following the completion of the SPO and it will be entitled to receive fees, including financial advisory fees, in the future."

93. The general partner of CD&R Fund V is CD&R Associates V Limited Partnership ("CD&R Associates V"), a Cayman Islands exempted limited partnership, which has three general partners. The managing general partner of CD&R Associates V is CD&R Investment Associates II, Inc. ("CD&R Investment Associates II"), a Cayman Islands exempted company. Under the partnership agreement of CD&R Associates V, all management authority, other than with respect to the amendment of the partnership agreement, is vested in CD&R Investment Associates II. The general partner of CD&R Fund VI is CD&R Associates VI Limited Partnership ("CD&R Associates VI"), a Cayman Islands

exempted limited partnership, which has a general partner, CD&R Investment Associates VI, Inc. ("CD&R Investment Associates VI"), a Cayman Islands exempted company. According to the Prospectuses, through this structure, Defendants Rogers and Schnall "may be deemed to share beneficial ownership of the shares owned of record by CD&R Fund V by virtue of their status as stockholders of CD&R Investment Associates II, the managing general partner of CD&R Associates V, and by CD&R Fund VI by virtue of their status as stockholders of CD&R Investment Associates VI, the general partner of CD&R Associates VI."

4. <u>PwC's Active Participation in the Fraud</u>

94. As detailed above in ¶29, Defendant PwC is a certified public accounting firm with offices located nationwide. PwC has served as SIRVA's outside auditor since the time the Company went public in 2003. According to SIRVA's Proxy, PwC earned $4,118,300 in fees for serving as the Company's auditor in 2003, in addition to $770,000 in fees for tax related services. PwC also performed a host of additional services for SIRVA, such as conducting benchmark surveys and specialized consulting. In addition, PwC served as SIRVA's actuary until May 2005, providing actuarial analysis through December 31, 2004. As actuary, PwC performed an actuarial analysis of claims payments and expected claim costs to establish reserve rates used to set SIRVA's insurance loss reserves in the Company's financial statements. PwC's role as SIRVA's actuary is significant since it ties directly to Defendants' fraudulent under reserving at TransGuard.

95. PwC purported to audit SIRVA's financial statements for fiscal years 2000 through 2003 in accordance with Generally Accepted Auditing Standards ("GAAS") and issued materially false and misleading unqualified audit opinions that those financial statements were prepared in accordance with GAAP. Additionally, PwC consented to the

use of its unqualified opinion letters in SIRVA's Class Period Form 10-Ks filed by the Company with the SEC and otherwise disseminated to the investing public.

96. As a result of PwC's knowing and/or reckless conduct and participation in PwC's fraudulent scheme, PwC is jointly and severally liable with the SIRVA Defendants to Lead Plaintiff and other members of the Class. PwC knew that its audit reports were being relied upon by investors, yet failed to comply with GAAS in the issuance of its false and misleading audit reports.

VII. DEFENDANTS' LIES AND OMISSIONS

A. Defendants Know, But Hide From Investors, the Problems in Europe

97. Former employees and executives of SIRVA have confirmed that management knew of serious problems in SIRVA's European Operations throughout the Class Period, and even months prior to the IPO. These witnesses hail from all levels of SIRVA, and are located in both the United States and Europe. The following account is based on first hand testimony provided by these former employees and high-level European executives.

98. According to a Former Senior European Finance Executive, who served in that role during the Class Period, SIRVA senior management, including Kelley and Ryan, knew about the problems with SIRVA's European operations *at least twelve months prior to the IPO*. Indeed, he personally explained the problems to the executives on at least three separate occasions, each of which is described in detail below.[3]

1. Defendants Demand an Impossible European Budget

99. The Former Senior European Finance Executive explained that sometime before October 2003, Jim Rogers and Brian Kelley set a budget for SIRVA's European

[3] All confidential witnesses are referred to in the masculine gender in order to protect their identity.

operations. In that budget, the European operations were expected to bring in $37 million in net income (also known as net profit). After setting the budget, the executives set a meeting in Europe to discuss it. But the Former Senior European Finance Executive already knew from the moment he first saw the expected profits, that the European operations would never be able to attain such a number, and that it wouldn't even be close.

2. Defendants Informed at the October 2003 UK Centre Meeting

100. It was easy to find a meeting place, as a few months prior, SIRVA had established a headquarters for its European operations in Milton Keynes, the United Kingdom. The location, which was opened in June 2003, was to be known as "a Centre of Excellence," and was to serve as a "central point for all European operations" (the "Centre").

101. So, as the Former Senior European Finance Executive explained, SIRVA executives traveled to the United Kingdom in October 2003 to hold a meeting at the Centre. The meeting was attended by SIRVA CEO Brian Kelley, SIRVA CFO Joan Ryan, European Operations Managing Director Mike Kingston, and the Former Senior European Finance Executive himself.

102. At the meeting, the two European executives told CEO Kelley and CFO Ryan that the $37 million was simply unattainable. They explained the downward trend in profits and the history of the budget misses, pointing out to them that the budget for 2003 had been approximately $28.5 million, but European Operations had missed it by about $7 million, posting only $21 in profits. And the year before that, the budget had been about $26.5 million, but they had missed it by $3.5 million, posting only $23 million in profits in 2002.

103. The Former Senior European Finance Executive then told Kelley and Ryan point blank that the European operations were experiencing declining demand, revenue

shortfalls, an inability to further cut costs, and an inability of acquisitions to perform up to expectations, and that these were all reasons for the European Operations' serious problems.

3. Defendants Informed during the November 2003 Conference Call

104. Defendants Kelley and Ryan returned home, and shortly thereafter, in November 2003, they held another meeting with the Former Senior European Finance Executive. The meeting was by telephone conference call, and the call included Kelley, Ryan, and Chairman Jim Rogers.

105. The European executives' explanation of the problems at the European operations at the last meeting had apparently made an impression on management, as Rogers told the Former Senior European Finance Executive that the expected profits for 2004 had been lowered from $37 million to $31.4 million, a nearly 15% drop.

4. Defendants Informed at the December 2003 Royal Chelsea Meeting

106. The next meeting Defendants scheduled to discuss the European operations was held on December 12, 2003. The Former Senior European Finance Executive explained that it was on this day that the SIRVA Board of Directors was to meet at the Royal Hospital Chelsea in London, as Board member General Sir Jeremey Mackenzie (who joined the SIRVA Board on July 7, 2003) is the Governor of that institution and was apparently able to secure meeting facilities there.

107. Before the Board meeting, the executives held their own meeting. In addition to the Former Senior European Finance Executive, the meeting was attended by Kelley, Ryan, Kingston, and the newly arrived President of SIRVA's European & Asia Pacific Operations, David Nicol. The Former Senior European Finance Executive and Kingston updated Nicol on the budget, and *again discussed the problems facing the European operations*.

5. Defendants Informed by January 2004 PowerPoint and Email

108. The Former Senior European Finance Executive confirmed that by mid-January 2004 it was clear that European Operations would not meet their monthly targeted goals, and that the mid-January results were "significantly less" than the budgeted figure. As a result, the Former Senior European Finance Executive submitted a six-page PowerPoint presentation to Kelley and Ryan showing them "more likely what the numbers were going to be." He also emailed updated budget numbers to Kelley, Ryan, and Head of Financial Planning and Analysis John Springer.

6. Defendants Informed at the Leadership Summit

109. About a month later, in February 2004, (less than three months after the IPO, but before the SPO), both the Former Senior European Finance Executive and the Former SIRVA Relocation Business Development Executive (during the Class Period) separately revealed that SIRVA management held a large meeting called the "SIRVA 2004 Leadership Summit" at the Doral Golf Resort & Spa in Miami, Florida.

110. The Former SIRVA Relocation Business Development Executive said that he "got a big invite by the President" to attend the February 2004 Summit, which also included "all senior level management," as well as the Board of Directors. Specifically, he recalled Defendants Jim Rogers, Brian Kelley, and Joan Ryan attended, as well as Stephan Branch, Acting CFO Ron Milewski and Senior Vice President and General Counsel Ralph Ford. He also recalled that CD&R principal Richard Schnall attended, because a friend and colleague had played golf with Schnall. The Former SIRVA International Division Executive also confirmed that Schnall was there, as well as board member Carl Stocker.

111. The Summit lasted three days and three nights – arriving on a Monday evening and leaving on a Thursday. The Former SIRVA Relocation Business Development

Executive said that the Summit consisted of one large meeting each day. "It was a full day of meetings on the first day, with Power Points and everything. It was kind of a state of the union address." Attendees were all given a leather portfolio to take notes.

112. The Former SIRVA International Division Executive confirmed this, saying "in the mornings, we had formal sessions. The leader of each business unit presented the results from the prior year and the expectations for the next year. Rogers and Kelley then would give their overview."

113. As explained by the Former SIRVA Relocation Business Development Executive, during the first meeting, both Brian Kelley and Jim Rogers singled out leadership from the European Operations as "weighing down" SIRVA profits. Kelley was actually "pointing the finger to senior leadership" of the European Operations, saying they were "*not profitable* on this side of the house." These executives also "discussed the European operations were losing money" and said that "the numbers were lousy and *Europe was bringing the Company down*."

114. The Former SIRVA Relocation Business Development Executive reported that the second day everyone played golf, and at night, the Company had its annual awards presentation. The Former SIRVA International Division Executive also reported that following the formal morning session, the attendees were free to go play golf, and the evenings were "networking" opportunities, with dinner and drinks.

115. At some point during these activities, the Former Senior European Finance Executive met personally with SIRVA CFO Ryan. He again informed Ryan that the 2004 numbers provided for the European Operations were unattainable. He also told her that he did not think she had paid heed to his prior warnings about Europe.

116. A Former SIRVA Controller in Europe corroborated this meeting, saying that the Former Senior European Finance Executive participated in a meeting with Defendant Ryan while in the U.S. in February 2004, at which the Former Senior European Finance Executive expressed his differences with Ryan, to which Ryan reportedly instructed the Former Senior European Finance Executive, "if you want to be on my team, you better follow my directions."

117. The Former Senior European Finance Executive said that SIRVA's President of European and Asia Pacific Operations, David Nicol, who had just been hired on January 9, 2004, was also in attendance at the Summit. Afterwards, when they retuned to Europe, they discussed the situation together. It wouldn't be long until they knew Europe's results for the first quarter of 2004.

7. <u>Kelley Goes Ballistic</u>

118. When Kelley got the report from Europe showing that they had missed their profit target for the first quarter of 2004 by about $1,000,000, or 33% of the amount it was expected to obtain, the Former Senior European Finance Executive said that Kelley went "ape-shit" and "ballistic." Rogers and Kelley phoned Europe, and told Nicol to "come to New York and explain the numbers."

119. At the meeting, which according to the Former Senior European Finance Executive took place at CD&R headquarters in New York sometime in late March or early April 2004, Rogers and Kelley were visibly upset. But, according to the Former Senior European Finance Executive, Nicol (who had only been with SIRVA for three months) could not understand how Kelley and Rogers were so upset about the miss, since the Former Senior European Finance Executive had been telling Kelley and Rogers *for months* that the numbers

were unattainable because of the problems the European Operations had long been experiencing.

8. European Management Resigns

120. Not long afterward, in April 2004, Nicols decided to resign his position. A Former SIRVA International Division Executive also confirmed that Nicol informed Kelley and the Board of Directors of the bad results for the European Operations in April 2004, and shortly thereafter, "Nicol suddenly was no longer in his position." In addition, about one or two months after that, the Former Senior European Finance Executive also decided to resign.

9. Other High Level SIRVA Employees Confirm Management Knew of the Problems in Europe

121. It is not just the Former Senior European Finance Executive and the Former SIRVA Relocation Business Development Executive who have revealed Defendants were given detailed knowledge about the problems in Europe. Indeed, multiple other Former employees have confirmed the fact that there were serious problems in Europe, and that Defendants were well aware of it.

10. Defendants Were Informed in Other Meetings and Conference Calls

122. For example, a Former TransGuard Finance Executive reported that SIRVA held a Monthly Operations Review Meeting on the third or fourth Wednesday of each Month in the Company Board Room in Westmont, Illinois. Defendants Kelley and Ryan attended the meeting, as well as those who reported directly to them. The President of each SIRVA Division attended and they could bring financial support staff to the meetings. The meetings generally began at 7:00 a.m. and lasted the whole day.

123. During the Monthly Operational Review Meetings, participants reviewed "pared down" versions of financials. SIRVA European Operations "were always struggling," according to the Former TransGuard Finance Executive. The participants would

spend at least an hour discussing European Operations, whereas discussion of the Network Services Division usually lasted no more than ten minutes.

124. According to a Former SIRVA Corporate Finance Director, the "finance chief" for each European operation participated in a monthly conference call with SIRVA Controller Denny (Dennis) Thompson. These conference calls took place a couple of days after the beginning of each month or a "few days after the close of books." A Former SIRVA Controller in Europe reported that during monthly financial meetings SIRVA European Operations "always had losses."

125. The Former SIRVA Global Business Development Executive reported that he participated in sales calls involving European Operations every Thursday morning, between 9 a.m. and 11 a.m. EST. Executive participants in the call included Brian Kelley, Stephan Branch, and Tim Callahan. He confirmed that it was "widely known" even before the SIRVA IPO that there were "problems in Europe." As he explained it, "it was always a joke that people just rolled their eyes."

11. <u>Other SIRVA Insiders Confirm The Serious Problems in Europe</u>

126. According to a Former SIRVA International Pricing Specialist, it was "pretty well known" prior to and during the Class Period that the international operations "were in a slump." "They were always bringing in emails and figures showing we weren't meeting our numbers." "We always had the feeling we were going to be fired because the numbers were so bad," said the Former SIRVA International Pricing Specialist.

127. In mid 2003, SIRVA promoted Executive Stephen Branch to Vice President of Marketing and provided him with a staff to market SIRVA European Operations, according to the Former Senior European Finance Executive. However, Branch was unable

to bring in any new business, according to the Former Senior European Finance Executive, a fact that was regularly discussed in commentary to the monthly numbers.

128. A Former SIRVA Relocation Market Research Manager who had contact with the European operations also confirmed that the SIRVA sales force in Europe was "in constant turmoil," and Branch went back and forth between Europe and the U.S. repeatedly. He added that in Europe "it was a revolving door in sales and no one was meeting their quotas." In addition, the sales force in place was "not booking any revenue or prospects into the system."

129. A Former SIRVA Sales Manager also confirmed that he knew in March 2004 that "the Company was losing money in TransGuard and Europe."

130. The Former SIRVA International Division Executive knew through conversations with SIRVA executives that the European Operations of SIRVA were not going to meet earnings as early as April 2004. Further, based on his conversations with Moving Services President Mike Fergus and CFO of Moving Services Steve Cumbow, the witness was "led to believe Europe was in trouble long before the third quarter of 2004." Finally, the witness recalled that Mike Kingston and Kevin Pickford "complained a lot about revenues being down."

B. Defendants Know but Hide from Investors, or Are Severely Reckless in Not Knowing, that TransGuard is Under-Reserved

1. Defendants Fail to Adjust Insurance Loss Reserves

131.01. Europe wasn't the only area in which Defendants issued fraudulent statements and withheld material information from investors. They also lied with respect to their insurance reserves. By purposefully underaccruing SIRVA's insurance reserves – or in other words, not sufficiently accumulating and setting aside money to offset potential liability – Defendants were able to overstate SIRVA's earnings in publicly disseminated documents throughout the Class Period, because money which should have been set aside to cover insurance expenses was instead reported as revenue, thus artificially boosting earnings. In addition, even if Defendants claim they did not know of certain insurance reserve false statements and omissions, then as shown below, they were severely reckless in not knowing that such statements were false and that such information was being omitted.

2. <u>The Confidential Sources</u>

131.02. Multiple witnesses have stepped forward to reveal their knowledge about SIRVA's serious and systemic under-reserving of its insurance reserves. Each of these sources is a former SIRVA employee who worked directly with SIRVA's insurance products and SIRVA's insurance reserves during at least some, if not all, of the Class Period, and therefore is in a unique position to know numerous details otherwise unavailable to outsiders, including investors and analysts. This section details the descriptive title of each of these sources, their job duties, their time of employment, and additional detail showing how they had access to such information.

a. The Former TransGuard General Accounting Manager

131.03. The Confidential Source identified as the Former TransGuard General Accounting Manager was employed by SIRVA in its TransGuard Division. He served in this position from approximately December 2003 until December 2004. The witness described his position generally as being a SIRVA "corporate" employee, as opposed to a TransGuard employee. His responsibilities as a general accounting manager for TransGuard included ensuring that TransGuard's financial obligations were timely met and recorded.

131.04. The Former TransGuard General Accounting Manager said that Allied Van Lines ("Allied") and North American Van Lines ("NaVL") were insured for Bodily Injury and Property Damage ("BIPD") for $10 million. The first $500,000 of insurance was "self insured" by the agents, and TransGuard Insurance provided the next $1,000,000 in BIPD insurance. An entity named Protective Insurance Company, which is owned by Baldwin Lyons, provided the remaining $8,500,000 of BIPD insurance for the Allied and NaVL agents. In other words, Protective Insurance Company provided insurance for liability ranging from $1,500,000 up to $10,000,000.

131.05. He explained that TransGuard "administered" the fund, but the fund was "more SIRVA corporate," meaning that SIRVA corporate operated the fund. The premiums SIRVA paid to Protective Insurance Company were based on the revenues of the Allied and NaVL agents. "They charged premiums based on hauling revenues." He also said that the premium equaled roughly .039 cents for $100 of hauling revenue generated by the agents. "It worked out that we paid premiums to Baldwin Lyons of about $400,000 to $500,000 per month," and he described the premiums paid as a "zero balance fund," meaning that as part of the insurance agreement with Protective Insurance Company, if "claims did not materialize, Baldwin Lyons would issue us a credit" at year end. He alternatively described this premium credit as a "refund on premiums."

131.06. As far back as the beginning of 2003 and during his entire employment with SIRVA, the Company booked the projected year-end refund as a receivable on a monthly basis. He said that the corresponding journal entry for the refund was to reduce either Cost of Goods Sold or other general expenses on a monthly basis. He was also responsible for booking the potential premium refund as a receivable in the general ledger and also reducing either Cost of Goods Sold or general expenses by a corresponding amount.

131.07. He also recalled generally that there was a "horrendous accident" at the end of 2002, so no refund was forthcoming, apparently for 2003 or 2004. Regardless, SIRVA continued to book the receivable and corresponding expense in the general ledger throughout 2003 and early 2004. He said that after the Former TransGuard Vice President of Finance left TransGuard employment in April 2004, the TransGuard General Accounting Manager brought the BIPD Fund receivable to the attention of the newly appointed Vice President of Finance Julee Gard. Nevertheless, the Company didn't stop booking the BIPD refund as a receivable until September 2004. "It was still listed as a receivable." He said SIRVA eventually had to write-off approximately $1,400,000 of overstated receivables which had resulted directly from the improper booking of the BIDP refund as a receivable.

131.08. The Former TransGuard General Accounting Manager also revealed that the NAIT cash account was "off by $4 million to $5 million" at the time Julee Gard began working for SIRVA in approximately April 2004. He said he believed the bank accounts "had not been reconciled since they [NAIT] were acquired in April 2002." As one of her first duties, Gard was intent on moving the NAIT accounting department from Kansas City to Westmont. When Gard went to the Kansas City office, she "got all the records going back to April 2002." "She was going to try to recreate the aging process. We had 10 to 12 temps working in the basement for months, to re-book billing." "They were still doing it" when he left SIRVA employment in December 2004. "They are going to have to take a charge of about $5 million because the receivables were off by about $5 million when I left." He said that the receivables were overstated "across the board."

b. The Former NAIT Occupational Accident Claims Supervisor

131.09. The Confidential Source identified as the Former NAIT Claims Supervisor in the First Consolidated Amended Complaint is now more specifically identified as the Former NAIT Occupational Accident Claims Supervisor. He served in the NAIT Division of TransGuard in Kansas City, Missouri from September 2004 until he chose to resign from the Company in late January 2005. During his tenure with TransGuard and SIRVA, he reported to Claims Manager Dave Logan. He said that Logan oversaw both the Occupational Accident Department and the NAIT Workers Compensation Department, and reported to Vice President of Claims Mike Keeling.

131.10. He said that the Occupational Accident Department of NAIT consisted of three adjusters, two clerical support personnel, and one Supervisor (himself). He estimated that each adjuster within the Occupational Accident Department handled an average of 200 files at a time. He also recalled that one of the clerical support personnel had approximately 300 files in process when he left NAIT employment. He explained that claims submitted to NAIT were not immediately assigned to an adjuster until all the necessary documentation had been received. Necessary documentation included wage information, dispatch reports and medical files. "Until the documentation came in, the claims were stuck in the hopper," he said.

c. The Former SIRVA Vice President of Pricing and Contracts

131.11. The Confidential Source identified as the Former SIRVA Executive of Pricing in the First Consolidated Amended Complaint is now more specifically identified as the Former SIRVA Vice President of Pricing and Contracts. He served the North America Van Lines Division of SIRVA from June 1, 2003 until he resigned on January 8, 2004. He referred to the division in which he worked as "Specialized Transportation," which he described as the "old Nav[a]l Fleet," referring to North American Van Lines. He reported to President of Specialized Transportation Division John Dupuy, and said that Dupuy reported directly to Defendant CEO Brian Kelley.

131.12. His position put him in the important role of running pricing contracts for the Specialized Transportation Division. He based pricing and costing on "cost models and tariffs." The Division was "constantly losing money," beginning at least one year prior to his employment with SIRVA and continuing through when he left the Company. He said the Division was purchased by some "larger agents," and it instantly became profitable. He said that agents are SIRVA "internal clients" that he described as local moving and storage companies. These agents brought in customers to the business, and SIRVA provided contracts, pricing, insurance and management for the business. The agents did the "final mile." In other words, he said, SIRVA picked up materials to be moved, moved the materials to the city of final destination and stored the materials. The Agents then picked up the materials from storage, and moved the materials to the final destination.

d. The Former TransGuard Supervisor of Insurance Accounting

131.13. The Confidential Source identified as the Former TransGuard Supervisor of Insurance Accounting served in the accounting department for the TransGuard Division of SIRVA from March 1999 until he left the Company in October 2003. He began his tenure with TransGuard as Staff Accountant for the TransGuard General Agency, and was later promoted to Financial Analyst and finally, prior to the TransGuard acquisition of NAIT in April 2002, he was again promoted to Supervisor of Insurance Accounting. As Supervisor of Insurance Accounting, he was responsible for reviewing all journal entries made on the "agency-side," and as described further below, was involved in the NAIT due diligence.

131.14. The Former TransGuard Supervisor of Insurance Accounting prepared an "internal report on a monthly basis" that basically "provided the entire financial package" to TransGuard President Larry Writt, Vice President Dan Briody, Vice President Susan Richardson, and CFO Defendant Joan Ryan. He described the report as an "internal measuring stick," comparing month-to-date and year-to-date numbers against prior periods. He also said that before SIRVA went public, the Company reported internal financial results on a monthly basis.

e. The Former NAIT Workers Compensation Claims Manager

131.15. The Confidential Source identified as the Former NAIT Claims Manager in the First Consolidated Amended Complaint is now more specifically identified in this section as the Former NAIT Workers Compensation Claims Manager. In addition to this position, he also served TransGuard in a variety of other positions from 1989 until February 2005. For ten years or more, he worked as a Claims Manager for TransGuard. He reported to the position of TransGuard Vice President of Claims, Don Smith. He revealed that prior to 2002, TransGuard operated its claims departments out of the then-company headquarters in Naperville, where it wrote and administered Occupational Accident, Occupational Comp., and Physical Damage insurance policies.

131.16. Prior to SIRVA's acquisition of NAIT in April 2002, he served as Occupational Accident Claims Manager. After the acquisition, he began working as the Worker Compensation Claims Manager. He said that at the time of his departure from the Company in February 2005, SIRVA was in the process of closing the Kansas City claims department in its entirety. He also said that Claims Manager Dave Logan oversaw the Kansas City, Missouri claims office. Logan reported to the position of Vice President of Claims Don Smith, and later Mike Keeling. The Former NAIT Workers Compensation Claims Manager says he left the Company about 15 months after the IPO because he was "feeling like the Company didn't care about the quality" as much as he did. When asked to clarify "Company," he said he was referring to SIRVA "upper management and up."

f. The Former TransGuard Vice President of Finance

131.17. The Confidential Source identified as the Former TransGuard Finance Executive in the First Consolidated Amended Complaint is now more specifically identified in this section as the Former TransGuard Vice President of Finance. He served TransGuard from October 30, 1995 until he left the Company on April 19, 2004. He started as a Supervisor for TransGuard, and worked his way up to Vice President of Finance. Prior to the IPO, his responsibilities were within the TransGuard Division. After the IPO, he served as Vice President of Finance for the Network Services Division, and reported directly to CFO Defendant Joan Ryan. He also said he had [organizational chart] “dotted-line” reporting responsibility to President of Network Services Larry Writt.

131.18. The Former TransGuard Vice President of Finance said he sat on a Committee that reviewed insurance claims to set reserves. Initially, the Committee reviewed only claims of more than $25,000. However, the Committee raised the minimum claim level that required Committee review to $50,000 sometime late in 2003, but definitely after the Company IPO. “It got to the point that there were so many claims at or about the $25,000 mark,” that the Committee raised the review floor to only claims with a potential reserve of $50,000 or more. Vice President of Claims Don Smith suggested the increase in level of claim to be reviewed, and Writt approved the increase.

131.19. He said that the Reserves Review Committee met on the third Thursday of each month, at 9:00 a.m. in “any available conference room” on the first floor of the SIRVA Westmont facility. Don Smith was in charge of setting the location for the meeting. In addition to the Former TransGuard Vice President of Finance, Committee members included Smith, SVP of Operations Marshall Felbrein, Director of Underwriting for Moving Services Division Susan Richardson, President of NAIT Don Briody, Mike Keeling (who replaced Smith as VP of Claims in approximately February 2004), Jim Gulley and Writt. Claims Managers also attended Committee Meetings and “told us what claims reserves should be set at.” The meetings lasted roughly one to two hours, depending on how many claims were reviewed. Typically, the Committee reviewed 20 claims per month.

131.20. The Former TransGuard Vice President of Finance also said that on the third or fourth Wednesday of each month, SIRVA top executives met in the Company Board Room in Westmont for a Monthly Operational Review Meeting. Defendant/CEO Brian Kelley and his "direct reports" attended this meeting. Joan Ryan "absolutely" attended this meeting as well. In addition, the President of each SIRVA Division attended. The Division Presidents could bring "financial support" staff to the meetings as well, if their presence was required. The Former TransGuard Vice President of Finance said he personally attended a few of the Monthly Operational Review Meetings, which generally started at 7:00 a.m. and lasted the entire day. During the course of the meeting, participants reviewed "pared down versions of financials." Larry Writt would do a presentation at the meetings related to the Network Services Division.

131.21. The Former TransGuard Vice President of Finance said that SIRVA developed its loss reserves internally "if we had enough of our own data." However, "if we had good solid data, we use our own. If we didn't have enough data, we used industry standards or we went to PwC for their thoughts." In addition, he explained that TransGuard previously served almost as a broker for workers compensation insurance. "There are two categories of insurance – Direct and Assumed. Direct is when you write the insurance yourself. Assumed is when there is a different underwriter that goes out and seeks other insurance companies to assume some of the risk." For most of 2003, TransGuard provided workers compensation on an "assumed basis." TransGuard assumed workers compensation policies from Clarendon National Insurance Company ("Clarendon"). In late 2003, TransGuard started its own Direct Workers Compensation business line. Because TransGuard had no historical data to accurately set a Loss Ratio for workers compensation policies, "we set our reserves at their [Clarendon National] level."

131.22. The Former TransGuard Vice President of Finance provided additional information regarding the relationship between Clarendon and TransGuard Insurance. TransGuard partnered with Clarendon immediately following the SIRVA acquisition of NAIT in April 2002. From April 2002 through January 1, 2003, only the Kansas City office offered Clarendon-written policies. During this eight-month period, the Westmont office issued Fireman's Fund worker compensation insurance.

131. 23. "Clarendon was asking a lot of questions," and definitely had a problem with the processes employed by TransGuard and NAIT going back as far as 2003. The problem arose because of the NAIT "pre-processor," which was supposed to "accept downloads from our system, and electronically send the information to Clarendon." But the FronTier software system had so many problems that it could not send the information electronically to Clarendon. Indeed, NAIT Accounting Manager Heather Bennet manually put together an Excel spreadsheet showing every single NAIT worker comp policy, the effective dates, premiums, name of insured, address of insured, annual policy amount and annual premium amount. The worksheet also showed premiums earned and premiums un-earned. He further explained that Premiums Earned were calculated by total premium amount divided by 365 and multiplied by the number of days the policy had been in effect. He provided an example of an annual policy of $12,000, saying "if you wanted to know premiums earned at the end of January, the formula would be ($12,000/365)x31."

131.24. Clarendon was "suspect of the premium numbers" because the numbers were not being generated automatically from FronTier, but instead were being calculated by Bennett's manual entries into an Excel spreadsheet. As a result, the Former TransGuard Vice President of Finance participated directly in "Premium Reviews" in the final days of December 2003. The "Premium Review" lasted three days. He also recalled specifically working on the "Premium Review" on New Year's Eve, December 31, 2003. "Clarendon gave us only three days" because Clarendon had been in the process of wrapping up their year-end books. Clarendon also "had some questions about our premiums, and Larry [Writt] sent" them to me. So, "I basically pulled several policies and did a data dump into our old Co-Star system to ensure the accuracy of the numbers." He said "beyond a doubt" that Ryan was aware of his participation in the "Premium Review," and therefore Ryan should have known of the problems Clarendon had with the TransGuard premiums. In addition, the Former TransGuard Vice President of Finance knows the problems with Clarendon continued even after he left TransGuard employment because a SIRVA Accounting Manager called him to seek his help on how to conduct the Clarendon "Premium Review."

131.25. Also, according to the Former TransGuard Vice President of Finance, every month TransGuard Director of Financial Planning and Analysis Holli McCardle prepared a Monthly Financial Package. The Monthly Financial Package was distributed to Joan Ryan, Brian Kelley, Larry Writt, TransGuard Senior Vice President Marshall Felbein, as well as the Former TransGuard Vice President of Finance. The "individual business line" Vice Presidents (Moving and Storage Vice President Susan Richardson, NAIT Vice President Dan Briody and General Freight Vice President Jim Gulley) received a "scaled down" version, which contained "just their piece" of the business.

131.26. The Monthly Financial Reports were distributed to each of these individuals by the third week of each month, since at least the time of the Company IPO. The Monthly Financial Report was distributed in paper hard copy to each of the recipients, were broken down by business line, and again broken down even further between premiums written and losses incurred. Further, the Monthly Financial Report showed actual premiums versus budget, actual premiums versus prior year and month-to-date premiums sales figures. This analysis was completed for both premiums and losses for each line of business.

131.27. The Former TransGuard Vice President of Finance was recently deposed by the United States Securities & Exchange Commission in connection with its formal investigation into the Company (as further described in Paragraph 340 below). His attorney, who defended him at the deposition, confirmed that the examiner's line of inquiry included numerous questions with respect to SIRVA's insurance reserves. His attorney also indicated that his client would no longer be able to provide information to Lead Counsel in this action without a subpoena.

g. The Former TransGuard Manager of Underwriting

131.28. The Confidential Source identified as the Former TransGuard Manager of Underwriting served TransGuard from 2002 to 2005. In his position, he oversaw selection, pricing, and profitability, and was responsible for audits. He also developed and implemented a formal training program based on audit findings. In his position, he led the Company in establishing processes/testing, and implementing changes with regard to Sarbanes Oxley, and handled all escalated customer service issues, annual performance reviews for his direct reports, budgets, and payroll. His daily responsibilities also included marketing TransGuard's product lines to attract prospective agencies, as well as negotiating contracts, commissions, and contingency plans. He reported to Director of Underwriting Susan Richardson.

131.29. Based on his position and direct observations, the Former TransGuard Manager of Underwriting said that he "absolutely knew" the Company was under-reserved for insurance long before the Company announced publicly it would take a charge to insurance reserves. He said he knows that because he was involved in a number of "underlying conversations" involving the fact that TransGuard was under-reserved for its insurance business. For example, he recalled a specific meeting in "mid 2003" in a Company conference in which the meeting participants were told "we have a $15 million oops." He said that the meeting included Vice President of Claims Mike Keeling, TransGuard Vice President Jim Gulley, Director of Underwriting Richardson, TransGuard President Larry Writt, and possibly others. During the meeting, the participants discussed the fact that "reserves are going to be way off." The participants then discussed "sliding the short fall" into the General Freight business line, which the Company could later sell and hide the missing reserves. "Within 45 to 60 days" after the meeting, SIRVA had sold the General Freight business line.

h. The Former SIRVA Director of Corporate Reporting

131.30. The Confidential Source identified as the Former SIRVA Director of Corporate Reporting served SIRVA from December 2004 until he left the Company on September 30, 2005. He described his job responsibilities with SIRVA as "basically drafting the most of the 10-K for 2005." In the process of preparing the Company 2005 Form 10-K, he was responsible for several "due diligence items," which included personally interviewing several TransGuard employees regarding the Company's insurance reserve manipulations. He revealed that when the final report from the Company's internal investigation came out, the report was "so damning that the Company's internal counsel resigned 30 days later." Commenting further on the report, he said "I can't believe they sent that report in an email – it's a roadmap for an indictment." He also confirmed that there was a "scheme to conduct the secondary offering prior to revealing the problems with the insurance reserves," and that he has information regarding misstatements of what he termed "material" facts contained in the secondary offering prospectus.

3. SIRVA's Insurance Business

132. SIRVA's Network Services Division consists of two subsidiaries, TransGuard and NAIT.

a. TransGuard

133. SIRVA acquired TransGuard in 1999. TransGuard is a wholesale general property and casualty insurance agency with multi-state locations serving independent insurance agents that specialize in the transportation industry. Through the local agent, TransGuard provides a package of policies, including commercial auto liability, commercial auto physical damage, general liability, property, cargo, warehouse, crime, umbrella, workers compensation, and ancillary coverages.

133.1. The Former TransGuard Vice President of Finance confirmed that TransGuard is divided into three separate divisions: (1) Moving & Storage; (2) NAIT; and (3) General Freight (which he said is also referred to as Small Fleet). He said that Susan Richardson oversaw the Moving & Storage Division, Dan Briody oversaw the NAIT Division, and Jim Gulley oversaw the General Freight Division.

b. NAIT

133.2. SIRVA acquired NAIT (the National Association of Independent Truckers) in April of 2002. NAIT is an association of independent owner/operators which provides business support for its members, including comprehensive insurance, truck services, communication programs, personal services, and more. In exchange for annual membership dues of $122, NAIT offers products and services such as fuel and tire discounts, emergency breakdown assistance, retirement programs, legal assistance, calling cards and overnight delivery. NAIT members are also offered a range of insurance services by TransGuard.

135.1 According to a Former TransGuard Vice President of Finance, prior to and during the Class Period, and going into the IPO, SIRVA "didn't want an insurance group reported on its own," so the Company "wrapped other services around" TransGuard and created the Network Services Division. Therefore, SIRVA's insurance business is part of its Network Services division. Based on the Former TransGuard Vice President of Finance's estimates, TransGuard accounted for roughly 50% of Network Services' overall revenue and 80-90% of earnings.

c. TransGuard is Network Services

136. Along with some other minor interests, TransGuard and NAIT are part of SIRVA's Network Services segment. However, as SIRVA reveals in its November 24, 2003 Prospectus, TransGuard makes up the vast majority of the income of the Network Services Segment. SIRVA's November 15, 2004 10-Q also says that the Network Services segment "is predominantly an insurance business."

4. <u>Manipulating Reserves Boosts Short Term Profits</u>

137.1 Insurance is a highly regulated business, and as such, there are rules requiring insurance companies to set aside premium money to pay claims when it becomes known that it is likely a claim will be paid. The money that is set aside is called "reserves" or "loss reserves." According to SIRVA's November 25, 2003 Prospectus, reserves are supposed to "include provisions for reported claims, or case estimates, provisions for incurred-but-not-reported claims and legal and administrative costs to settle claims." In addition, the Prospectus also makes clear that reserve estimates are supposed to be "based upon past claims experience, knowledge of claims staff regarding the nature and potential cost of each claim and trends, and estimates of future claims trends."

138. Despite the rules, regulations, and procedures prohibiting such actions, SIRVA's executives didn't take long to discover that they could manipulate SIRVA's earnings upward by simply lowering (or not increasing) TransGuard's reserves. And that's exactly what they did.

5. NAIT Claims Were Under-Reserved Even Prior to the IPO

138.1. The Former NAIT Workers Compensation Claims Manager said that in January or February 2002, a couple of months prior to the SIRVA acquisition of NAIT, he and Vice President of Claims Don Smith traveled to the NAIT Kansas City headquarters to personally conduct due diligence. Specifically, he said that they were sent by SIRVA management to Kansas City to review NAIT claims reserves. Upon their arrival, he and Smith reviewed claims files for (1) the NAIT-written Occupational Accident claims and (2) Worker Compensation claims written by Fireman Funds and handled by NAIT. "We looked at each individual claim file. I would review the file notes, and if I had questions, I would look at the data in the file." The types of information he said they reviewed in the file included the potential exposure of the claims and the amount reserved for the claims. Upon completion of the due diligence review, he found the NAIT claims had been under-reserved. He reported his findings to Don Smith, and he said that Smith in turn reported the findings to TransGuard President Larry Writt.

6. TransGuard's Budget Setting Process

139.1 As they did with the European Operations, Defendants set budget goals for TransGuard. Normally, the budget numbers requested by Defendants Kelley and Ryan were transmitted to the President of TransGuard, Larry Writt, in approximately July of a given year for the following year's budget, according to the Former TransGuard Vice President of

Finance. For example, he said, Ryan and Kelley sent initial TransGuard 2004 budget numbers to Writt in July 2003.

140.1. According to the Former TransGuard Vice President of Finance, after receiving the budget numbers, Writt reviewed the requested numbers with the TransGuard Vice President of Finance, in or around September. TransGuard's President and Vice President of Finance would divide the numbers requested among the three TransGuard business lines: Moving and Storage, General Freight and NAIT. For the years 2003 and 2004 specifically, TransGuard's President and Vice President of Finance concluded that they would have to increase new business to meet budget expectations.

141.1. Following their initial review, according to the Former TransGuard Vice President of Finance, TransGuard's President and Vice President of Finance would meet with Defendants Ryan and Kelley in September/October in the Company board room, where Kelley and Ryan would "beat [TransGuard's President and Vice President of Finance] over the head to meet their numbers." Indeed, the Former TransGuard Vice President of Finance recalled specifically that for 2003 and 2004, Ryan and Kelley "put in ridiculous premium numbers."

142.1. According to the Former TransGuard Vice President of Finance, after the meeting with Kelley and Ryan, TransGuard's President and Vice President of Finance would meet with the heads of each business division: Dan Briody, Vice President for NAIT; Susan Richardson, Vice President for Moving & Storage; and Jim Gulley, Vice President for Transportation Services. The final step of the budget process included a final budget meeting in November or December, which the Chairman of the Board, Defendant Rogers, would attend.

142.2. In addition to the above-described meetings, both the Former TransGuard Vice President of Finance and the Former NAIT Workers Compensation Claims Manager recalled that CEO Brian Kelley continued to "push" NAIT Vice President Dan Briody to increase the NAIT numbers. In fact, the Former TransGuard Vice President of Finance recalled specifically that in a Monthly Operation Review Meeting in 2003 Kelley instructed Briody to double his premium numbers in two years.

143.1. TransGuard created a "budget worksheet" in Excel, which was set up "to get to the bottom line," and which took existing premiums and built off that to meet premium budget expectations set by Kelley and Ryan, according to the Former TransGuard Vice President of Finance. The budget worksheet included certain fixed costs, such as 12% claims administration, 2.5% premium tax expense, a 42% loss ratio for auto liability and a 55% loss ratio for worker compensation, he said.

144.01. According to the Former TransGuard Vice President of Finance, the budget worksheet also set forth how much each business line, for example, auto liability and worker compensation, contributed on a percentage basis to the total amount of premiums written by each TransGuard business center (e.g., Moving and Storage, General Freight and NAIT.). "We did see worker compensation increase within NAIT. It went from 15-20% all the way up to 40% of the monthly NAIT premiums written by the end of 2003." The percentages of premiums written by business line for each TransGuard profit center were also contained in the Monthly Financial Package distributed to Defendants Kelley and Ryan, among others (described below in VIII(D)).

144.02. The Former TransGuard Vice President of Finance said that the initially set TransGuard loss ratios would be appropriate if in fact TransGuard was booking the same type of business. However, "if you continue to put pressure on the premium number, you get a different type of business," and the loss ratio should be adjusted accordingly. In short, he explained, TransGuard generated more premiums from the workers compensation business, but did not update its loss ratio analysis to address this increased workers compensation business.

7. TransGuard Was Dangerously and Knowingly Understaffed

144.03. The Former TransGuard Vice President of Finance said that "we had a brand new CEO and CFO, and neither knew much about our [insurance] business." Most of the TransGuard executives, such as himself, Marshall Felbein, and Larry Writt had been with TransGuard for several years. "We knew the business." Still, "Brian [Kelley] and Joan [Ryan] would tell us 'we want a total of $200,000,000, and TransGuard, $50 million is your share." He explained that "we were thinking maybe $35 million to $38 million" when setting the TransGuard 2004 budget. "We ended up settling for $42 million or $43 million." However, "we could only increase revenues so much," the Former TransGuard Vice President of Finance explained. So, in an effort to meet the 2004 budget requirements, TransGuard began cutting staff, particularly claims adjusters and accounting staff.

144.04. He was particularly troubled by the cutting of the staff in early 2004 because he had participated in a meeting in the fall of 2003 with Defendants Kelley and Ryan, among other SIRVA and TransGuard executives, in which the pre-2004 staff cutback levels were already considered to be insufficient, particularly with regard to underwriting, claims and accounting. At this point, the Former TransGuard Vice President of Finance said that "Joan and Brian asked [PwC]" to conduct a review of the TransGuard business. Basically, he said Kelley and Ryan were looking for an analysis of staffing needs, and that the focus of the PwC examination of TransGuard was to find areas the Company could improve. In the course of their review, PwC met with several TransGuard executives, including himself, Dan Briody, Gene Garbaccio, Don Smith and Larry Writt. PwC also met with Kelley and Ryan, because PwC "wanted to know their expectations."

144.05. The Former TransGuard Vice President of Finance explained that he knows Kelley and Ryan knew that TransGuard was understaffed because he had traveled to an A.M. Best Insurance rating meeting with Kelley, Ryan, Writt and Holli McArdle in the fall of 2003. Following the meeting, PwC presented the findings of their TransGuard review to Kelley, Ryan, Larry Writt, McArdle, and the Former TransGuard Vice President of Finance. Specifically, two PwC employees -- John Merrigan and John Marra -- presented their review of TransGuard in a conference room at the Marriot hotel at the Newark, New Jersey airport. In addition, he said that PwC employee Jessica Armor participated via conference call because she was in California at the time working on the MovePak acquisition.

144.06. During the course of the meeting, PwC "focused on the lack of staff" within TransGuard, particularly in areas of claims adjusters, accounting and internal actuaries. PwC "looked at the number of accounts and premiums, and determined we were understaffed." The Former TransGuard Vice President of Finance recalled that the PwC analysis also went into the 2004 budget process.

144.07. Nevertheless, "in order to meet numbers, positions were still going to be eliminated" said the Former TransGuard Vice President of Finance. Indeed, contrary to the PwC advice in the 2003 Newark airport Marriot hotel conference, TransGuard continued to cut workers in late 2003 and early 2004, despite the fact that the top executives knew claims would increase with the increasing number of premiums being written, he said.

8. **The Understaffing and Under-Reserving Are Further Confirmed**

144.08. The Former NAIT Workers Compensation Claims Manager said that in April 2002, SIRVA acquired NAIT. In June 2002, TransGuard sent all "existing claims" in the Occupational Accident line of business to the NAIT Kansas City office. By December 2002, all "open claims" were sent to Kansas City and the Naperville independent contractor claims office closed. In early 2003, TransGuard started writing Worker Compensation insurance through Clarendon. In June 2003, TransGuard opened a claims department in the new Westmont headquarters.

144.09. However, the Former NAIT Workers Compensation Claims Manager said that in order to write Worker Compensation insurance, TransGuard had to first become licensed by individual states. While this licensing process was ongoing in early 2003, TransGuard partnered with Clarendon. Per the agreement between TransGuard and Clarendon, TransGuard would administer (bill, handle claims, etc.) the worker compensation policies, which would be written on "Clarendon paper." In other words, "TransGuard handled the claims operation." Some of the Clarendon business was handled out of the Westmont office, and some of the business was handled out of the Kansas City office. He further explained that the Kansas City office sold policies to independent contractors and small fleets, and therefore, Kansas City handled the Clarendon business sold into those channels. The Westmont office sold policies to traditional employers and handled the Clarendon business sold to those traditional employers.

144.10. The Former NAIT Workers Compensation Claims Manager said that once TransGuard partnered with Clarendon in early 2003, Clarendon was given the right to audit TransGuard's reserves for the Worker Compensation insurance written on Clarendon paper. He said that Clarendon scheduled audits for Kansas City every six months -- April 2003, October 2003, and April 2004. The Clarendon auditors came to the Westmont office only once, in October or November 2003. "The purpose of the audits was to ensure TransGuard was properly reserving for claims written on Clarendon paper." Clarendon contracted with a company named Altair to conduct the audit of the TransGuard books, who assigned an auditor named Roger Glasgow to perform the audits of TransGuard on behalf of Clarendon. He also revealed that following the first Clarendon audit in April 2003, Vice President of Claims Don Smith told him that there was "a big problem in Kansas City." "They are under-reserved and understaffed," Smith told him. The Former NAIT Workers Compensation Claims Manager was "surprised each time I was told by Don Smith about the problems that there didn't appear to be anything being done about it."

144.11. The Former NAIT Workers Compensation Claims Manager also revealed that PwC only reviewed the books in their entirety, while the Clarendon auditors had "looked at each individual claim file." In addition, he said he is certain the information conveyed in the Clarendon audits was known throughout SIRVA senior management, because a "couple of times each [Large Loss Reserve] Meeting" Dan Briody would "try to take down [reduce] reserves with regard to the Kansas City claims." He specifically recalled raising this issue with TransGuard senior management, especially in light of the problems arising from the Clarendon audits. He even recalled speaking with Kansas City office Claims Manager Dave Logan, who informed him that Briody "encouraged us to be optimistic in reserving."

144.12. He said that in June 2003, TransGuard began writing its own Workers Compensation insurance, whereas it had "initially sold" worker compensation coverage through Clarendon. "We just started writing for big insureds," as "before that, Kansas City had sold worker compensation for small fleets," he said. In early 2004, as accounts came up for renewal or as new business came in, TransGuard began to "write on TransGuard paper."

144.13. He explained that Worker Compensation insurance is "state regulated insurance" that is usually issued to an employer. Occupational Accident insurance, on the other hand, is sold to independent employees he said. In the case of TransGuard, Occupational Insurance is sold to independent truck drivers. All of the Occupational Accident Claims were handled in the Kansas City, Missouri office following the acquisition. However, before he left the Company, he was working on a plan to start handling Occupational Accident claims in Westmont, Illinois.

144.14. In November 2004, he said SIRVA made the decision to close claims operations in Kansas City, and transfer them to Westmont. "The Worker Compensation Claims were sent over first," and all other claims were sent over by November 30, 2004. He personally reviewed approximately 25% of the Worker Compensation claims sent over from Kansas City. For those 25% of the Worker Compensation claims alone, he estimated he "put over $500,000" toward Worker Compensation Claims Reserves, saying that if he had to raise reserves more than $500,000 for only 25% of the claims, then it is likely that TransGuard had to increase reserves at least $2,000,000 for Worker Compensation claims coming from the Kansas City office.

9. "Large Loss Reserve" Meetings

145.1. TransGuard held a so-called "Large Loss Reserve" meeting at 9:00 a.m. on the third Thursday of every month, according to the Former TransGuard Vice President of Finance, the Former NAIT Workers Compensation Claims Manager and the Former NAIT Occupational Accident Claims Supervisor. The meeting was held in a meeting room in the Westmont, Illinois headquarters. The meetings typically lasted one to two hours, depending on how many claims were reviewed. The meetings were led by Vice President of Claims, Don Smith, until he was succeeded by Mike Keeling, who changed the meetings to the fourth Thursday of every month.

146.1. Attendees at the Large Loss meetings included theVice President of Claims, the Vice President of Finance, the Senior Vice President of Operations, the Director of Underwriting for Moving Services Division, the NAIT President; the Vice President of Transportation Services, the TransGuard President, and the Claims Managers for each business line.

147.1. As the name of the meetings indicates, the Large Loss Reserve committee reviewed claims with potentially large losses. According to the Former TransGuard Vice President of Finance, initially the committee reviewed claims with potential damages of $25,000 and above. The amount of loss increased to $50,000 in late 2003 and, in January 2005, the amount of loss increased to $100,000.

148.1. Prior to the Large Loss Reserve meeting, the Claims Manager for each business line (i.e., Occupational Accident, Transportation Services, Moving and Storage, and Workers Compensation) had to prepare a one-page “Reserve Committee Sheet” and submit it to the Vice President of Claims, according to the Former NAIT Workers Compensation Claims Manager.

149.1. The Former NAIT Occupational Accident Claims Supervisor stated that he had to review the claims files for which he was responsible and submit analysis of those files to the Claims Manager for that business line by the 10th of every month. A Claims Manager would then review the analysis and meet with “higher ups.” The Former NAIT Occupational Accident Claims Supervisor estimated that there were roughly 20-25 large loss files in process, a large loss file being a file with a claim over $100,000.

150.1. The Reserve Committee Sheet prepared by each business line Claims Manager contained information such as (1) the name of the insured, (2) the name of the claimant, (3) the date of the accident; (4) a description of the accident; and (5) a Claims Manager assessment of where the claim was going, according to the Former NAIT Workers Compensation Claims Manager.

151.1. According to the Former NAIT Workers Compensation Claims Manager, at the very bottom of the one-page Reserve Committee Sheet, there was a line for current reserves and what the claim manager thought the reserve needed to be for each given claim. Below that line, there was a blank, which was to be filled in by the Vice President of Claims. The blank was supposed to show the total amount of reserve, including the current amount reserved and the amount to be increased. This space was intentionally left blank prior to the Large Loss Reserve meetings, because the entire Large Loss Committee would have to agree on the reserve increase prior to the Vice President of Claims filling in the amount.

152.1. After the Vice President of Claims filled in the total reserves, including the current amount to be increased, the Vice President of Claims signed the Reserve Committee Sheet, according to the Former NAIT Workers Compensation Claims Manager. Following the Large Loss Reserve Meeting, Claims Managers entered the revised information from the Reserve Committee Sheet into the respective claims handling system – called FronTier for Workers Compensation and Occupational Accident, and WINS for Moving and Storage and Transportation Services.

10. <u>Management Knows Reserves Are Being Manipulated Downward</u>

153.1. According to the Former TransGuard Vice President of Finance, at the meetings, NAIT Vice President Dan Briody would actively push reserves downward.

Sometimes, Briody even "got to the point of being angry" about "pushing to have his reserves lowered."

154.1. The Former TransGuard Vice President of Finance also revealed that Defendants Kelley and Ryan knew that Briody was manipulating reserves downward because Vice President of Claims, Don Smith, drafted very descriptive minutes of each Large Loss Reserve meeting. These minutes, the existence of which is also confirmed by the Former NAIT Workers Compensation Claims Manager, "were pretty descriptive."

155.1. In addition to Kelley and Ryan, the package consisting of the minutes was also distributed to TransGuard's President Larry Writt and each of the business unit leaders. As the Former TransGuard Vice President of Finance revealed, "You could see on the sheet and in the minutes that Briody wanted to push down the reserves."

156.1. Also, according to the Former TransGuard Vice President of Finance and Former NAIT Workers Compensation Claims Manager, a package containing the minutes of the previous meeting, along with the Claims Sheets, was distributed the day before the following committee meeting to the Defendants Kelley and Ryan, the TransGuard President, the TransGuard Vice President of Finance, and the business unit leaders – the Vice President of Moving and Storage, the Vice President of NAIT, and the Vice President of Transportation Services. The Vice President of Claims, Don Smith and later Mike Keeling, was responsible for distributing the package.

11. PwC Informs Management of Under-Reserving

157.1. As explained in ¶ 94, in addition to acting as SIRVA's auditor, PwC also acted as SIRVA's actuary. In that role, PwC came to TransGuard twice a year, on June 30th and December 31st, to provide a reserves analysis, according to the Former TransGuard Vice President of Finance.

158.1. According to the Former TransGuard Vice President of Finance, the Company provided PwC with (1) premium information, (2) paid claims information, and (3) current reserves. Current reserves consist of two categories: (1) case reserves and (2) Incurred But Not Reported reserves ("IBNR"). Case reserves were set out in the Large Loss Reserve Committee meetings, and were claims that "are known." Whereas, IBNR reserves are reserves for other claims that are out there, but have not yet been reported.

159.1. After PwC reviewed the information provided by the Company, PwC would provide the Company with a reserve analysis indicating whether the Company's reserves were adequate, according to the Former TransGuard Vice President of Finance. The reserve analysis report came in two bound books, which combined were about four inches thick, and it contained a three page summary, which specifically indicated the sufficiency of the reserves for each business line (Cargo, Warehouse, General Liability, Auto Liability, Auto Physical Damage and Worker Compensation) within each business unit (Moving and Storage, General Freight, and NAIT).

160.1. According to the Former TransGuard Vice President of Finance, the PwC reserve analysis was done twice each year -- June 30th and December 31st. The Company typically received PwC's reserve analysis report about a month after PwC began the analysis, according to the Former TransGuard Vice President of Finance. In other words, the Company typically received PwC's June 30th analysis by August, and PwC's December 31st analysis by February, he said. This is further corroborated by the Former TransGuard Supervisor of Insurance Accounting, who also confirmed that PwC provided a 2003 year-end audit opinion regarding the reserves, but that PwC did not set the reserves.

161.1. The Former TransGuard Vice President of Finance stated with certainty that Joan Ryan received a copy of each PwC reserve analysis during the Class Period, including the drafts of the reserve analysis for the period ending December 31, 2003. He said he knows Ryan received the PwC reserve analysis because when TransGuard received the final version of PwC's reserve analysis, PwC employees Steve Skov and Eugene (last name not recalled) came to the Company for a meeting to review the reserve analysis. He said that the meeting always took place in one of the conference rooms on the first floor. The attendees at the meeting included Defendant Ryan, the TransGuard Vice President of Finance, the Vice President for NAIT, the Vice President for Moving and Storage, the Vice President for Transportation Services, and the Vice President of Claims. TransGuard President Larry Writt would also occasionally attend. The participants in the meeting would review PwC's reserve analysis by looking at the summary page first, and then go through the details.

162.1. According to the Former TransGuard Vice President of Finance, PwC's reserve analysis for the period ending June 30, 2003 showed a large difference between December 31, 2002 and June 30, 2003, and indicated that the workers compensation business line was under-reserved by "seven digits" and up to $2 million. The Former TransGuard Vice President of Finance recalled that the numbers "jumped off the page."

163.1. After that, there was a delay in the Company receiving PwC's reserve analysis for December 31, 2003, according to the Former TransGuard Vice President of Finance. But when the Former TransGuard Vice President of Finance reviewed a draft of the December 31, 2003 PwC reserve analysis, it again showed that the TransGuard worker compensation business line was under-reserved by "seven digits," up to $3 million this time.

164.1. However, instead of increasing the reserves (and thus taking a hit on profits), the Former TransGuard Vice President of Finance revealed that Ryan told him that she wanted a different actuarial firm. In fact, Ryan was "pushing us to change the actuary," and "was adamant" about it. This occurred at a meeting in Brian Kelley's office in January 2004, he said, and he further confirmed that by July, PwC had been replaced as actuary. The Former TransGuard Supervisor of Insurance Accounting expanded on this, revealing that TransGuard switched from PwC auditing the reserves to Tillinghast helping to actually set reserves is (1) because the business lines were growing more complex and (2) because PwC "should not be developing and auditing numbers at the same time."

12. <u>TransGuard Manipulates Reserves to Meet Budget</u>

165.1. TransGuard did not account for reserves on an individual-policy basis, but instead, according to the Former TransGuard Vice President of Finance, TransGuard looked at the total picture of reserves for each business line. In other words, he explained, TransGuard did not make adjustments based on individual claims, but instead on the entire business line.

166.1. So, according to a Former TransGuard Supervisor of Insurance Accounting, and based upon his position, his duties, the internal reports he prepared and reviewed, and his first-hand observations, he reported that "to make the numbers, they would adjust reserves here and there." The former employee used the example, "say we were projected to hit $2 million in a quarter, but came in at $1.9 million, we would just change the percentage of reserves." He said that the change in a few percentage points generally was made in the "owner/operator" line of business.

13. <u>Management Turns a Blind Eye Even After Confronted with Under-Reserving</u>

167.1. The Former TransGuard General Accounting Manager reported that the recently deceased Gary Jinx was in charge of accounting for TransGuard reserves. In addition, he confirmed that "Jinx made the journal entries to record the reserves." The witness remembered from his conversations with Jinx that "Gary looked at the 'Yellow

Books' in March 2004 when he started and saw they were short about $4 million to $5 million in the worker compensation line."

168.1. The Former TransGuard General Accounting Manager said that Jinx reported the reserves shortfall immediately to Brian Kelley, Joan Ryan, and to some Tillinghast folks in a meeting. He said that even though Jinx discovered the reserves shortfall as early as March 2004 and reported his findings in the same timeframe to management, the Company did not take the charge to reserves because Jinx "had to convince them that they were under-reserved."

14. Top Level Management Knows the Reserves Are a Ticking Time Bomb

169.1. According to the Former SIRVA Vice President of Pricing and Contracts, SIRVA's Specialized Transportation division held "executive meetings" "once a month" "in the executive conference room in the Company's Ft. Wayne, Indiana facility." In addition to himself, participants in the meetings included all Vice President level employees and above, as well as a human resources employee, a member of the legal department, President of Specialized Transportation John Dupuy, Dan Roberson, and Dick Laine. The Former SIRVA Vice President of Pricing and Contracts explained that Dupuy reported directly to SIRVA CEO Defendant Kelley.

170.1. According to the Former Vice President of Pricing and Contracts, TransGuard Insurance "fell under the umbrella" of Specialized Transportation. He said that the TransGuard reserves were discussed in the context of the Executive Meetings participants reviewing the Division Profit & Loss Statements, which he said "SIRVA tracked on a facility and Division specific level." He confirmed that the TransGuard reserves situation "came up in several Executive Meetings," and were "a line item in costing that we would always discuss." Discussions focused on the fact that accruals were not keeping up with costs incurred. Based on his tenure at the Company, his participation in these meetings, the duties of his position, and his first-hand knowledge as an executive at the Company, he said that "it was widely known that we were going to take a big hit to reserves, and that we had a big balloon payment coming somewhere down the road." He also recalled specifically that these discussions occurred in his very first Executive Meeting in June 2003, confirming that "there was at least a six to nine month gap."

170.2. Based on his direct participation in numerous Executive Meetings, as well as for the reasons stated above, the Former SIRVA Vice President of Pricing and Contracts also revealed that the discussions focused on the fact that "based on current trends, the Division was already losing money." In fact, he said, "they just kept letting it go, hoping things would turn around." He said that "Dick Laine reported on the claims during the Executive Meetings," and that "Laine's presentation would always be something like 'here is what we should accrue and what the numbers *would* look like, but here is what we *will* accrue.'"

15. Confidential Sources Involved with the Post Class Period Investigation Confirm that the Reserves Were Understated

170.3. The Former SIRVA Director of Corporate Reporting reported that there was a "compromise" between PwC and Company management regarding the insurance reserves reported in the 2003 Company Form 10-K. He indicated that the compromise involved PwC ceding its role as the SIRVA insurance actuarial provider in exchange for allowing SIRVA to understate its insurance reserves in the Form 10-K. According to the Director of Corporate Reporting, PwC is "guilty as hell." As he explained, "at that time everybody thought for a two or three billion dollar company a two or three million dollar problem was not that big a deal." He further confirmed that "the 2003 10-K and every filing thereafter contained false statements." For example, he said that there was at least one $2 or

$3 million TransGuard entry that "people were saying reconciled and completed when they knew it was not true."

16. SIRVA Bails Out of Insurance Business

171.1. At the time of the filing of the First Amended Complaint on October 19, 2005, less than two years after the IPO, TransGuard was just a shell of what it once was. Its rating, which is the key metric for evaluating any insurance company's strength, was downgraded multiple times, including on August 17, 2005, when A.M. Best Co. reduced TransGuard to Fair, meaning that A.M. Best lowered TransGuard from "Secure" status to "Vulnerable."

172.1. Indeed, on September 21, 2005, SIRVA announced a definitive agreement to sell the stock of all its insurance-related interests, including TransGuard and NAIT, to reinsurer IAT Reinsurance Company Ltd ("IAT"). On January 5, 2006, SIRVA confirmed that it had completed the sale of TransGuard, NAIT, Vanguard Insurance Agency, Inc., and other related companies of its U.S. insurance services group to IAT.

VIII. DEFENDANTS HAD MOTIVE AND OPPORTUNITY TO MISREPRESENT SIRVA'S FINANCIAL RESULTS

A. Defendant CD&R's Suspiciously Timed Insider Selling

173. In addition to the indicators of scienter discussed above, Defendants were motivated to engage in the wrongdoing herein in order to allow Defendant CD&R and indirectly Rogers and Schnall to profit from their sales of SIRVA common stock during the IPO and the SPO. In fact, CD&R always intended to cash out its position in SIRVA. According to the Former SIRVA International Division Executive, the purpose of the SPO was an "exit strategy" for CD&R, they were going to have the secondary offering sometime in '04, and from there try to exit."

174. CD&R pocketed almost $430 million selling SIRVA stock in the IPO and SPO:

CD&R Fund	Shares Outstanding Before the Offerings	Shares sold in the IPO	% Sold in IPO	IPO Proceeds in Millions	Shares Sold in the SPO	% Sold in SPO	SPO Proceeds in Millions	Shares Outstanding After the Offerings	Total Proceeds in Millions
V	32,221,750	4,523,203	14%	$78.4	10,611,629	62%	$224.7	17,085,837	$303.1
VI	13,394,422	1,880,273	14%	$32.6	4,411,202	62%	$93.4	7,102,498	$126
								Total	**$429.1**

175. Defendants Rogers and Schnall had financial and controlling interests in the entities which sold a substantial number of shares during both the IPO and SPO offerings, thereby giving them a strong incentive to create the illusion that the Company's financial performance was better than it actually was.

176. According to the IPO and SPO Prospectuses, Defendants Rogers and Schnall were principals of CD&R, a private investment firm that is the manager of selling stockholders CD&R Fund V and CD&R Fund VI.

177. Defendants Schnall and Rogers were also limited partners of CD&R Associates V (the general partner of selling stockholder CD&R Fund V), and CD&R Associates VI (the general Partner of selling stockholder CD&R Fund VI).

178. Finally, Defendants Schnall and Rogers were stockholders and directors of CD&R Investment Associates II (the managing general partner of CD&R Associates V) and CD&R Investment Associates VI (the managing general partner of CD&R Associates VI).

179. According to the IPO Prospectus:

> Messrs. Rogers and Schnall may be deemed to share beneficial ownership of the shares owned of record by Clayton, Dubilier &

> Rice Fund V Limited Partnership by virtue of their status as stockholders of CD&R Investment Associates II, Inc., the managing general partner of CD&R Associates V Limited Partnership, and by Clayton, Dubilier & Rice Fund VI Limited Partnership by virtue of their status as stockholders of CD&R Investment Associates VI, Inc., the general partner of CD&R Associates VI Limited Partnership.

180. During the IPO, the two selling stockholders CD&R Fund V and CD&R Fund VI sold 4,523,203 and 1,880,273 shares respectively for a combined profit of $111,036,274. The two selling stockholders CD&R Fund V and CD&R Fund VI sold 10,611,629 and 4,411,202 shares respectively in the SPO for a combined profit of $318,108,446.

181. Between the two offerings, Defendants Schnall and Rogers had an indirect financial interest in the sale of a total of 21,426,307 SIRVA shares sold for combined proceeds of $429,144,720. These enormous proceeds provided Defendants with motive to misrepresent the financial results of the Company in order to drive up the offering price and increase proceeds for the investment funds in which they would share a controlling financial interest.

182. SIRVA's own Code of Business Conduct also sets forth Core Requirements relating to Insider Trading or Dealing & Stock Tipping, including the requirement that one "Never buy or sell the stock or other securities of SIRVA or any company while you have inside information about the company." Policy No.CCP-503, at pg. 43. Defendants violated this Policy when they sold thousands of shares of SIRVA stock while in possession of materially adverse information about the Company that was not yet revealed to the investing public.

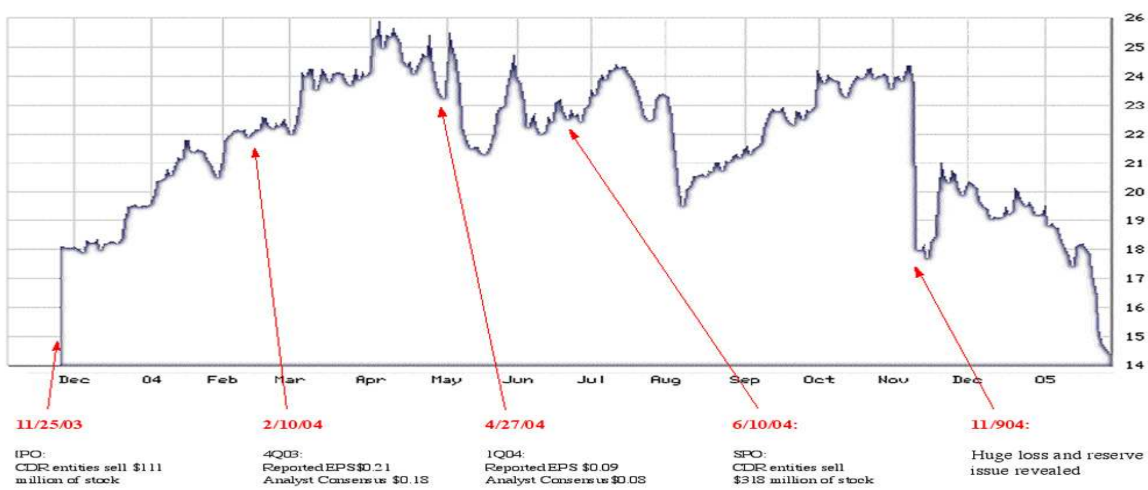
B. <u>Cooking the Books to Meet Analysts' Estimates</u>

183. SIRVA top management was intensely focused on meeting short-term Wall Street goals even through intimidation and earnings manipulation. A Former SIRVA

International Division Executive contrasted SIRVA's approach to companies which focus on long-term growth, stating "at SIRVA, long-term is quarterly numbers and short term is this week."

184. According to SIRVA's September 21, 2005 8-K, a letter from Defendant Ryan indicated that she was forced to resign "because of her insistence on "accurate financial reporting." The Ryan letter and the statements of numerous former employees reveal that SIRVA top management was intensely driven to, if not obsessed with, meeting Wall Street's quarterly EPS estimates.

185. It was essential for the Company to foster and maintain publicly the illusion of being a high-growth company. As set forth herein, Defendants falsified their financial results during the Class Period, among other reasons, to create the illusion that SIRVA was meeting analysts' expectations. As set forth below, the Company's reported financial figures met or exceeded analysts' consensus estimates in both quarters preceding the Company's SPO in June 2004 by as little as a penny for the first quarter of 2004.



186. Each time Defendants issued another positive earnings announcement, SIRVA's stock price increased, enabling the Company to establish a seemingly conservative price of $22 per share for the SPO.

187. Without Defendants' accounting fraud and their policy of using the "balance sheet to generate earnings," Defendants could not have met analyst estimates prior to the SPO and Defendant CD&R could not have sold over $300 million in stock. Only a few short months after the successful SPO did the truth regarding SIRVA's true financial condition begin to surface.

C. Defendants Kelley and Ryan's Enormous Cash Bonuses Provided Additional Incentive to Mislead Investors

188. Defendants Kelley and Ryan were strongly motivated to improperly misrepresent SIRVA's financial results because of the potential to receive enormous cash bonuses and stock option grants. According to the 2004 Proxy, SIRVA's compensation philosophy is that "[p]ay should be directly linked and highly differentiated based on the success of SIRVA, business segment, team and individual performance." The Proxy stated:

> **Short-Term Incentives**
>
> The SIRVA, Inc. Management Incentive Plan provides for cash and/or stock-based awards to be paid annually when specific performance targets are achieved. During 2003, the executive officers participated in the Management Incentive Plan. Actual bonuses paid to executive officers are based on earnings growth targets, cash generation targets, and strategic and leadership initiatives goals for each business.
>
> **Long-Term Incentives**
>
> The long-term incentive program is designed to encourage creation of long-term value for our stockholders and equity ownership by our executives. During 2003, SIRVA made stock option grants to SIRVA's executive officers under the SIRVA, Inc. Stock Incentive Plan and under the SIRVA, Inc. Omnibus Stock Incentive Plan (the "Omnibus Plan") adopted in November 2003. Each grant allows the officer to acquire shares of SIRVA's common stock, generally subject to the completion of a specified vesting period, and continued employment with SIRVA. These shares may be acquired at a fixed price per share (the closing market price on the day before the grant date) over a ten-year period (for grants under the Stock Incentive Plan) or seven-year period (for grants under the Omnibus Plan). Actual awards to each executive, if any, are structured to reflect the historic and expected future performance

> of the executive, the importance of each position to SIRVA and difficulty of finding a suitable replacement, and the executive's potential.

189. According to SIRVA's 2004 Proxy Statement, under SIRVA's Management Incentive Plan, cash and stock options are awarded to certain executives "annually when specific performance targets are achieve," such as earnings growth targets and cash generation targets.

190. As detailed in the Company's Management Incentive Plan incorporated into the IPO Prospectus, the following performance criteria was used to determine bonuses:

> (i) revenue growth; (ii) earnings before interest, taxes, depreciation and amortization; (iii) earnings before interest, tax and amortization; (iv) operating income; (v) pre- or after-tax income; (vi) cash flow; (v) cash flow per share; (viii) net earnings; (ix) earnings per share; (x) return on equity; (xi) return on invested capital; (xii) return on assets; (xiii) economic value added (or an equivalent metric); (xiv) share price performance; (xv) total shareholder return; (xvi) improvement in or attainment of expense levels; (xvii) improvement in or attainment of working capital levels; (xviii) debt reduction; or (xiv) strategic and leadership goals.

If these criteria were met, Defendants Kelley and Ryan would receive enormous bonuses of up to 100% of their base salary.

191. According to Annex A to the Management Incentive Plan, incentive awards were based in 2003 on earnings growth and cash generation in 2003 exceeding that in 2002. Earnings growth is measured by SIRVA EBITA. Cash generation is measured by Operating Funds Flow ("OFF") for SIRVA Relocation and by SIRVA's Average Daily Sales Outstanding ("DOS") (13 points) performance for all other portions of SIRVA.

192. Defendants Kelley and Ryan in fact, received significant performance based bonuses for 2003 based on the issuance of SIRVA's false financial results:

a. During 2003, in addition to his base salary of $575,000, Defendant Kelley received a cash bonus of $341,2850, a stock option award of 150,000 shares, additional compensation valued at $42,282, relocation fees totaling $77,477, and a $14,315 contribution to the defined contribution plan. In 2004, his base salary was increased to $650,000.

b. During 2003, in addition to her base salary of $320,137, Defendant Ryan received a cash bonus of $207,573, a stock option award of 302,029 shares, $26,893 in other annual compensation and a contribution of $4,255 to her defined benefits plan.

193. Moreover, according to SIRVA's Stock Incentive Plan, performance stock options do not vest until the Company achieves the EBITA target specified in the Management Stock Option Agreement evidencing such incentive award. Therefore, Defendants Kelley and Ryan had motive to inflate the Company's financial results in order for their stock options to vest.

D. Defendants Kelley, Ryan and Rogers Were "Hands-On" Executives

194. Because of their Board memberships and/or executive and managerial positions with SIRVA, each of the Individual Defendants had access to the adverse, non-public information about the business, finances, markets and present and future business prospects of SIRVA particularized herein via access to internal corporate documents, conversations or connections with corporate officers or employees, attendance at management and/or Board of Directors' meetings and committees thereof and/or via reports and other information provided to them in connection therewith.

195. As revealed by numerous witnesses, Defendants Kelley, Ryan and Rogers took a very active, hands-on approach in their roles as the Company's executive officers and Chairman of the Board. Such participation included attendance at key departmental meetings, receipt of reports from different corporate divisions, and weekly conference calls,

all of which revealed SIRVA's declining profitability and accounting problems. In the face of SIRVA's mounting operational difficulties, Defendants nonetheless established "ridiculous" forecasts which they knew SIRVA would not attain absent fraudulent accounting manipulations.

196. Employees who challenged Defendants' improper practices were terminated from the Company. As commented on by the former CFO, Defendant Ryan, SIRVA management set the "tone at the top" which led to the improper accounting ultimately revealed. Several examples of meetings with Defendants Kelley and Ryan illustrate the "tone at the top" that resulted in improper accounting:

- According to a Former SIRVA Controller in Europe, the SIRVA European Operations CFO participated in a meeting with Defendant Ryan while in the U.S. in February 2004, at which the European CFO expressed his differences with Ryan. Ryan reportedly instructed the European CFO, "if you want to be on my team, you better follow my directions." Shortly thereafter, the European CFO was dismissed or left his position.

- According to a Former Senior European Finance Executive, in late March or early April 2004, Defendant Rogers and Kelley summoned the President of European and Asia Pacific Operations, David Nicol, to New York to explain the numbers. According to a Former SIRVA International Division Executive, Nicol informed Defendants Kelley and the Board of Directors of the poor results in Europe in April 2004, and shortly thereafter, "Nicol suddenly was no longer in his position."

197. Defendants had access to reports and meetings which put Defendants on notice of SIRVA's accounting improprieties. With regard to SIRVA's inadequate insurance loss reserves, Defendants had access to reports and meetings such as the following:

- TransGuard executives held monthly "large loss reserve" meetings to discuss and set claims reserves.

- Claims managers for each business line prepared "Reserve Committee Sheets" each month summarizing claims.

- Prior to each Large Loss Reserve Committee meeting, Defendants Kelley and Ryan received a package containing the minutes of the previous meeting, along with the Claims Sheets, according to a Former TransGuard Finance Executive and Former NAIT Claims Manager.

- Reserve amounts were entered into a claims handling system – the workers compensation and occupational accident divisions used the FronTier claims management system and the Moving and Storage and Transportation Services used the WINS claims management system.

- Defendants Kelley and Ryan received a "Monthly Financial Package" each month, according to a Former TransGuard Finance Executive and Former TransGuard Supervisor of Insurance Accounting. The Monthly Financial Package broke down each business line by premiums written and losses incurred. These reports were distributed in paper hard copy to each recipient, and were broken down by business line. For each business line, the Monthly Financial Report then broke down between premiums written and losses incurred. The Report also showed actual premiums versus budget, actual premiums versus prior year and month-to-date premiums sales figures.

- Each quarter, TransGuard used a spreadsheet titled "Loss Reserve Development" or "LRD" containing data on loss reserves by line of business obtained from the Freedom Accounting System to prepare quarterly filings with the Illinois Department of Insurance.

198. According to a Former SIRVA Senior Treasury Analyst, Defendant Ryan frequently received FASB 133 Reports on Investments, which qualified as a "priority report" because SIRVA's "upper management" needed to know gains and losses in the Company's investment portfolio. A Former TransGuard Supervisor of Insurance Accounting also explained that Defendant Ryan received an "internal report on a monthly basis" that "provided the entire financial package," in that it was an "internal measuring stick," comparing month-to-date numbers and year-to-date numbers against prior periods. Defendant Ryan was also intricately involved in change of accounting systems in the Company's TransGuard Division. According to a Former Senior Level Accountant in the TransGuard Division, Defendant Ryan oversaw the transition of TransGuard's accounting structure from Company/Agency to GAAP/Statutory.

199. According to a Former SIRVA Relocation Business Development Executive, Defendant Kelley participated in weekly "Quick Market Intelligence" conference calls that

took place on Fridays at 8 a.m., where information generated by the Relocation Services division was discussed.

200. In addition, Defendants Kelley and Rogers attended "Town Hall Meetings," which, according to a Former SIRVA Sales Manager, took place in the cafeteria of the Ft. Wayne facility and were a forum to discuss operations with agents.

201. Defendants were warned repeatedly that SIRVA's European Operations could not meet its budget:

- According to a Former SIRVA International Division Executive, the results for the European Operating Systems were also reported to Defendants Kelley and Ryan on a monthly basis.

- According to a Former Senior European Finance Executive, Defendants Kelley and Ryan were told at a meeting in October or November of 2003 that the budget they had set for European operations was not attainable. The meeting took place at SIRVA's European Operations headquarters in Milton Keynes, which had just opened in June 2003.

- At a meeting of the SIRVA's Board of Directors attended by Defendants Kelley and Ryan on December 12, 2004 to update the newly-arrived President of European and Asia Pacific Operations, David Nicol, on the budget, participants at the meeting discussed SIRVA Europe faced in meeting budget, according to the Former Senior European Finance Executive.

- At a Leadership Summit attended by Defendants Kelley, Ryan, Schnall and Rogers and held at the Doral Country Club in Miami, Florida in February 2004, SIRVA executives openly discussed the fact that European Operations were losing money and "bringing the company down," according to a Former SIRVA Relocation Business Development Executive in attendance. David Nicol made a presentation at the Leadership Summit about the prospects of European Operations. Defendant Rogers was specifically asked whether SIRVA would lay-off European employees due to its poor performance. Defendants Kelley and Rogers singled out the leadership from European Operations as "weighing down" SIRVA profits. In fact, the former employee revealed that Defendant Kelley was "pointing the finger to senior leadership" of the European Operations, saying they were "not profitable on this side of the house."

- SIRVA held a Monthly Operations Review Meeting during the Class Period on the third or fourth Wednesday of each Month in the Company Board Room in Westmont, Illinois, according to a Former TransGuard Finance Executive. Defendants Kelley and Ryan attended the meeting, as well as those who reported directly to them. The President of each SIRVA Division attended and they could

> bring financial support staff to the meetings. The meetings generally began at 7:00 a.m. and lasted the whole day. During the Monthly Operational Review Meetings, participants reviewed "pared down" versions of financials. SIRVA European Operations "were always struggling," according to the Former TransGuard Finance Executive. The participants would spend at least an hour discussing European Operations, whereas discussion of the Network Services Division usually lasted no more than ten minutes.

202. Defendants Kelley and Ryan also took a very active role in the staffing of the TransGuard Division. For instance, according to the Former TransGuard Finance Executive, Defendants Kelley and Ryan participated in a meeting in the fall of 2003 where the 2004 staff cutbacks were discussed. The Former TransGuard Finance Executive also attended an A.M. Best Insurance rating meeting with Defendants Kelley and Ryan, and a meeting at the Marriot Hotel at the Newark, NJ airport where PwC presented the findings of their TransGuard review to all participants, including Defendants Kelley and Ryan.

203. The Defendants' involvement went past mere attendance in meetings and conference calls. According to a Former SIRVA Director of Business Development, Defendant Rogers was "very involved in a lot of corporate initiatives," and was "active" in business development and strategic marketing. The former employee specifically described Defendant Rogers as an "active executive[]," who received daily financial reporting, including reports of Days Sales Outstanding, Revenue Processed and Revenue not Processed. According to this former employee, Defendant Rogers was also very involved in the strategic marketing and business development with agents and direct accounts.

204. This attitude was shared by Defendant Kelley, who, according to the Former SIRVA Relocation Business Development Executive, was a "very hands on manager." This former employee explained how several Relocation Executives would go to Chicago at least every week to personally meet with Defendant Kelley to discuss the progress of the relocation business.

205. According to the Former TransGuard Finance Executive and the Former NAIT Claims Manager, Defendants Kelley and Ryan were also personally responsible for establishing budgets for the various SIRVA divisions, including TransGuard. These former employees explained that SIRVA budgets were established "top down" from Defendants Kelley and Ryan. For instance, for 2003 and 2004, once the Former TransGuard Finance Executive "got the numbers," they met with Defendants Kelley and Ryan in September or October in the Company "Board Room," where Kelley and Ryan "put in ridiculous numbers." In the final stage of this budget process, Defendant Rogers would attend the "final budget meetings" in November or December. This "top down" budgeting process was confirmed by the Former Senior European Finance Executive, who explained that the budget for European Operations came from Defendants Rogers and Kelley. A Former Operations Executive at North American Van Lines also disclosed that Defendants Rogers and Kelley both took an active role in the budgeting process, and that both "pushed hard on performance." This active role included attending Budget Review meetings held around November in the "old-Allied building" in Naperville, IL.

E. <u>SIRVA Needed the Proceeds from the IPO to Repay Massive Amounts of Pre-IPO Debt and Refinance its Revolving Credit Facility</u>

206. In November 2003 SIRVA conducted an IPO of its stock, selling 21,052,632 million shares for a price of $18.50 per share for a total of approximately $389,473,692. The net proceeds of the offering were more than $234 million dollars, after deducting underwriting discounts and commissions. Defendants were motivated to misstate the Company's financial results in the IPO Prospectus in order get a higher offering price. In addition, the IPO was a necessity not only to allow CD&R to begin exiting from SIRVA at a profit, but to allow CD&R to pay back high-interest debt. Indeed, CD&R built SIRVA by cobbling together numerous small companies similar to a "roll-up." As described in a

September 8, 2003 article in the *Fort Wayne News Sentinel*, CD&R "built SIRVA by borrowing a lot of money, frequently at very high interest rates, to buy a series of companies."

207. According to SIRVA's IPO Prospectus, SIRVA intended to apply the proceeds from the offering towards repayment of debt obligations, in the following priority:

> - to repay in full the Tranche A senior term loan under [their] existing senior credit facility;
> - to repay in full the Tranche B senior term loan under [their] existing senior credit facility;
> - to repay in full the revolving credit facility under [their] existing senior credit facility;
> - to repurchase approximately 93% of North American Van Lines' 13^{3}/8% senior subordinated notes due 2009;
> - to repay in full SIRVA's senior discount loan;
> - to redeem all of SIRVA's outstanding shares of junior exchangeable preferred stock issued in connection with the purchase of the Allied and Pickfords businesses from Exel plc, formerly known as NFC plc; and
> - to repay the seller notes of North American Van Lines issued in connection with the purchase of CRS, the relocation services business of Cooperative Resource Services, Ltd."

208. CD&R had a particular interest in the success of the IPO (in addition to its sale of 6,405,006 shares of stock in the IPO through CD&R Fund V and CD&R Fund VI) since SIRVA's senior discount loan to be repaid in full from the proceeds of the IPO had been assigned to Arawak, Ltd., a wholly owned subsidiary of CD&R Fund VI, by J.P. Morgan Securites, Inc. and others. Indeed, SIRVA used IPO proceeds to redeem the senior discount loan for over $65 million in accreted value.

209. SIRVA also intended to use the offering to refinance the existing senior credit facility of its wholly-owned subsidiary North American Van Lines for $313.3 million in

borrowings and a revolving credit facility providing up to $150 million in revolving credit commitments, with a new senior credit facility. Under the new senior credit facility, SIRVA's subsidiary, SIRVA Worldwide, Inc. would be the primary borrower and, along with one or more of its foreign subsidiaries, would borrow $446.7 million.

210. According to the Credit Agreement incorporated in December 1, 2003 8-K, the availability of the new senior credit facility was subject to many conditions precedent, one of which was that at least $200 million in gross cash proceeds were received from the IPO. This provided Defendants with motivation to misrepresent SIRVA's financial results to increase the offering price as well as the number of shares purchased during the offering in order to ensure that SIRVA would make enough proceeds to be able to obtain the new senior credit facility, and refinance and repay certain of its debts.

F. SIRVA Used the Cash Obtained Through Refinancing Its Revolving Credit Facility To Acquire Companies

211. CD&R created SIRVA with the goal of creating the first comprehensive global relocations company. CD&R did so by acquiring and combining different companies from different segments of the relocation business. After its IPO, SIRVA continued this strategy, acquiring numerous companies in order to expand its relocation services and expand its global reach. In order to finance the acquisitions, SIRVA needed cash, lots of it. SIRVA used its revolving credit facilities to come up with the cash to finance its acquisitions. During the Class Period, SIRVA engaged in numerous acquisitions that were critical to the continued viability of the Company.

212. On February 6, 2004, SIRVA acquired Move-Pak (the details of which are unavailable in public filings). On March 2, 2004, SIRVA acquired Relocation Dynamics, Inc. ("RDI") for $1,786,000 net of acquired cash of $200,000, and contingent consideration of $3,000,000 payable subject to achievement of certain revenue targets over five years.

213. On May 3, 2004, SIRVA acquired Rettenmayer Internationale Umzugslogistik GmbH for $4,116,000 in cash net of acquired cash of $239,000. On August 2, 2004 SIRVA purchased for $1,202,000 in cash an additional branch location from the previous Rettenmayer owner.

214. On September 2, 2004, SIRVA acquired D.J. Knight & Co. Ltd. ("DJK") for $1,836,000 in cash net of acquired cash of $1,164,000.

215. On December 24, 2004, SIRVA, through its subsidiary SIRVA Worldwide Inc., acquired Executive Relocation Corporation for $100,000,000. In order to finance this acquisition, SIRVA amended the credit agreement it entered into on December 1, 2003 following the IPO. According to the 8-K filed on December 23, 2004, the amendment provided a $490 million term loan and increased SIRVA Worldwide's swing line loan capacity.

216. In order for SIRVA to amend the existing credit agreement to finance acquisitions, it needed to appear that SIRVA's financial performance was strong. It was also necessary for SIRVA to maintain certain credit ratings that are directly linked to SIRVA's performance.

217. Indeed, after the news regarding the problems with SIRVA's financial statements came out, on July 27, 2005, Moody's downgraded SIRVA Worldwide, Inc. to B2 from Ba3 and concluded that "[t]he rating outlook is negative."

218. Defendants had the motive to take all steps to ensure that the Company maintained its credit ratings, including engaging in improper accounting to misstate its financial results, in order to fund the numerous acquisitions necessary to its growth as a comprehensive global relocation business.

G. **Defendants Stocker, Ryan and Schnall's Severe Recklessness Is Further Evidenced By Their Membership on the Audit Committee**

219. Defendant Stocker is the Chairman of the Audit Committee of SIRVA's Board of Directors. In addition, Defendants Ryan and Schnall have served on the Audit Committee during their tenure at SIRVA, until February of 2003 and October of 2003, respectively. These Defendants were privy to the Company's fictitious revenue recognition and other accounting manipulations because of their positions on the Audit Committee which was charged with reviewing the Company's financial statements and its internal controls.

220. Defendant Stocker was intimately aware of SIRVA's false financial reporting due to his integral role in formulating and reviewing SIRVA's accounting practices as Chairman of the Audit Committee. According to SIRVA's 2004 Proxy Statement, Defendant Stocker was also identified by SIRVA as one of its "financial experts." The Audit Committee met eleven times during the 2003 fiscal year, including telephone meetings.

221. According to the Audit Committee Report in the 2004 Proxy, with respect to the audited financials for fiscal year 2003, Defendant Stocker:

- Reviewed and discussed the audited consolidated financial statements with SIRVA's management;
- Discussed the financial statements with PwC as required by SAS No.61;[4]
- Reviewed and discussed with management the processes in place to provide the disclosure certifications required by the Sarbanes-Oxley Act and SEC rules; and
- Reviewed the written disclosures and the letter from PwC required by Independence Standards Board Standard No.1[5] and has discussed with PwC its independence from SIRVA.

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[4] Statement on Auditing Standards No.61 requires the audit committee to exercise oversight over financial reporting as well as the scope and results of the audit.

[5] Independence Standards Board No.1 refers to Independence Discussions with the Audit Committee.

222. With regard to internal controls, during fiscal year 2003 Defendant Stocker also:

> reviewed the quality and integrity of SIRVA's financial reporting and other internal control processes, the quality and integrity of its financial statements, its compliance with legal and regulatory requirements and its code of conduct, the qualifications and independence of its independent auditors, the performance of its internal audit function and independent auditors and other significant financial matters.

223. The Audit Committee, including Defendant Stocker, also certified the 2003 financial statements:

> The Audit Committee has reviewed SIRVA's audited consolidated financial statements and discussed such statements with management. The Audit Committee has discussed with PricewaterhouseCoopers LLP, SIRVA's independent auditors during the 2003 fiscal year, the matters required to be discussed by Statement of Auditing Standards No. 61 (Communication with Audit Committees), as amended. The Audit Committee also received from management the CEO/CFO financial reporting and disclosure certifications required by the Sarbanes-Oxley Act and SEC rules relating thereto and has reviewed and discussed with management the processes in place to provide such certifications.

224. According to SIRVA's Audit Committee Charter, Defendant Stocker was expressly charged with assisting the Board of Directors in monitoring:

> (1) the quality of the Corporation's financial reporting and other internal control processes, (2) the quality and integrity of the Corporation's financial statements, (3) the independent auditor's qualifications and independence, (4) the performance of the Corporation's internal audit function and independent auditors, (5) the compliance by the Corporation with legal and regulatory requirements and its code of conduct; and (6) to prepare the report of the Committee required to be included in the Corporation's annual proxy statement under the rules of the U.S. Securities and Exchange Commission (the "SEC").

225. The 2004 Proxy Statement demonstrated that Defendant Stocker specifically endorsed the public dissemination of the false financial statements, noting that, based upon review and discussions with management and the independent accountants, "that SIRVA's

audited consolidated financial statements be included in SIRVA's Annual Report or Form 10-K for the fiscal year ended December 31, 2003, and be filed with the SEC."

226. Prior to becoming CFO of SIRVA, Defendant Ryan served as a director and member of SIRVA's Audit Committee from June 2002 through February 2003. Through her membership on the Audit Committee, she was intimately aware of the financial reporting of the Company for the year 2002 incorporated into the IPO Prospectus.

227. Defendant Schnall became a director of SIRVA in March 2002 and was a member of the Audit Committee until October 2003. Through his membership on the Audit Committee he was intimately aware of the financial reporting of the Company for the year 2002 incorporated into the IPO Prospectus.

H. The Defendants Violated SIRVA's Own Code Of Business Conduct

228. In addition to violating GAAP and numerous federal securities laws, the Defendants violated SIRVA's own Code of Business Conduct during the Class Period. According to the Company's recent Code of Business Conduct, dated March 2004 and filed as Exhibit 14.1 to the 2003 10-K, the Core Requirements for Controllership are to "Follow SIRVA's accounting policies and procedures as well as all generally accepted accounting principles, standards, laws and regulations for accounting and financial reporting of transactions, estimates and forecasts." SIRVA Guide To The Code Of Business Conduct 2004, Policy No.CCP-502, at pg. 41. The Company and its Officers were clearly in violation of this Policy when they improperly accounted for the Company's insurance reserves, in contradiction of GAAP and the federal securities laws.

229. In addition, as general cannons, the Code of Business Conduct also states that, "As associates of SIRVA, we will . . . [c]omply with all applicable laws and regulations that govern the conduct of our business." *Id*. at pg. 7. Defendants violated this Policy when they

knowingly withheld adverse information about the Company's financial state, in contradiction of federal securities laws.

IX. MATERIALLY FALSE STATEMENTS DURING THE CLASS PERIOD

A. The IPO Prospectus

230. The Class Period begins on November 25, 2003. On that day, SIRVA's Prospectus for its IPO became effective. The false and misleading statements contained in the Prospectus filed in connection with the IPO detailed in ¶¶37-46 above are also actionable as false statements under the Exchange Act. The reasons for falsity of the IPO Prospectus are detailed above in ¶¶47-53.

B. Defendants' False 4Q and Fiscal Year 2003 Statements

231. On February 10, 2004, SIRVA issued a press release announcing its financial results for the fourth quarter and full fiscal year of 2003. According to the press release, SIRVA's 2003 net income, excluding special items, more than doubled since 2002, while revenue rose 8%:

> SIRVA [] today reported net income of $19.0 million, or $0.27 per diluted share, for the full year ended December 31, 2003.
>
> * * *
>
> … SIRVA's 2003 net income was $47.0 million, or $0.73 per diluted share, more than double the performance for the year ended December 31, 2002. The company recorded net income of $20.8 million, or $0.33 per diluted share, for the full year 2002.
>
> SIRVA's operating revenue for the full year 2003 was $2.35 billion, an increase of 8 percent from the previous year. The company's revenue less Purchased Transportation Expense (PTE)(1), or net revenue, was $1 billion, up 19 percent from the previous year. SIRVA's 2003 income from operations, excluding the unusual charges, was $129.7 million, a 38 percent increase from the previous year.

232. The same day, SIRVA executives held a conference call, in which Defendants Kelley and Ryan participated. Defendant Kelley praised the Company's growth of its insurance business "in an intelligent and low-risk manner":

> Most importantly, however, is that we achieved this growth in an intelligent and low-risk manner. As evidence, our insurance group delivered a combined ratio of just over 80 percent in 2003. The combined ratio is the primary measure of profitability in the insurance business. Essentially, it's the inverse of operating income, excluding investment gain.

233. Defendants Kelley and Ryan also praised the Company's European operations.

Defendant Ryan commented, "with our capabilities in place in Europe, we are now in a position to drive real, organic growth in 2004."

234. During the call, Defendant Kelley made the following projections for 2004:

> So, as we look to 2004, we are comfortable that we can deliver on our long-term financial goals. And that is, 10 percent plus organic net revenue growth and 20 percent plus earnings per share growth, driven primarily through operations.
>
> * * *
>
> Therefore, we expect earnings per share growth for the year to be well in excess of our long term 20 percent target. Overall, we are comfortable with the midpoint of current estimates, $1.15 to $1.16 per share.
>
> * * *
>
> Taking into account interest and taxes, we estimate first quarter EPS of approximately seven cents per share versus a five cent loss in last year's first quarter. As a reminder, the first quarter is our seasonally slowest quarter.

235. Regarding SIRVA's Insurance business, Defendant Kelley again focused on SIRVA's experience and "very careful risk models":

> The Insurance business "which is a question many had" we do underwrite insurance. We've done it for over 25 years. We're very good at it. We have a niche strategy, which is pretty simple.

> We offer basically three types of policy to constituents that we know very, very well. We know drivers, we know trucks, and we've been involved with them for a long time. We are operate in markets that are very difficult to serve, because you need to go one-on-one with these independent owner/operators and drivers. You have to have very careful risk models, which we do.

236. On March 26, 2004, SIRVA filed its annual report on Form 10-K with the SEC ("2003 10-K"). The 2003 10-K was signed by Defendants Kelley, Ryan, Schnall, Stocker and Rogers, among others, and reiterated the financial information reported in the Company's February 10, 2004 press release.

237. The 2003 10-K included the following certification of Defendants Kelley and Ryan required by Exchange Act Rule 13a-14(a):

> **CERTIFICATION**
>
> I, [], certify that:
>
> I have reviewed this annual report on Form 10-K of SIRVA, Inc.;
>
> Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
>
> Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
>
> The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
>
>> (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others

> within those entities, particularly during the period in which this report is being prepared;
>
> (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
>
> (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
>
> The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
>
> (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
>
> (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Each of the Forms 10-K and 10-Q filed by SIRVA during the Class Period repeats the certification by Defendants Kelley and Ryan. [6]

238. The 2003 10-K also included the following certification, pursuant to 18 U.S.C. § 1350, by Defendants Kelley and Ryan:

> The undersigned hereby certifies that the Annual Report on Form 10-K for the year ended December 31, 2003 of SIRVA, Inc. (the

[6] Beginning with SIRVA's first quarter 2004 Form 10-Q, Defendant Kelley and Ryan's certifications are pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

> "Company") filed with the Securities and Exchange Commission on the date hereof fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Each of the Forms 10-K and 10-Q filed by SIRVA during the Class Period repeats the certification in substantially the same language above by Defendants Kelley and Ryan.[7]

239. The 2003 10-K further assured investors that the Company maintained adequate internal controls:

> **ITEM 9A. CONTROLS AND PROCEDURES**
>
> Under the supervision and with the participation of management, our chief executive officer and chief financial officer have evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2003, and, based on their evaluation, the chief executive officer and chief financial officer have concluded that, as of December 31, 2003, these controls and procedures are effective to ensure that (i) information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including the chief executive officer and chief financial officer, as appropriate to allow timely decisions regarding required disclosure.

Each Form 10-K and 10-Q filed by SIRVA during the Class Period repeats the assurance regarding "Controls and Procedures" above in substantially the same language.

240. As stated in the IPO and SPO Prospectuses, Defendants reiterated their growth as an insurance provider through the Company's TransGuard division, and emphasized the Company's cautious approach and resulting loss and expense ratio, specifically stating that

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[7] Beginning with SIRVA's first quarter 2004 Form 10-Q, the Defendant Kelley and Ryan's certifications are pursuant to18 U.S.C. § 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

“[we] are cautious in choosing which customers to insure and what kinds of insurance to write.”

241. The 2003 10-K also repeated SIRVA’s critical accounting policies for revenue recognition, insurance reserves, and claims reserves in substantially the same language as contained in the IPO Prospectus. (*See* ¶¶44-46 *infra.*)

242. With regard to revenue recognition, the 2003 10-K added:

> In connection with the adoption of EITF 99-19, "Reporting Revenue Gross as a Principal versus Net as an Agent" ("EITF 99-19"), we performed an initial review of our different revenue streams to assess the appropriate presentation of each source of revenue. Since that time, and as the underlying business has developed, we review each new revenue stream and periodically reassess our analysis of existing revenue streams to determine the appropriate presentation. Based on these assessments and the guidance contained in EITF 99-19, we recognize the majority of our operating revenues on a gross basis.

243. With regard to the Company’s insurance reserves, the Form 10-K reiterated much of the same information as in the IPO and SPO Prospectuses, adding that, at “December 31, 2003 and 2002, our insurance reserves totaled $53.7 million and $48.7 million, respectively.” (*See* ¶¶44-45 above.)

244. The Company further touted its Network Services division as it had in the SPO Prospectus, and again explained its insurance reserves as it had in the IPO and SPO Prospectuses, which the Company reported as $80 million at December 31, 2004, compared to $76.5 million at December 31, 2003. (*See* ¶¶44-45 above.)

C. <u>Reasons for Falsity: 4Q and FY 2003</u>

245. Contrary to Defendants assurances in paragraphs 237-239 above that SIRVA maintained adequate internal controls, Defendants would later admit that the Company in fact did not maintain effective internal controls. (*See, e.g.*, ¶¶335(c), 357.)

246. Contrary to Defendants' statements regarding its "low risk" insurance business (*see* ¶232 above), "very careful risk models" (*see* ¶235 above) and "cautious approach" (*see* ¶240 above), as well as SIRVA's critical accounting policies for insurance and claims reserves (*see* ¶241 above), Defendants had under-reserved its insurance business in order to boost short term profits and meet budget and improperly failed to take a timely charge to accrue additional liabilities relating to SIRVA's multiple-line property and commercial liability insurance (*see* ¶¶131-170 above).

247. Contrary to Defendants statements praising SIRVA's operations in Europe, Defendants knew that SIRVA was experiencing serious problems in Europe and could not meet budget in Europe. (*See* ¶¶97-130 above.)

248. Contrary to statements regarding SIRVA's critical accounting policies for revenue recognition (*see* ¶241 above), SIRVA improperly recognized premium revenue and commission income (*see* ¶¶373-374 below) and improperly accelerated revenues related to both corporate fees and referral fees (*see* ¶¶377-379 below).

249. Defendants' projections for 2004 in paragraph 234 above were materially false and misleading, because, without Defendants' undisclosed improper accounting manipulations (*see* ¶¶347-357, 359-399 below), SIRVA would not be able to meet Defendants' projections for 2004.

250. The financial results for the fourth quarter and full fiscal year 2004 announced on February 10, 2004 and included in the 2003 10-K were materially false and misleading because they were achieved through improper accounting not in conformance with GAAP. (*See* ¶¶359-399 below.)

D. **Defendants' False 1Q 2004 Public Statements**

251. On April 27, 2004, SIRVA announced "strong results for the first quarter ended March 31, 2004." In a press release, Defendants reported double-digit growth in revenues and income in the quarter:

> SIRVA, INC. (NYSE: SIR), a global relocation services provider, today reported net income of $6.4 million, or $0.09 per diluted share, for the first quarter ended March 31, 2004. This represents a $7.9 million increase from the company's net loss of $1.5 million, or $0.05 per diluted share, for the first quarter of 2003.
>
> SIRVA's operating revenue for the first quarter 2004 was $529.0 million, an increase of 11.6 percent from $474.2 million in operating revenue for the first quarter 2003. The company's revenue less Purchased Transportation Expense (PTE), or net revenue, was $265.6 million for the first quarter 2004, up 21.7 percent from $218.3 million in net revenue for the first quarter of last year, partially driven by favorable foreign currency impacts and by acquisitions. SIRVA's 2004 first quarter income from operations was $16.4 million, up 28.1 percent from $12.8 million in income from operations for the first quarter of 2003

252. Defendant Kelley touted the Company's reported results, assuring investors that all of SIRVA's operating segments performed well, including Europe:

> "Our strong first quarter results reflect the strength of our relocation offerings around the world," said Brian P. Kelley, president and chief executive officer of SIRVA. "We're redefining relocation for our customers and bringing them real quality improvements and cost reductions. All four of our business segments performed well operationally and we made significant progress in broadening our services offering and expanding our presence throughout the European continent."

253. According to the Defendants, the Company's business was so strong that they raised their earnings guidance for the year. In this regard, Defendant Kelley made the following announcement:

> "We are confident in our ability to meet our financial goals for 2004: a plus 10 percent increase in organic net revenue and a plus 20 percent increase in operating income," Kelley said. "Given our first quarter performance, and the positive forward indicators for relocation initiations and moving volumes, we are raising our

> earnings per share guidance for the year from $1.15 - $1.16 to $1.17 - $1.20. For the second quarter we expect earnings per share of $0.22 - $0.23. This compares to earnings of $0.09 per share realized in the second quarter of last year."

254. On the same day, Defendants Kelley and Ryan held a conference call with analysts. With regard to Network Services, which includes SIRVA's insurance business, Defendant Kelley specifically stated:

> [W]ithin Network Services, in the first quarter, we began the integration of the Move-Pak acquisition we announced in February. Move-Pak is a strong complement to our existing moving and storage insurance customer base and it provides a strong West Coast presence for us. Now, Move-Pak was basically an insurance broker, selling the very policies we do to different customers in the market. As a broker, they did not underwrite these policies. With the acquisition, we take over the underwriting which gives us the profit of both the broker and the underwriter allowing for a higher return with very little additional risk. The integration has gone very well, and this acquisition has already delivering strong results, in fact, in its first 18 months we expected to deliver incremental operating income in excess of its acquisition price. The organic growth in Network Services is healthy as more than two-thirds of this segment's revenue growth came organically.

255. With regard to SIRVA's European operations, Defendant Kelley stated

> All in all, we got off to a very strong start in 2004. Our first-quarter results were validation of our strategic direction and our core competencies. We're generating organic growth through cost selling relocation and moving services to our corporate clients. We're quickly integrating and growing acquisitions and as always, we're sharply focused on costs, productivity and quality

256. Defendant Ryan touted the Company's excellent financial results for the quarter:

> Operating revenue for the first quarter was 529 million, up 12 percent from the first quarter of 2003. Net revenue in the first quarter was 266 million, that's up 22 percent from the same period last year. Excluding the impact of acquisitions and favorable currency impact, net revenue grew 10 percent in the quarter. Earnings per share for the quarter were 9 cents, that compares to a 5 cent per share loss in the same period a year ago.

257. Defendant Kelley then further assured the analysts and investing public that the Company was on track to meet its long-term financial goals and raised EPS guidance.

> Overall, we got off to a great start to the year. As we look forward for the full year, we're comfortable that we can deliver on our long-term financial goals. Which are 10 percent plus organic net revenue growth, and 20 percent plus EPS growth, driven primarily through operations. Given our strong first-quarter performance and the positive forward indicators we're seeing in the market, we're raising our full-year EPS guidance to $1.17 to $1.20 per share. And for the second quarter, we expect EPS of approximately 22 to 23 cents per share versus the 9 cents we earned in last year's second quarter.

258. Regarding the Company's growth in Europe, Defendant Kelley answered analyst questions:

> CHRIS HUSSEY: Looking at the numbers, Europe seemed to be one of the key drivers for the out performance in a way from our perspective. The FX issue, obviously the topline but not much of a bottom line I would imagine -- all of your costs are locally based. Can you walk through a little bit, Brian, what are you guys doing exactly in Europe that is allowing you to get these margins up so quickly? Is it Scanvan? Did they come in with a better margin than we anticipated or is this just blocking and tackling?
>
> BRIAN KELLEY: It is blocking and in tackling, Chris. It is looking at all of the operations we have across the UK and the continent. It's looking at how do we continue to wring costs out of this and wring efficiency in productivity out of it and do it in a way that is better and do it on an ongoing basis. This effort has been going on for 12 months, 18 months, and we anticipate we will continue to be able to do this. If we look at this, we talked a little bit about Europe, we want to be able to continue to take the cost out, rip the cost out, make sure that we've got an efficient model so that we can invest in the front end. Invest in selling and marketing so we can grow the business. And that is basically what we have done. We have invested a significant amount in sales and marketing there. We had to have the cost reduction in order to do that and get the productivity to do that. So, that is what you're seeing in Europe.
>
> CHRIS HUSSEY: Should we expect then this margin improvement to continue the profit growth continue out of Europe for the rest of the are you going to maybe take some of this excess profit?

> BRIAN KELLEY: You'll probably see us invest some of this and continue to grow.

259. On May 7, 2004, SIRVA filed its first quarter 2004 report with the SEC on Form 10-Q ("1Q04 10-Q"). The report was signed by Defendant Ryan, as well as SIRVA Corporate Controller and Principal Accounting Officer Dennis M. Thompson, and reiterated the financial information contained in the April 27, 2004 press release. The Form 10-Q included certifications from Defendants Kelley and Ryan, as required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002. (*See* ¶¶237-238 above.)

260. In the 1Q04 10-Q, Defendants reassured investors that the financial results reported therein were presented in accordance with GAAP, and fairly presented the Company's actual results, stating:

> Management of the Company believes the interim financial statements include all adjustments, including normal recurring adjustments, necessary for a fair presentation of the financial condition and results of operations for the interim periods presented.

261. The 1Q04 10-Q also repeated SIRVA's critical accounting policies for revenue recognition, insurance reserves, and claims reserves in substantially the same language contained in the IPO Prospectus and 2003 10-K. (*See* ¶¶44-46, 241 above.)

262. With regard to insurance and claims reserves, the 1Q04 10-Q added that, at March 31, 2004, insurance reserves totaled \$51.7 million and claims reserves totaled \$19.6 million.

263. The 1Q04 10-Q also repeated the assurances that the Company had effective controls and procedures. (*See* ¶¶239 above.)

E. <u>**Reasons for Falsity: 1Q 2004**</u>

264. The financial results for the first quarter 2004 announced on April 27, 2004 and included in the 1Q04 10-Q were materially false and misleading because they were

achieved through improper accounting not in conformance with GAAP. (*See* ¶¶347-357, 359-399 below.)

265. Defendants assurances in the 1Q04 10-Q that the interim financial statements gave a fair presentation of the financial condition and results of the Company were materially false and misleading, because, the financial statements actually contained numerous violations of GAAP. (*See* ¶¶347-357, 359-399 below.)

266. Defendants' statements regarding SIRVA's insurance reserves (*see* ¶254 above) were materially false and misleading, because the Company had under-reserved its insurance business in order to boost short term profits and meet budget and improperly failed to take a timely charge to accrue additional liabilities relating to SIRVA's multiple-line property and commercial liability insurance (*see* ¶¶131-170 above).

267. Contrary to Defendants' statements praising SIRVA's operations in Europe, Defendants knew that SIRVA was experiencing serious problems in Europe and could not meet budget in Europe. (*See* ¶¶97-130 above.)

268. Contrary to statements regarding SIRVA's critical accounting policies for revenue recognition (*see*¶ 261 above), SIRVA improperly recognized premium revenue and commission income (*see* ¶¶373-374 below) and improperly accelerated revenues related to both corporate fees and referral fees (*see* ¶¶377-379 below).

269. Defendants' projections for 2004 in paragraphs 253 and 357 above were materially false and misleading, because, without Defendants' undisclosed improper accounting manipulations (*see* ¶¶347-357, 359-399 below), SIRVA would not be able to meet Defendants' projections for 2004.

270. The statements in the 1Q04 10-Q that the Company maintained effective controls and procedures were materially false and misleading, because, as Defendants would

later admit, the Company in fact did not maintain effective internal controls. (*See, e.g.*, ¶¶335(c), 357.)

F. **False Statements In Connection With The 2004 Proxy and 2003 Annual Report to Shareholders**

271. In connection with SIRVA's first annual meeting with shareholders as a public company held on May 27, 2004, the Company filed its Proxy Statement on Form 14A with the SEC on April 19, 2004 and issued its 2003 Annual Report to Shareholders ("Annual Report").

272. Defendants Kelley and Rogers' letter to shareholders included in the 2003 Annual Report assured investors that the Company was committed to corporate governance:

> BUILDING SHAREHOLDER TRUST Companies today must demonstrate a true commitment to responsible, proactive and independent governance. From our inception, SIRVA has focused on earning the trust and respect of our shareholders. We have a strong Board of Directors that operates with full disclosure and transparency and that works hard to meet the highest standards of fiduciary responsibility and corporate effectiveness. Our Directors truly act as stewards. They uphold the spirit and letter of our own code of conduct, spelled out in SIRVA's Guide to the Code of Business Conduct, everywhere we operate. Our Board oversees a corporate strategy designed to deliver predictable future growth and a competitive return on invested capital.
>
> * * *
>
> The governance of our company is in excellent shape. Our Directors are independent in their advice, knowledgeable about the business, highly interested in the management team and engaged both strategically and financially.

273. Defendants Kelley and Rodgers also praised the Company's progress since its IPO:

> In November of 2003, we completed our initial public offering (IPO). We used the proceeds to pay down debt. We also were able to recapitalize the balance sheet, cutting our interest payments in half. At a time when many economies are still sluggish or in the early stages of recovery, we delivered a strong financial performance. Our operating revenues increased 8 percent, our pro

> forma income from operations rose 38 percent, and we generated $89 million of free cash flow. And we accomplished this while reinvesting heavily in our "Relocation Redefined" strategy.

274. The Annual Report included financial statements for the years ended December 31, 2001, 2002 and 2003, together with an Independent Auditors' Report by PwC assuring investors that the financial statements fairly presented the financial position of SIRVA and the results of operations and cash flows were in conformity with GAAP.

275. The Annual Report also included a statement signed by Defendants Kelley and Ryan explaining management's responsibility for financial statements:

> **Management's Responsibility for Financial Statements**
>
> Management is responsible for the preparation and content of the financial statements included in this annual report. The financial statements have been prepared in conformity with generally accepted accounting principles and reflect management's judgments and estimates concerning effects of events and transactions that are accounted for or disclosed.
>
> SIRVA, Inc. and its subsidiaries maintain accounting systems that are supported by internal accounting controls. These systems and controls provide reasonable assurance that assets are safeguarded and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. At the end of our next fiscal year, our independent auditors will report on our assertions as to the effectiveness of our internal controls over financial reporting as required under Section 404 of the Sarbanes-Oxley Act of 2002. We are confident in the effectiveness of our internal controls and our ability to meet the requirements of this legislation.
>
> Ethical decision-making is fundamental to our management philosophy. Management recognizes its responsibility for fostering a strong ethical climate and is committed to conducting its business with integrity and complying with Management's Responsibility for Financial Statements both the letter and spirit of the laws and regulations that govern our operations. Employee awareness of these objectives is achieved through key written policy statements, a Code of Business Conduct and training.
>
> The Audit Committee of the Board of Directors is composed solely of independent non-employee directors. This committee meets

> periodically with the internal auditors, management and the independent auditors, who have free access to the committee without management present, to discuss the results of their work and their evaluation of the internal control structure and the quality of financial reporting.

276. The Annual Report also repeated SIRVA's critical accounting policies for revenue recognition, insurance reserves, and claims reserves in substantially the same language contained in the IPO Prospectus and 2003 10-K. (*See* ¶¶ 44-46 *infra.*)

277. The Proxy filed in connection with the annual meeting with shareholders included a report of the Audit Committee of the Board of Directors of SIRVA:

> **AUDIT COMMITTEE REPORT**
>
> During fiscal year 2003, the Audit Committee of the Board reviewed the quality and integrity of SIRVA's financial reporting and other internal control processes, the quality and integrity of its financial statements, its compliance with legal and regulatory requirements and its code of conduct, the qualifications and independence of its independent auditors, the performance of its internal audit function and independent auditors and other significant financial matters. Each of the Audit Committee members satisfies the definition of independent director as established in the NYSE corporate governance listing standards. During the year, in accordance with section 407 of the Sarbanes-Oxley Act of 2002, SIRVA identified Carl Stocker and Robert J. Dellinger as the Audit Committee's "Financial Experts". SIRVA operates with a January 1 to December 31 fiscal year. The Audit Committee met eleven times, including telephone meetings, during the 2003 fiscal year.
>
> The Board adopted a written charter for the Audit Committee in 2002, which was subsequently amended and restated on November 24, 2003. The Committee operated under those charters during the 2003 fiscal year. The Audit Committee has reviewed the relevant requirements of the Sarbanes-Oxley Act, the revised rules of the SEC, the new corporate governance listing standards of the NYSE regarding audit committee policies, and the Committee's charter with respect to these requirements.
>
> The Audit Committee intends to further amend its charter, if necessary, as the rules and standards evolve to reflect any additional requirements or changes. You can access the latest charter at www.SIRVA.com or by writing to us at SIRVA, Inc., 700 Oakmont Lane, Westmont, Illinois 60559, Attention: Investor

> Relations. A copy of the current charter is enclosed as Appendix A to this proxy.
>
> The Audit Committee has reviewed SIRVA's audited consolidated financial statements and discussed such statements with management. The Audit Committee has discussed with PricewaterhouseCoopers LLP, SIRVA's independent auditors during the 2003 fiscal year, the matters required to be discussed by Statement of Auditing Standards No. 61 (Communication with Audit Committees), as amended. The Audit Committee also received from management the CEO/CFO financial reporting and disclosure certifications required by the Sarbanes-Oxley Act and SEC rules relating thereto and has reviewed and discussed with management the processes in place to provide such certifications.
>
> The Audit Committee has received and reviewed the written disclosures and the letter from PricewaterhouseCoopers LLP required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees), and has discussed with PricewaterhouseCoopers LLP its independence from SIRVA. Based on the review and discussions noted above, the Audit Committee recommended to the Board that PricewaterhouseCoopers LLP be retained in its current role as SIRVA's external auditor and that SIRVA's audited consolidated financial statements be included in SIRVA's Annual Report on Form 10-K for the fiscal year ended December 31, 2003, and be filed with the SEC.

G. <u>Reasons for Falsity: 2004 Proxy and 2003 Annual Report to Shareholders</u>

278. The statements in the Proxy and Annual Report regarding corporate governance and SIRVA’s Code of Business Conduct detailed in paragraph 272 above, were materially false and misleading because the Company was actually violating GAAP in a number of ways. (*See* ¶¶347-357, 359-399 below.)

279. Defendants Kelley and Rogers’ praise of the Company’s progress since the IPO detailed in paragraph 273 above was materially false and misleading because they failed to also disclose that the Company’s progress was the result of improper accounting manipulations. (*See*¶¶347-357, 359-399 below.)

280. The financial statements included in the Annual Report, as well as PwC’s Independent Auditor Report detailed in paragraph 277 above were materially false and

misleading because the financial statements were not prepared in accordance with GAAP. (*See* ¶¶347-357, 359-399 below.)

281. The statement signed by Defendants Kelley and Ryan explaining management's responsibility for financial statements detailed in paragraph 275 above was materially false and misleading because the financial statements were not prepared in accordance with GAAP and Defendants were engaging in accounting manipulations. (*See* ¶¶347-357, 359-399 below.)

282. The critical accounting policies for insurance reserves and claims reserves contained in the Annual Report (*see* ¶273 above) were materially false and misleading because the Company had under-reserved its insurance business in order to boost short term profits and meet budget and improperly failed to take a timely charge to accrue additional liabilities relating to SIRVA's multiple-line property and commercial liability insurance (*see* ¶¶131-170 below).

283. The critical accounting policies for revenue recognition contained in the Annual Report (*see* ¶276 above) were materially false and misleading because SIRVA improperly recognized premium revenue and commission income (*see* ¶¶373-374 below) and improperly accelerated revenues related to both corporate fees and referral fees (*see* ¶¶377-379 below).

284. The Audit Committee Report contained in the Proxy was materially false and misleading because the 2003 Form 10-K was not prepared in accordance with GAAP (*see* ¶¶347-357, 359-399 below) and the Company lacked adequate internal controls (*see, e.g.* ¶¶335(c), 357 below).

H. The SPO Prospectus

285. The false and misleading statements contained in the Prospectus filed in connection with the June 10, 2004 SPO detailed in paragraphs 56-63 above are also actionable as false statements under the Exchange Act. The reasons for falsity of the SPO Prospectus are detailed above in ¶¶63, 47-53.

I. Defendants' False 2Q 2004 Public Statements

286. On August 5, 2004, SIRVA reported "strong results for the second quarter" of 2004, with operating revenues up 15% and net income nearly tripling, as compared to the second quarter of 2003:

> CHICAGO, August 5, 2004 – SIRVA, INC. (NYSE: SIR), a global relocation services provider, today reported net income of $17.5 million, or $0.23 per diluted share, for the second quarter ended June 30, 2004. This represents an $11.3 million increase from the company's net income of $6.2 million, or $0.09 per diluted share, for the second quarter of 2003.
>
> Excluding one-time items, SIRVA reported earnings of $0.24 per diluted share in the second quarter, more than double the second quarter of 2003.
>
> SIRVA's operating revenue for the second quarter of 2004 was $668.8 million, an increase of 15.4 percent from $579.8 million in operating revenue for the second quarter 2003. The company's revenue less Purchased Transportation Expense (PTE), or net revenue, was $319.7 million for the second quarter of 2004, up 23.1 percent from $259.7 million in net revenue for the second quarter of last year. SIRVA's second quarter 2004 income from operations was $33.0 million, up 33.6 percent from $24.7 million in income from operations for the second quarter of 2003.

287. Defendant Kelley touted the Company's European growth:

> "We continue to invest in our European and Asia Pacific operations with the goal of developing a powerful selling and marketing capability across the rest of the world like we have in the U.S.," Kelley said. "We are building the infrastructure for future growth."

288. Defendants also expressed their confidence in the Company's ability to meet the previously disseminated earnings guidance:

> With strong performance in the first half of the year, the company remains confident that it will deliver on its stated objective of $1.17 - $1.20 earnings per share for 2004, based on an average sharecount assumption of 75.5 million shares. With the exercise of the Exel warrants, the average sharecount will now be approximately 77.1 million shares in the third and fourth quarters. Accounting for this impact, the company's revised guidance for 2004 is a range of $1.15 - $1.18 per diluted share.

289. On the same day, Defendants Kelley and Ryan participated in a conference call with analysts, wherein they touted the Company's second quarter results and discussed future earnings estimates. Defendant Kelley specifically stated:

> We are very pleased with our results in the second quarter. In the quarter, we delivered 15 percent growth in our operating revenue, 23 percent growth in net revenue, 25 percent growth in operating income, and we delivered an EPS, an earnings per share, of 24 cents, more than double last year's second quarter. These results reflect the success of our business model which allows us to continue to win market share in our key segments, improve operating margins, and generate strong free cash flow. In the second quarter, we performed well in each of these three areas.

290. Defendant Kelley again assured analysts and the investing public that SIRVA would be able to meet its previous guidance:

> As we look to the rest of the year, we're confident in our ability to deliver operationally on our previous guidance of earnings per share in the range of $1.17 to $1.20 for the year which was based on average share count of roughly 75.5 million shares.

291. In response to analysts questions, Defendant Kelley stated:

> BRIAN KELLEY: [] we have come out and publicly, when we went public we said we were going to grow net revenue plus 10 percent. The estimate we just put in for the full year grows, and now we're at 14 percent. We said we are going to grow operating income. We said EPS would grow at 20 percent, that will double. We said most of it will be driven by operating income, which we said would be about 20 percent. We are growing that at 23 percent on the current estimate.

> Cash flow is quite strong, well stronger than what we committed. So we are very comfortable and strategically our plan we're executing on all fronts. We have an ST business that frankly is worse than we thought going into the year. We are able to overcome it and still overdeliver in the first half, and we simply want to make sure that we have protection in the second half to overcome it as well.
>
> GARY YABLON: Okay. But I just want to make sure I understand the context of what is going on here. You are earning -- the base business of what is going on at this company is better than what we are seeing in these reported figures?
>
> BRIAN KELLEY: Absolutely.
>
> ***
>
> We're very comfortable with where we have been, with what is out there today. We are comfortable that as we look forward, we couldn't be more comfortable in the core of our business, in our Relocation Solutions business around the world, in our Network Services business around the world. We look at where we are heading, we look strategically where we're heading, how we are executing, our operating performance, cash flow as I mentioned, operating margin accretion. All of those things are terrific for us.

292. Regarding the Company's insurance services Defendant Kelley stated:

> Also noteworthy, the insurance services combined ratio for the most recent quarter remained in the 80 percent range which means we are growing this business without compromising our risk standards. We're on track to deliver continued driver growth as we pursue the nearly 200,000 risk qualified independent drivers in the USA today.

293. On August 13, 2004, SIRVA filed its second quarter report on Form 10-Q with the SEC ("2Q04 10-Q"). The report was signed by Defendant Ryan, as well as SIRVA Corporate Controller and Principal Accounting Officer Dennis M. Thompson, and reiterated the financial information conveyed in the August 5, 2004 press release. The 2Q0410-Q included certifications from Defendants Kelley and Ryan, as required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002. (*See* ¶¶237-239 above.)

294. In the 2Q04 10-Q, Defendants again reassured investors that the financial results reported therein were presented in accordance with GAAP, and fairly presented the Company's actual results.

295. The 2Q04 10-Q referred readers to the critical accounting policies described in the 2003 10-K. (*See* ¶¶ 44-46, 241 above.)

296. The 1Q04 10-Q also repeated the assurances that the Company had effective controls and procedures. (*See* ¶239 above.)

J. <u>Reasons for Falsity: 2Q 2004</u>

297. The financial results for the second quarter of 2004 announced on August 5, 2004 and included in the 2Q04 10-Q were materially false and misleading because they were achieved through improper accounting not in conformance with GAAP. (*See* ¶¶347-357, 359-399 below.)

298. Contrary to Defendants statements touting SIRVA's European growth in paragraph 287 above, Defendants knew that SIRVA was experiencing serious problems in Europe and could not meet budget in Europe. (*See* ¶97-130 above.)

299. Defendants' repeated assurances that SIRVA would meet the Company's guidance for 2004 in paragraphs 288-291 above were materially false and misleading, because, without Defendants' undisclosed improper accounting manipulations (*see* ¶¶347-357, 359-399 below), SIRVA would not be able to meet Defendants' projections for 2004.

300. Contrary to Defendants' statements regarding the Company's insurance business (*see* ¶ 292 above) as well as SIRVA's critical accounting policies for insurance and claims reserves and the amount of reserves set (*see* ¶295 above), the Company had under-reserved its insurance business in order to boost short term profits and meet budget and

improperly failed to take a timely charge to accrue additional liabilities relating to SIRVA's multiple-line property and commercial liability insurance (*see* ¶¶131-170 above).

301. Defendants assurances in the 2Q04 10-Q that the interim financial statements gave a fair presentation of the financial condition and results of the Company (*see* ¶ 294 above) were materially false and misleading, because, the financial statements actually contained numerous violations of GAAP. (*See* ¶¶131-170 above.)

302. Contrary to statements regarding SIRVA's critical accounting policies for revenue recognition (*see* ¶295 above), SIRVA improperly recognized premium revenue and commission income (*see* ¶¶373-374 below) and improperly accelerated revenues related to both corporate fees and referral fees (*see* ¶¶377-379 below).

303. Contrary to Defendants' assurances in paragraphs 296 above that SIRVA maintained adequate internal controls, Defendants would later admit that the Company in fact did not maintain effective internal controls. (*See, e.g.*, ¶¶335(c), 357.)

X. THE TRUTH REGARDING SIRVA'S INADEQUATE LOSS RESERVES AND PROBLEMS IN EUROPE IS SLOWLY REVEALED

A. SIRVA Announces $15.2 Million Charge To Increase Insurance Loss Reserves As Well As Poor Results In Europe

304. After the close of ordinary trading on November 9, 2004, SIRVA announced its third quarter 2004 results, also revealing that SIRVA was forced to take a $15.2 million charge to increase insurance loss reserves. Because of the charge, and poor results in Europe, SIRVA reported a sharp decline in operating income.

305. SIRVA also announced that, because of belatedly disclosed problems, it was significantly scaling back its expectations, "revising its 2004 earnings guidance to $0.85 - $0.87 per share from continuing operations," from the $1.17 - $1.20 per share it had reaffirmed in its second quarter press release.

306. Later that same day, Defendants held a conference call with analysts. During the call Defendant Kelley explained that the $15.2 million charge to increase loss reserves was due to recent growth reducing claims loss predictability and that the Company's new actuary, TillingHast, informed the Company of the need to significantly increase loss reserves. Kelley also stated that the reserve short falls were primarily in three lines of SIRVA's insurance business: occupational accident, worker's compensation and commercial auto.

307. Defendant Kelley explained how the change in actuaries had caused the Company to take the $15.2 million charge to insurance loss reserves:

> We've grown this business and we changed actuaries May of this year our previous actuaries gave us analysis through 12-31 and that said where our reserves were in the range. We're fine, that is acceptable and so we were fine with that. We changed actuary's in July. In mid August, met with the new actuary and historically, what we've done for years is we are required at the end of each year to file a statutory filing with the state to assure that our reserves are accurate and we do that every year.

308. In response to analysts questions, Defendant Kelley admitted that the Company should be conducting actuarial reviews more than twice a year:

> BRIAN KELLEY: And if you look at the way we've typically done this to get actuarial estimate at mid-year and at year end, you know, one of the clear things we'll do now is we'll be looking at it daily, week weekly, monthly and making sure it's not enough to do -- it's not enough to do an actuarial estimate twice a year. We've down that historically forever.
>
> TONY: right
>
> BRIAN KELLEY: And so if -- if these estimates moving forward are accurate, we're going to -- we're going to take the -- the actions we need to make sure that we're looking at claims and I don't want to give you the view that we're not looking at claims. We constantly look at claims. The issue is you get an actuarial estimate which is a combination of science and art and we get them twice a year. I can tell you we' ore going to get a lot more than two a year now.

309. In response to analysts' questions, Defendant Kelley explained that there had been a change in losses:

> TONY: I'm still a little bit confused on the insurance side. In that, you know, we've got three to four years of loss ratio data here and those numbers in general have been treading down. You know, you were kind enough to provide us with, you know, the best write up on this business at this point in time and I kind of go back to the question that Josh asked at the beginning of the call. Has there been a change in loss, because I guess so or are you telling me your new actuary says you need to reserve more but there's been no change -- has there been a change in the performance
>
> BRIAN KELLEY: No I want to be very clear on this. There has been a change in losses.
>
> TONY: And is that just -- so that the loss ratio in the quarter, was it huge?
>
> BRIAN KELLEY: The loss ratio in the quarter -- when you get an estimate it reflects both policy -- or accident years 2002, 2003, 2004, and so they came in and took a look at all of those. And a portion of it was for prior periods and a portion of it was for the current period.

310. Defendant Ryan then explained how loss reserves are calculated:

> JOAN RYAN: the only thing that I would add to that is the ultimate loss reserve was calculated understanding what the details were with a deep understanding of the policies and then looking at historical you know loss rates and development rates to be able to come up with what we are now going to book at going forward

311. Defendant Kelley also explained how the Company would change its insurance business in the future to fix its insurance loss reserves problem:

> And here's how we plan to fix each of these three lines. First occupational accident. We will continue to grow this profitable business. It represents 32% of our insurance business, it's our largest and most profitable line. But going forward, we will minimize volatility by reducing our retained risk from $500,000 per occurrence to 250,000. The second line is worker's compensation, which currently represents 9% of our insurance business. Effective with our January 1, reinsurance renewals we will increase reinsurance worker's comp from 50% to 80% there by reducing our risk by 50%. And we've set a hard cap going forward to ensure worker's comp stays at less than 10% of the premium as

> it is today. Finally, the general freight commercial auto lines. This business is 14% of our insurance revenue and at the new loss rate estimates for this line it's only marginally profitable so we stopped writing new policies as of November 6th. End of story for that line. These changes are not temporary fixes. They reflect a more conservative approach of this business going forward. By taking these operational actions, re-adjusting our reserves and scaling back our growth targets. We expect to retain the stable and predictable characteristics that have defined this business historically. This business has averaged a combined ratio in the low 80% range for over ten years. And with these more conservative loss estimates we will raise our expecting combined ratio to the mid to high 80s for 2005 which we estimate will result in a negative P&L impact of approximately $2.5 million per quarter, but we expect the actions we've taken to quickly return this business to the combined ratios we've experienced over the last few years in the low 80s. Even with these new reserve levels our insurance business continues to be a high margin business for us and will continue to out-perform its peer group of insurance companies but it will become an increasingly smaller part of our results less than 20% of our operating income as we grow our core relocation business at a much faster rate.

312. SIRVA's disclosures caused its stock price to drop from $23.78 per share on November 9, 2004, to $17.95 per share on November 10, 2004, a one-day drop of 24.5%, on unusually heavy trading volume.

313. SIRVA's failure to accrue material liabilities for expected losses related to SIRVA's multiple-line property and commercial liability resulted in financial results that were materially false and misleading. Indeed, the $15.2 million charge was an increase of 36% over year-end 2003 figure of $41.6 million. The materiality is also evidenced by the fact that if not for the failure to take the charge of $15.2 million, for example in the twelve months ended March 31, 2004, SIRVA's income from operations would have been essentially flat. *See* SAB No. 99 (stating that in assessing the materiality of a misstatement the registrant must consider whether the misstatement masks a change in earnings or other trends [and] whether the misstatement hides a failure to meet analysts' consensus expectations for the enterprise). In contrast, SIRVA touted that "[t]hese represent increases

of 8% and 28% over our operating revenues and income from operations, respectively, for the twelve-month period ended March 31, 2003, resulting from a combination of internally generated and acquisition growth."

314. Analysts at Deutsche Bank later explained on November 9, 2004 that SIRVA had changed its actuary in order to comply with the Sarbanes-Oxley Act, as its actuarial firm had also been its audit firm for more than 10 years. The analyst also noted that SIRVA had also hired an internal actuary, a position which the Company had not had up until that time.

315. JP Morgan analysts Bradley Safalow and Sofya Tsinis downgraded the Company to Neutral on November 10, 2004 stating:

> We are downgrading [SIRVA] from [Overweight] to [Neutral] & taking it off JPM FL for the following reasons: the magnitude of reserve taken in 3Q suggests that ins. claims might be rising, which could impact future Q's, improving profitability in [SIRVA's] European div. could take several Q's, & we don't see any NT catalysts.

316. Although SIRVA had announced bad news on November 9, 2004 regarding the charge necessary to increase insurance reserves, the Company had not yet revealed the full extent of its problems.

317. Indeed, in a November 9, 2004 analyst report, Credit Suisse First Boston analysts Joshua Rosen, Gregory Cappelli, Jeremy Davis and Smita Vadlamani continued to maintain a positive outlook on the Company based on Defendants' statements:

> While we've significantly scaled back our expectations for the international relocation and Network Services businesses, we continue to believe the company is in the early stages of a business model transformation that is driving stronger growth and higher margins through its competitive advantage within comprehensive relocation services. We believe management has taken a conservative approach to guidance this time and has positioned the company to deliver on the lowered expectations.

318. On November 15, 2004, SIRVA filed its third quarter report on Form 10-Q with the SEC ("3Q04 10-Q"). The report was signed by Defendant Ryan, as well as SIRVA Corporate Controller and Principal Accounting Officer Dennis M. Thompson, and reiterated the financial information conveyed in the November 9, 2004 press release and explained the impact of the $15.2 million charge to increase insurance loss reserves. The 3Q04 10-Q included certifications from Defendants Kelley and Ryan, as required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002. (*See* ¶¶237-239 above.)

319. In the 3Q04 10-Q, Defendants again reassured investors that the financial results reported therein were presented in accordance with GAAP, and fairly presented the Company's actual results.

320. The 3Q04 10-Q referred readers to the critical accounting policies described in the 2003 10-K. (*See* ¶¶ 44-46, 241 above.)

321. The 3Q04 10-Q further explained the charge for loss reserves:

> (d) Insurance Loss Reserves
>
> The Company's multiple-line property and commercial liability insurance group sets its reserve rates to provide for expected losses based on a percentage of earned premiums. The percentage is based on historical data, run rates and periodic review of actuarial analysis of claim payments and expected claim cost development. Insurance loss reserves were $57,787 and $41,582 at September 30, 2004 and December 31, 2003, respectively. During the three months ended September 30, 2004, the Company increased its insurance loss reserves by $15,207. The primary component of this increase was $12,107 related to estimated ultimate losses. This change in estimate resulted from the Company reviewing a number of factors including more experience with losses and how they develop and actuarial data as of September 30, 2004, which indicated unfavorable development of prior period claims. This increase was the result of a change in estimate and thus recognized in income in the current quarter. In addition, the insurance group incurred significant losses during the three months ended September 30, 2004 as a result of increased claims resulting from the hurricanes that inflicted substantial damage in the Southeast region of the United States. Reserve estimates of $3,100 were

> recorded for these specific claims. Insurance loss provisions are recorded in Other Direct Expense.

322. The 3Q04 10-Q repeated the assurances that the Company had effective controls and procedures. (*See* ¶239 above.) However, the 3Q04 10-Q also revealed for the first time that its internal controls may not be adequate:

> We are currently undergoing a comprehensive effort to comply with Section 404 of the Sarbanes-Oxley Act of 2002. Compliance is required as of our year-end of December 31, 2004. This effort includes a detailed plan to document, evaluate the design, and test the effectiveness of our internal controls. Our review process has identified certain internal control items that we have improved or continue to improve. These items include information technology system controls, further formalization of policies and procedures, improved segregation of duties, and enhanced monitoring controls. While we do not currently expect to have any material weaknesses in our internal controls as of December 31, 2004, we cannot provide assurance that a failure by us to complete, test, and confirm these changes and improvements by that date will not result in a material weakness in our internal controls, nor can we provide assurance that we will not identify any other items that could result in a material weakness.

323. After the 3Q04 10-Q was filed, JP Morgan analysts Bradley Safalow and Sofya Tsinis met with Defendant Kelley and SIRVA's Treasurer Doug Gathany to follow-up on the Company's 3Q04 results. The analysts submitted a report to the public on November 24, 2004. Regarding the Network Services division, the analysts commented that:

> As expected, much of the conversation centered on the performance of the Network Services division, where [SIRVA] incurred a $15.2MM charge during the 3Q04 to enhance reserves for TransGuard. Here are a few positive observations from our meetings: only $5MM of the $15MM charged related to adverse development in prior accident years, [SIRVA] now plans to hire its own internal actuary, and the company is ceding more risk.
>
> ***
>
> Only $5 million of the Total Charge Related to Higher Claim Experience
>
> According to management, only $5 million of the $15 million charge taken related to higher claim experience from the past 2-3

> accident years. Management has characterized the remaining $10 million as a "growth penalty". Over the past three years, TransGuard has more than doubled its gross premiums written. The company's new actuary, Tillinghast, has taken the view that the substantial underwriting growth generated by TransGuard over the past 2-3 years will likely lead to higher claims experience. It is hard to determine at this stage whether or not the increased reserve levels are overly conservative, or insufficient relative to risk. However, given the short-tail nature of TransGuard's policies, we are encouraged that the charge was not solely a function of adverse development in the past several accident years.

324. The analysts also compared SIRVA's insurance reserves to those of its largest competitor, and were stunned of such a difference in the way both companies calculated their insurance loss reserves:

> Reserve Policies Relative to Largest Competitor Appear Less Conservative
>
> One of TransGuard['s] largest competitors is Vanliner, which is owned and operated by Unigroup (the owner of United Van Lines). Vanliner provides a similar suite of insurance policies as TransGuard, although its exposure to worker's comp is significantly higher and the company generates a much higher percentage of revenues from its agents, than does TransGuard. However, within specific policies categories, it appears that Vanliner has been reserving more conservatively, even though the company has witnessed adverse development for the last 3-4 years. This could suggest that Vanliner does not have the same risk discipline as TransGuard, or that there is some difference in the structure of the policies. On a gross premium basis, TransGuard is approximately 20% smaller than Vanliner, although that gap has narrowed substantially over the past 3-4 years. Aside from a sizeable difference in underwriting discipline, it is hard for us to identify why pure loss ratios for TransGuard business would be materially different for those of Vanliner. For example, pure loss ratio on commercial auto liability is almost 34% lower than that for Vanliner. TransGuard's commercial auto liability does include occupational accident, which is a low loss business, but that does not account for the entire difference. We think this is an area for concern given the underwriting growth and TransGuard's adverse development for accident year 2002. The table below outlines the difference in their reserve policies.

B. <u>CFO Ryan Suddenly Resigns</u>

325. On January 21, 2005, SIRVA shocked the public by announcing that Defendant Ryan had resigned from the Company, effective that day. The release gave no reason for Ryan's resignation, only to say that she would remain with the Company in a consulting capacity and that the Company had appointed Ronald Milewski as acting CFO during the search for a permanent CFO replacement, which was already underway.

326. Deutsche Bank analysts Brandt Sakakeeny and Adrienne Colby stated that they were "obviously very concerned by the timing and the lack of guidance" behind Defendant Ryan's resignation.

XI. THE TRUTH REGARDING SIRVA'S NEED TO RESTATE PRIOR YEARS FINANCIALS IS REVEALED

A. <u>END OF THE CLASS PERIOD: SIRVA Reveals Potential Need to Restate and Revealed for the First Time the Need to Take Charges Related to Europe</u>

327. On January 31, 2005, ten days after CFO Ryan's resignation, SIRVA shocked investors again, announcing for the first time that it may in fact be required to issue a restatement and that Company was reviewing whether its accounting had any material weaknesses. The Company also revealed for the first time that the charges it would take were more than the $15.2 million originally announced and would not just related to insurance loss reserves, but also to its European operations:

> In the fourth quarter of 2004, the company commenced a thorough review of its accounting practices and significant balance sheet accounts, which has led to the identification of ***$21 million to $25 million pre-tax, or $0.18 to $0.22 per fully diluted share, of charges in its Insurance and European operations.*** The review was undertaken in connection with implementing procedures to comply with Section 404 of the Sarbanes-Oxley Act, the disappointing performance of the company's Insurance and European businesses in the third quarter of 2004, and as part of its year-end closing process.

* * *

> The company is currently evaluating the charges, their nature and the period they relate to, and ***whether any restatements will be required.*** SIRVA's independent public accountants have not completed their audit.
>
> The company will comment further on its fourth quarter and full year 2004 earnings when it completes and files its annual report on Form 10-K. ***In addition, the company is also reviewing whether it has any "material weaknesses" as defined by the Public Company Accounting Oversight Board's Auditing Standard No. 2.***

328. During a conference call on the same day, Defendant Kelley tried to explain the reasons for the Company's sudden dismal financial outlook:

> First, what happened? Earlier today, we announced that we will not meet our previously-issued earnings guidance for the fourth quarter of 2004. The reasons for this are twofold. ***First, we will have certain unanticipated charges related to our insurance and European operations.*** Second, we had lower-than-expected operating margins in each of our business segments. Now, based on our current analysis, we expect a net loss per fully-diluted share from continuing operations of between 16 cents and 20 cents in the fourth quarter versus the previous guidance of earnings between 15 cents and 17 cents per fully-diluted share. For the full year 2004, the Company expects earnings per fully-diluted share from continuing operations of between 49 cents and 53 cents.
>
> ***
>
> So what are the implications going forward? You should understand that we are now working on completing our annual close. We do know that certain of the charges relate to accounting errors. ***We are evaluating all the charges, their nature, the period they relate to, and whether any restatements will be required.*** Our independent public accountants, PwC, have not yet completed their audit. You should also understand that the charges are not the result of any changes in the Company's policies, including our revenue recognition or reserve methodologies.
>
> Now we will be revealing whether we have any material weaknesses in connection with Sarbanes-Oxley, and we will offer our perspective about that when we announce earnings. ***We will also know later whether this will mean that we file our 10-K late or restate earnings for prior periods.***

329. These disclosures caused SIRVA's stock price to drop from $14.40 per share on January 28, 2005, to close at $8.86 per share on January 31, 2005, a one-day drop of 38.5% on a day of unusually heavy trading volume.

330. Credit Suisse First Boston analysts Joshua Rosen and Jeremy Davis were concerned about the Company's lack of visibility, as they stated that "[m]ost concerning in our opinion, is the lack of visibility regarding the operating margin in the corporate relo[cation] segment, which we view as the most important value driver for the company."

331. Furthermore, JP Morgan analysts Bradley Sofalow and Sofya Tsinis were very surprised by the Company's difficulties in its Network Services division, stating "[w]hile we did not anticipate that the company would incur any more difficulties in the Network Services division following the charges taken in the third quarter, we currently think that this might not have been the case."

332. On February 1, 2005, Jonathan Shapiro and Fitzhugh Peters at Goldman Sachs issued a scathing analyst report entitled "Stock relocated to single digits, but too many unanswered questions" and stating:

> WE ARE NOT BUYERS BECAUSE OF ACCOUNTING AND MGMT CREDIBILITY: Despite the 38% drop in the shares, which had already been weak following the abrupt departure of CFO Joan Ryan last week, we would not look to be stepping into SIR shares for several reasons True, at 9X our new 2005 EPS estimate of $1.00, SIR shares could look inexpensive, but given the outstanding accounting-related questions, we believe the possibility for more bad news exists – there are just too many unknowns for us to get comfortable. In addition, while we are not lawyers, SIR was already facing shareholder lawsuits from its November earnings warning, and we would imagine today's events could bolster or add to these efforts. Further, SIR recently completed a new credit agreement, financial restatements or filing delays could lead to technical default. In terms of management credibility, we have spoken with a umber of investors who met with CEO Brian Kelley over the course of the fall, who received positive commentary on the business – all while a "thorough review of accounting practices" was underway. Finally SIR mgmt.

> had issued 4Q guidance on November 9, and nevertheless was nowhere near what the actual results ended up being on revenue (better) and margins (much worse), leading to questions around the company's forecasting ability and controls.

333. However, during the January 31, 2005 conference call with analysts, Defendant Kelley continued to mislead the public regarding the severity of the Company's accounting problems, assuring analysts that the accounting problems did not involve revenue recognition:

> You should also understand that the charges are not the result of any changes in the Company's policies, including our revenue recognition or reserve methodologies.
>
> * * *
>
> Finally, what does it mean for our core business? First, let me make three points. One, there are no revenue recognition issues involved here…

334. Analysts, including those at Credit Suisse First Boston and JPMorgan, bit on to this bit of information as a positive note in an otherwise dreary announcement, repeating Defendant Kelley's statement that the charges are not the result of changes in the Company's revenue recognition or reserve policies in their reports on January 31, 2005 and February 1, 2005 respectively .

XII. POST CLASS PERIOD EVENTS

A. SIRVA Announces Delay in Filing 2004 10-K and SEC Inquiry

335. On March 15, 2005 SIRVA announced that the filing of its annual report on Form 10-K for the year ended December 31, 2004 would be delayed beyond the March 16 deadline. The release also revealed:

a. On March 10, 2005 SIRVA's Board of Directors had concluded that previously issued financial statements for the years 2003, 2002, 2001 and 2000, quarterly financial statements for the first three quarters of fiscal year 2004 and quarterly financial information for the first three quarters of fiscal years 2003 and 2002 should not be relied upon because of errors in those financial statements.

b. The Company estimated that an approximately $22 million charge would relate to accounting errors that would require a restatement of the previously released financial statements for 2001, 2002, 2003 and the first nine months of 2004;

c. Management believed that accounting errors were the result of material weaknesses in internal control over financial reporting in its Insurance and European operating units, specifically:

> Inadequate preparation and insufficient review and analysis of certain financial statement balances and related account reconciliations; and
>
> Lack of sufficient personnel with appropriate qualifications and training in certain key accounting roles;

d. The audit committee of the Board of Director is conducting an ongoing review of certain of the Company's financial reporting practices and related processes, and has engage outside legal and financial advisors to assist in the review;

e. The SEC had initiated an informal inquiry related to the Company's recent earnings guidance announcement for the fourth quarter and full year ended December 31, 2004; and

f. The Company was in discussions with lenders regarding an extension of time to provide audited financial statements, as required under the credit agreements.

B. <u>SIRVA Forced to Amend Credit Agreement and Its Insurance Business is Downgraded</u>

336. On March 31, 2004 SIRVA disclosed that it had entered into a second amendment to a credit agreement providing a 90-day extension of time to deliver audited financial statements and increasing the margin rate on the loan.

337. On April 27, 2005 A.M. Best announced it was downgrading TransGuard Insurance from A- (Excellent) to B++ (Very Good) and would maintain its "Under Review" status of the Company.

C. SIRVA Delays Filing of 1Q05 10-Q and Increases Amount of Restatement to $27 Million

338. On May 10, 2005 SIRVA filed a Notification of Late Filing with the SEC, stating that it would not be able to file its first quarter 2005 Form 10-Q within the 5-day extension period which ends May 15, 2005.

339. On June 20, 2005, SIRVA provided an update on the status of is review of prior year financial statements. The Company disclosed that the amount of accounting errors identified by the Company had increased from the $22 million announced March 15, 2005 to $27 million.

D. SEC Inquiry Converted to Formal Investigation

340. On June 22, 2005, SIRVA disclosed that it was informed on June 21, 2005 by the staff of the enforcement division of the SEC that the previously disclosed informal inquiry related to the Company's previous earnings guidance announcement for the fourth quarter and full year ended December 31, 2004 being conducted by the SEC recently was converted to a formal investigation.

E. SIRVA Forced to Amend Agreements and Downgraded Again

341. On July 1, 2005 SIRVA filed a Form 8-K with the SEC indicating that it had been granted an extension under a third amendment to an amended and restated receivables sale agreement until September 30, 2005 to deliver audited financial statements for the year ended December 31, 2004; unaudited financial statements for the quarterly period ended March 31, 2005; and unaudited financial statements for the quarterly period ended June 30, 2005.

342. On July 27, 2005, Moody's downgraded SIRVA Worldwide, Inc, a wholly owned subsidiary of SIRVA, to B2 from Ba3.

343. On July 28, 2005 SIRVA announced that "it is targeting to report audited financial results for the fourth quarter and full year 2004 in September, when it expects to file its 2004 Form 10-K."

F. The Costs Associated With the Restatement Increased Repeatedly

344. The costs associated with the Company's restatement are expected to be extremely significant. Indeed, since the Company released its first estimate as to what these expenses might accrue to, the estimate has been increased twice, and has nearly doubled, further evidencing the magnitude and severity of SIRVA's restatement.

345. The Company first released its restatement cost estimate in a press release dated March 15, 2005, which was attached as an exhibit to the Company's Form 8-K dated March 10, 2005. In this release, the Company stated that it expected "to record approximately $35 - $40 million in expenses during 2005," regarding external resources needed to comply with the Company's audit committee review, SEC inquiry, and the additional support required to complete its fiscal year 2004 close and restatements. However, a mere three months later, on June 20, 2005, the Company revised this estimate to $55 million.

346. A few months later, on August 8, 2005, it was again announced in the Company's Form 8-K that "SIRVA increased its guidance related to the costs associated with its restatements, compliance with audit committee reviews, and ongoing SEC investigation." Over a month later, on September 15, 2005, the Company stated that it expected expenses associated with the audit and restatement to be approximately $60 million. Broken down, "[t]hese expenses include approximately $40 million related to the Independent Review,

approximately $10 million related to incremental audit procedures and approximately $10 million related to professional services provided to assist the Company with its internal review." This is a far cry from the initial estimate of $35 - $40 million, and as the Company has not yet completed its audit review and restatement, expenses are mounting every day.

G. <u>SIRVA Reveals Details of Anticipated Restatement But Delays Issuing 2004 10-K Again</u>

347. On September 21, 2005 SIRVA filed a Form 8-K with the SEC providing more detail of the forthcoming restatement and revealing that it would delay filing its 2004 Form 10-K yet again, stating that it anticipates filing its 2004 Form 10-K by the end of October 2005. The 8-K revealed that the Company's pre-tax income from continuing operations will be reduced by a total of $34 million for the periods 2000 through the first nine months of 2004.

348. The Summary of Significant Accounting Adjustments attached to the 8-K identifies twelve accounting errors, each of which impacted income from operations by an amount greater than $1 million. These twelve errors account for 66% of the total restatement amount, meaning the Company still has not revealed the remaining 34%.

349. Six of the twelve accounting errors appear in the Network Services segment. The six errors total approximately $14 million, or 74% of $19 million in total errors in the Network Services segment. The six errors include:

- Overstated premium revenue (approximately $4 million impacting Q1 through Q3 of 2004, 203 and 2002);
- Overstated commission income (approximately $3 million impacting Q1 through Q3 of 2004, 2003, 3003 and prior periods);
- Underaccrued claims expenses (approximately $2 million impacting Q1 through Q3 of 2004);

- Underaccrued ceded reinsurance premiums (approximately $2 million impacting Q1 through Q3 of 2004, 2003, 2002 and prior periods);

- Overstated premium revenue (approximately $2 million impacting Q1 through Q3 of 2004 and 2003); and

- Underaccrued insurance broker profit sharing (approximately $1 million impacting Q1 through Q3 of 2004, 2003, 2002, and prior periods).

350. Two of the twelve accounting errors impacting results from operations by more than $1 million are in the Moving Services North America segment. The two errors represent approximately $3 million, or 50% of the approximately $6 million in total errors in the Moving Services Segment. The two errors include:

- Understated customer incentives or agent commissions (approximately $2 million impacting Q1 through Q3 of 2004, 2003, and 2002) and

- Understated agent commission liability (approximately $1 million impacting Q1 through Q3 of 2004, 2003, and 2002, and prior periods).

351. Two more of the twelve errors are in the Global Relocation Services segment. There are a total of $3 million in errors in the Global Relocation Services segment, including:

- Premature revenue recognition (reduction of operating income of $1 million over the period 2002 through 2004); and

- Overstated home inventory valuation reserve (reduction of approximately $1 million impacting Q1 through Q3 of 2004, 2003, and 2002).

352. Another of the twelve errors includes the understatement of facility lease costs, resulting in an approximately $4 million increase in rent expenses, impacting Q1 through Q3 of 2004, 2003, and 2002 and prior periods.

353. The final error involves inadequate reconciliation of intercompany accounts and results in an approximately $3 million increase to agree all intercompany accounts, impacting Q1 through Q3 of 2004, 2003, and 2002 and prior years.

H. **<u>"Independent Review" Cannot Rule Out Intentional Accounting Misstatements</u>**

354. According to the September 21, 2005 8-K, the Audit Committee initiated a review in early January 2005 after the Company received a letter sent on behalf of the Company's former CFO, Defendant Ryan, who had resigned on January 21, 2005, alleging that she had been asked to resign due to her insistence on accurate financial reporting. The letter also commented adversely on the "tone at the top" set by senior management and the insistence on meeting earnings targets. The letter also indicated that in one instance, the Company had misused material non-public information. The Audit Committee engaged the law firm of Clearly Gottlieb Steen & Hamilton LLP ("Cleary Gottlieb") to advise the Audit Committee in connection with the review, and Cleary Gottlieb retained Deloitte & Touche LLP as forensic accountants to assist in the review.

355. The Audit Committee expanded its review in February 2005 to address allegations regarding the adequacy of the Company's accounting practices contained in a pseudonymous email sent to PwC.

356. In March 2005, the Audit Committee again expanded the review to include the circumstances giving rise to the accounting entries that were the basis for the Board of Director's decision to restate previously issued financial statements for the years 2000 through 2003 and the first nine months of 2004.

357. The Summary Report of Cleary Gottlieb included as an exhibit to the September 21, 2005 8-K reveals, among others, that:

- A “pseudonymous email” to PwC alleged improprieties in the Company’s moving services North America segment.

- The Company had a ***“regular practice of looking to the balance sheet as a source of earnings.”***

- The Independent Review identified an accounting adjustment in the third quarter of 2004 that “people involved ***knew*** to be false.”

- Assumptions underlying the Company’s financial statements were not well documented and estimates appeared subjective.

- “Given the Company’s performance culture, the timing of estimates in the reporting cycle and the subjectivity involved in setting these estimates, ***possibilities for abuse are created***.”

- A number of accounting entries being corrected as part of the restatement were made without acceptable support or sufficient documentation and ***“it cannot be ruled out” that the misstatements were made intentionally***.

- The Company’s internal controls failed to prevent and detect misstatements in a timely manner.

XIII. DEFENDANT’S OMISSIONS AND FAILURE TO REVEAL THE TRUTH

358. In addition to the false and misleading statements described in detail throughout this Complaint, Defendants also failed to disclose the truth regarding SIRVA's financial condition. Specifically, and in addition to the other omissions described in this Complaint, Defendants failed to tell the public that: a) their European Operations were suffering from serious problems even prior to the IPO, and that they knew about it; 2) their Network Services segment was materially under-reserved, and Defendants were manipulating reserves to manage earnings and meet estimates; and 3) SIRVA was engaging in serious accounting violations and manipulations, and as a result SIRVA's reported financial results were materially false and misleading.

XIV. DEFENDANTS' FALSE FINANCIAL REPORTING

A. <u>Defendants' Violation Of GAAP And SEC Rules</u>

359. During the Class Period, the Company represented that SIRVA's financial statements when issued were prepared in conformity with GAAP, which are recognized by the accounting profession and the SEC as the uniform rules, conventions and procedures necessary to define accepted accounting practice at a particular time. However, the Company used improper accounting practices in violation of GAAP, SEC reporting requirements and its own publicly stated policies to falsely inflate SIRVA's reported operating profits, net income and earnings per share and to falsely deflate its cost of sales in the interim quarters and fiscal years during the Class Period.

360. SIRVA's materially false and misleading financial statements resulted from a series of deliberate senior management decisions designed to conceal the truth regarding SIRVA's actual operating results. The SIRVA Defendants caused the Company to violate GAAP and SEC rules by, among other things:

a. improperly failing to take a timely charge to accrue additional liabilities related to SIRVA's multiple-line property and commercial liability insurance;

b. improperly overstating premium revenue;

c. improperly overstating commission income;

d. improperly accounting for accrued expenses, including, but not limited to, claim expenses, ceded insurance premiums, insurance broker profit sharing, customer incentives, and agent commissions liability;

e. improperly accelerated revenue related to both Corporate fees and referral fees;

f. improperly accounted for home inventory valuation reserve;

g. improperly accounted for its facility leases; and

h. failing to establish and maintain adequate internal accounting controls.

361. As set forth in Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Concepts ("Concepts Statement") No. 1 (November 1978), one of the fundamental objectives of financial reporting is that it provide accurate and reliable information concerning an entity's financial performance during the period being presented. Concepts Statement No. 1, paragraph 42, states:

> Financial reporting should provide information about an enterprise's financial performance during a period. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' and creditors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance.

362. As set forth in SEC Rule 4-01(a) of SEC Regulation S-X, "[f]inancial statements filed with the [SEC] which are not prepared in accordance with [GAAP] will be presumed to be misleading or inaccurate." 17 C.F.R. § 210.4-01(a)(1). Management is responsible for preparing financial statements that conform with GAAP. As noted by the AICPA professional standards:

> financial statements are management's responsibility . . . . [M]anagement is responsible for adopting sound accounting policies and for establishing and maintaining internal control that will, among other things, record, process, summarize, and report transactions (as well as events and conditions) consistent with management's assertions embodied in the financial statements. The entity's transactions and the related assets, liabilities and equity are within the direct knowledge and control of management . . . . Thus, the fair presentation of financial statements in conformity with Generally Accepted Accounting Principles is an implicit and integral part of management's responsibility.

1. **<u>The SIRVA Defendants Improperly Failed to Take a Timely Charge to Accrue Additional Liabilities Related to SIRVA's Multiple-line Property and Commercial Liability Insurance</u>**

363. SIRVA's financial statements filed with the SEC on Form 10-K for 2003 represented that:

> The Company's multiple-line property and commercial liability insurance group sets its reserve rates based on a percentage of earned premium. The percentage is based on historical data, run rates and actuarial methods.

364. SIRVA, however, improperly failed to accrue material liabilities for expected losses, related to SIRVA's multiple-line property and commercial liability insurance, thus causing the Company to announce materially overstated earnings and understated liabilities during the Class Period. As stated in its 3Q 2004 10-Q dated November 15, 2004, this eventually resulted in the company's disclosing that:

> The Company's multiple-line property and commercial liability insurance group sets its reserve rates to provide for expected losses based on a percentage of earned premiums. The percentage is based on historical data, run rates and periodic review of actuarial analysis of claim payments and expected claim cost development. Insurance loss reserves were $57,787 and $41,582 at September 30, 2004 and December 31, 2003, respectively. *During the three months ended September 30, 2004, the Company increased its insurance loss reserves by $15,207. The primary component of this increase was $12,107 related to estimated ultimate losses.* This change in estimate resulted from the Company reviewing a number of factors including more experience with losses and how they develop and actuarial data as of September 30, 2004, which indicated unfavorable development of prior period claims. This increase was the result of a change in estimate and thus recognized in income in the current quarter.

365. Moreover, the problems with insurance loss reserves did not end there. In fact the Company took an additional charge of $6 million related to "updated information and analysis that indicated the need to further increase the loss reserves in the Company's insurance business."

366. GAAP requires that

> A liability for unpaid claim costs relating to insurance contracts other than title insurance contracts, including estimates of costs relating to incurred but not reported claims, shall be accrued when insured events occur.
>
> * * *
>
> The liability for unpaid claims shall be based on the estimated ultimate cost of settling the claims (including the effects of inflation and other societal and economic factors), using past experience adjusted for current trends, and any other factors that would modify past experience. Changes in estimates of claim costs resulting from the continuous review process and differences between estimates and payments for claims shall be recognized in income of the period in which the estimates are changed or payments are made.

SFAS No. 60 *Accounting and Reporting by Insurance Enterprises* ¶¶ 17-18 (June 1982).

367. Moreover, GAAP provides that an estimated loss from a loss contingency "shall be accrued by a charge to income" if: (i) information available prior to issuance of the financial statements indicated that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements; and (ii) the amount of the loss can be reasonably estimated. FASB Statement of Financial Accounting Standards ("SFAS") No. 5 Accounting for Contingencies, ¶ 8 (March 1975). SFAS No. 5 also requires that financial statements disclose contingencies when it is at least reasonably possible (i.e., greater than a slight chance) that a loss may have been incurred. The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss or a range of loss, or state that such an estimate cannot be made.

368. In addition, FASB Interpretation No. 14, Reasonable Estimation of the Amount of a Loss, states that if the reasonable estimate of a particular loss contingency is a range, an amount shall be accrued for the loss. When some amount within the range appears at the time to be a better estimate than any other amount within the range, that amount shall

be accrued. When no amount within the range is a better estimate than any other amount, however, the minimum amount in the range shall be accrued.

369. The SEC considers the disclosure of loss contingencies to be so important to an informed investment decision that it promulgated Regulation S-X, which provides that, although disclosures in interim period financial statements may be abbreviated and need not duplicate the disclosure contained in the most recent audited financial statements, "where material contingencies exist, disclosure of such matters shall be provided even though a significant change since year end may not have occurred." 17 C.F.R. § 210.10-01.

370. SIRVA also violated GAAP by failing to take a timely charge to accrue additional liabilities related to SIRVA's multiple-line property and commercial liability insurance, in its interim financial statements, as indicated by APB Opinion No. 28, ¶ 17, Interim Financial Reporting:

> The amounts of certain costs and expenses are frequently subjected to year-end adjustments even though they can be reasonably approximated at interim dates. To the extent possible such adjustments should be estimated and the estimated costs and expenses assigned to interim periods so that the interim periods bear a reasonable portion of the anticipated annual amount.

371. In addition, Concepts Statement No. 5 Recognition and Measurement in Financial Statements of Business Enterprises, states that "[a]n expense or loss is recognized if it becomes evident that previously recognized future economic benefits of an asset have been reduced or eliminated . . . ."

372. Accordingly, during the Class Period SIRVA Defendants improperly failed to take a timely charge of approximately $22 million to accrue additional liabilities related to SIRVA's multiple-line property and commercial liability insurance.

2. **The SIRVA Defendants Improperly Recognized Premium Revenue and Commission Income**

373. During the Class period, Defendants also materially inflated the Company's reported revenues, accounts receivable, earnings and earnings per share by improperly recognizing premium revenue and commissions income by approximately $6 million and $3 million, respectively. In order for revenue to be recognized, it must be earned and realized or realizable. Concepts Statement No. 5 ¶ 83. Revenues are earned when the reporting entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues. Revenues are realizable when related assets received or held are readily convertible to known amounts of cash or claims to cash. *Id.* ¶ 83. If collectibility is not reasonably assured, revenues should be recognized on the basis of cash received. *Id.* ¶ 84g; *see also* Accounting Research Bulletin ("ARB") No. 43, (June 1943) Ch. 1A, ¶ 1; Accounting Principles Board Opinion ("APB") No. 10, Omnibus Opinion-1966 ¶ 12 (Dec. 1966). If payment is subject to a significant contingency, revenue recognition is improper. *See* SFAS No. 5 ¶ 17.

374. Defendants, however, in contravention of GAAP, materially inflated the Company's reported revenues by improperly recognizing revenue in a myriad of ways. For example, SIRVA admitted in its September 21, 2005 8-K the following:

> Overstated premium revenue: The Company maintains systems to invoice its customers for insurance premiums and other services. The Company did not administer an effective process to reconcile the general ledger account balances to the detailed accounts receivable trial balance. Upon review, it was determined that certain customer refund payments and certain customer billing adjustments were not accurately recorded in the general ledger, and were not detected in a timely manner due to the lack of an effective reconciliation process. As a result, the Company recorded an adjustment to reduce accounts receivable and reduce amounts previously recorded as revenue in the amount of approximately $4 million. The correction of error impacted Q1 through Q3 of 2004, 2003 and 2002.

> Overstated commission income: The Network Services segment places coverage on behalf of the Company and its affiliates, which involve numerous Corporate insurance contracts. The Company had arrangements with a certain insurer to participate in favorable loss experience by such insurer with respect to its layer of coverage. The Company recorded its participation as income when the cash was received. Further analysis indicated these amounts were a return of premium and were consequently due back to the named insured. As a result, Network Services recorded an adjustment to establish a liability for amounts previously recorded to commission income in the amount of approximately $3 million. The correction of error impacted Q1 through Q3 of 2004, 2003, 2002 and prior periods.
>
> Overstated premium revenue: The Company maintains systems to invoice its customers for insurance premiums and related expenses. In late 2003, the Company acquired an insurance agency and certain errors in amounts subsequently recorded as accounts receivable were not detected in a timely manner due to the lack of an effective reconciliation process. As a result, the Company recorded an adjustment to reduce accounts receivable and reduce amounts previously recorded as premium revenue in the amount of approximately $2 million. The correction of error impacted Q1 through Q3 of 2004 and 2003.

3. <u>The SIRVA Defendants Improperly Accounted For Accrued Expenses</u>

375. SIRVA's financial statements were materially false and misleading and violated GAAP because the SIRVA Defendants improperly accounted for SIRVA's accrued expenses, including but not limited to, claim expenses, ceded insurance premiums, insurance broker profit-sharing, customer incentives, and agent commissions liability during the Class Period. GAAP requires that the financial effects of transactions, events and circumstances be accounted for in the period in which they occur. Concepts Statement No. 6 Elements of Financial Statements ¶ 139-40, 144-46. In addition, Concepts Statement No. 5 states, "[a]n expense or loss is recognized if it becomes evident that previously recognized future economic benefits of an asset have been reduced or eliminated . . . ." Indeed, Defendants' failure to properly record SIRVA's accrued expenses was a violation of this fundamental

principle of accrual accounting and GAAP which caused reported operating results during the Class Period to be overstated by approximately $8 million.

376. In this regard, the SIRVA Defendants belatedly admit that SIRVA's financial statements were materially false and misleading for the following reasons:

> Underaccrued claims expenses: The Company has a stop-loss reinsurance agreement with a third-party insurance carrier that in part determines its ultimate claims expense. With respect to its 2002 and 2003 reinsurance agreements for workers compensation, the analysis of the stop-loss contracts was overlooked and thus, the Company did not properly record the cost of stop-loss for those two contract years. As a result, the Company recorded an adjustment to increase its loss reserve claims payable liability and increase loss expense in the amount of approximately $2 million. The correction of error impacted Q1 through Q3 of 2004.
>
> Underaccrued ceded reinsurance premiums: The Company has agreements with third party reinsurance carriers that transfer portions of the Company's insurance obligations to those third party reinsurers. Payments of premiums to such reinsurers are based upon those agreements. The amounts of ceded premiums were not calculated in accordance with the related agreements and as a result were not accurately entered in the Company's systems. Also, the Company had not completely reconciled certain balances due reinsurers between the general ledger and the underlying data. As a result, the Company recorded an adjustment to increase ceded reinsurance premium costs in the amount of approximately $2 million. The correction of error impacted Q1 through Q3 of 2004, 2003, 2002 and prior periods.
>
> * * *
>
> Underaccrued insurance broker profit sharing: The Company has agreements with certain of its insurance brokers to pay an additional commission based upon the profitability of the business sourced by those brokers. The Company failed to accrue the full amount of the contingent commission related to the transportation services line of business in accordance with the agreements. As a result, the Company recorded an adjustment to increase commission expense in the amount of approximately $1 million. The correction of error impacted Q1 through Q3 of 2004, 2003, 2002, and prior periods.
>
> * * *

> Understated customer incentives or agent commissions liability: The Company historically recorded into income amounts relating to certain unclaimed customer refunds and customer incentives. Further analysis indicated that a portion of these amounts remain contractually due to its customers or agents. Therefore, the Company recorded an adjustment to reinstate a liability for amounts previously recorded as income in the amount of approximately $2 million. The correction of error impacted Q1 through Q3 of 2004, 2003, and 2002.
>
> Understated agent commission liability: The Company historically recorded into income amounts relating to certain unclaimed shipping charges, penalties and other amounts collected from its agents or customers related to weight challenges and destination service disagreements. Further analysis indicated that a portion of these amounts remain contractually due to the agents. Therefore, the Company recorded an adjustment to reinstate a liability for amounts previously recorded as income in the amount of approximately $1 million. The correction of error impacted Q1 through Q3 of 2004, 2003, and 2002 and prior periods.

4. The SIRVA Defendants Improperly Accelerated Revenues Related to Both Corporate Fees and Referral Fees

377. The Company improperly accelerated revenue related to both Corporate fees and referral fees. The Company's improper accounting resulted in an overstatement of operating income of $1 million over the period 2002 through 2004. According to GAAP:

> A sale shall not be considered consummated until (a) the parties are bound by the terms of a contract, (b) all consideration has been exchanged, (c) any permanent financing for which the seller is responsible has been arranged, and (d) all conditions 2 precedent to closing have been performed. Usually, those four conditions are met at the time of closing or after closing, not when an agreement to sell is signed or at a preclosing.

SFAS No. 66 Accounting for Sales of Real Estate ¶ 6 (October 1982).

378. The Company, however, has admitted that it recognized revenue prior to closing, in direct contradiction to GAAP. In this regard, the Company disclosed:

> The Company has corrected the timing of revenue recognition with respect to both Corporate fee and referral fee revenue as follows:
>
> For Corporate fee revenue related to its fixed fee product, the Company has now determined that it should recognize revenue at

> the date the Company closes on the purchase of the home from the transferee, rather than at the date when the Company enters into a contract with the third party buyer of the home.
>
> For Corporate fee revenue related to its traditional product, the Company has now determined that it should recognize revenue at the date when the Company closes on the home sale to the third party buyer, rather than at the date when the Company enters into a contract with the third party buyer of the home.
>
> For listing real estate broker referral fee revenue, the Company has now determined that it should recognize revenue at the date when the Company closes on the home sale to the third party buyer, rather than at the date when the Company enters into a contract with the third party buyer of the home.
>
> For destination referral fee revenue, the Company has now determined that it should recognize revenue at the date when the transferee closes on the purchase of a destination home from a third party seller, rather than at the date when the transferee enters into a contract with the third party seller of the destination home.
>
> The Company has determined that the net impact of the above items will defer revenue recognition by approximately 30 to 35 days for most transactions.

379. Indeed as the Company admitted, Defendants violated GAAP by improperly recognizing revenue when the Company entered into a contract, rather than prior to the closing, thus overstating operating income by $1 million over the period 2002 through 2004.

5. <u>The SIRVA Defendants Improperly Accounted for its Facility Leases</u>

380. In addition, the Company also improperly accounted for its facility leases resulting in a restatement of approximately $7 million of understated expenses. In this regard, the Company disclosed in its September 21, 2005 8-K:

> 11. Understated facility lease cost: The Company historically recorded the rent expense associated with certain facility leases on an as-invoiced basis. However, this was not in accordance with GAAP which requires the Company to record rent payments on a straight line basis (including the effects of rent escalation clauses and free rent periods) and to depreciate certain leasehold improvements over the shorter of the facility's useful life or the term of the lease. Therefore, the Company recorded an adjustment to increase rent expense in the amount of approximately $4

million. The correction of error impacted Q1 through Q3 of 2004, 2003, and 2002 and prior periods.

6. **<u>The SIRVA Defendants Improperly Failed to Disclose the Accounting Changes and the Effects of the Changes on Earnings</u>**

381. During the Class Period, SIRVA changed: (a) its estimating methodology related to purchased transportation expenses; (b) its cargo claims reserve methodology for several units within Moving Services North America in the fourth quarter of 2002 that increased income by approximately $2.4 million; (c) its cargo claims reserve methodology for two divisions within Moving Services North America in the second quarter of 2003 that increased income by approximately $771,000; and (d) the Moving Services North America segment inappropriately took approximately $502,000 into income as a lump sum in the third quarter of 2003. As a result of the foregoing changes, the Company experienced material gains in operating income and achieved its earnings estimates. SIRVA, however, failed to disclose the changes and the effects of the change on reported earnings as required by GAAP.

382. Accordingly, the SIRVA Defendants knew or recklessly disregarded that the Company's public filings during the Class Period failed to comply with the disclosure obligations under the SEC's rules and regulations, including, among other things, the rules and regulations concerning Management's Discussion and Analysis of Financial Condition and Results of Operations. *See* 17 C.F.R. §229.303.

383. Moreover, during the Class Period, SIRVA's Management's Discussion and Analysis ("MD&A) favorably compared its results for the comparable period of the prior years or quarters but failed to disclose that those results were not comparable since SIRVA's operating income included:

a. changes in estimating methodology related to purchased transportation expenses;

b. changes in the cargo claims reserve methodology for several units within Moving Services North America in the fourth quarter of 2002 that increased income by approximately $2.4 million;

c. changes in the cargo claims reserve methodology for two divisions within Moving Services North America in the second quarter of 2003 that increased income by approximately $771,000; and

d. that the Moving Services North America segment inappropriately took approximately $502,000 into income as a lump sum in the third quarter of 2003.

26. Thus, in reporting its improved income from operations during the Class Period, SIRVA failed to disclose the Company's accounting changes and its impact on earnings even though they were material elements of those improved results, in contravention of GAAP and SEC rules.

384. Item 7 of Form 10-K and Item 2 of Form 10-Q, MD&A require the issuer to furnish information required by Item 303 of Regulation S-K [17 C.F.R. 229.303]. In discussing results of operations, Item 303 of Regulation S-K requires the registrant to:

> Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expenses which, in the applicant's judgment, should be described in order to understand the applicant's results of operations.

The Instructions to Paragraph 303(a) further state:

> Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes shall be described to the extent necessary to an understanding of the registrant's businesses as a whole . . . .

385. In addition, the SEC, in its May 18, 1989 Interpretive Release No. 34-26831, has indicated that registrants should employ the following two-step analysis in determining

when a known trend or uncertainty is required to be included in the MD&A disclosure pursuant to Item 303 of Regulation S-K:

> A disclosure duty exists where a trend, demand, commitment, event or uncertainty is both presently known to management and is reasonably likely to have a material effect on the registrant's financial condition or results of operations.

386. Nonetheless, SIRVA's Prospectus failed to disclose that the Company's income from operations growth was, in part, achieved by the changes in methodologies described above. To be sure, changes in the company's methodologies could effectively change the perception as to how fast the company is growing. In addition, SIRVA failed to disclose that it lacked internal controls necessary to prevent the Defendant's improper failure to disclose the changes in methodologies, and that the absence of such internal controls was reasonably likely to have a material adverse effect on the Company operating results, disclosure of which was necessary for a proper understanding, evaluation, and informed investment decision of the Company's operating performance.

387. Moreover, GAAP provides that the usefulness of financial statements in making economic decisions depends significantly upon the user's understanding of the accounting policies followed by a company. APB Opinion No. 22, Disclosure of Accounting Policies ¶ 7 (April 1972). In fact, GAAP states that information about the accounting policies adopted by a reporting company is "essential" for financial statement users. *Id.* ¶ 8. Accordingly, GAAP, in paragraph 12 of APB Opinion No. 22 provides:

> In general, the disclosure should encompass important judgments as to appropriateness of principles relating to recognition of revenue and allocation of asset costs to current and future periods; in particular, it should encompass those accounting principles and methods that involve any of the following:
>
> a. A selection from existing acceptable alternatives;

> b. Principles and methods peculiar to the industry in which the reporting entity operates, even if such principles and methods are predominantly followed in that industry;
>
> c. Unusual or innovative applications of generally accepted accounting principles (and, as applicable, of principles and methods peculiar to the industry in which the reporting entity operates).

388. SIRVA's Class Period financial statements were thus also false and misleading and failed to comply with GAAP because they improperly failed to disclose "[t]he effect on income before extraordinary items, net income and related per share amounts of the current period . . . for a change in estimate that affects several future periods . . . ." In this regard, the Company disclosed in its September 21, 2005 8-K, in pertinent part:

> changes in estimating methodology related to purchased transportation expenses ("PTE") implemented during the 24 month period ended September 30, 2004 were appropriate, improved the quality of the estimates, and were not "reversed engineered" to hit earnings targets. The review did, however, note that Company personnel had made numerous errors such as math errors, inconsistent application of current methodology and use of incorrect or incomplete data when calculating the entries for this account. In addition, the Company did not disclose in its public filings for the third quarter of 2004 that approximately $1.7 million of net income for the quarter resulted from a change in estimating methodology rather than from business operations.
>
> Changes in the cargo claims reserve methodology for several units within Moving Services North America in the fourth quarter of 2002 that increased income by approximately $2.4 million were inadequately disclosed in the Company's public filings.
>
> Changes in the cargo claims reserve methodology for two divisions within Moving Services North America in the second quarter of 2003 that increased income by approximately $771,000 were not disclosed in the Company's public filings.

32. Accordingly, investors were unable to assess the impact on earnings related to the changes in methodologies. Indeed, GAAP states that

> [c]omparability . . . and consistency in the application of methods over time increases the informational value of comparisons of relative economic opportunities or performance. The significance

> of information, especially quantitative information, depends to a great extent on the user's ability to relate it to some benchmark.

389. Accordingly, SIRVA's financial statements were materially false and misleading because they omitted information that was required by GAAP.

B. SIRVA's False and Misleading Financial Statements Were Material

390. The foregoing violations of GAAP were material. As set forth in SIRVA's Form 8-K issued on September 21, 2005, SIRVA announced it would restate its reported financial statements for the years 2000 through 2003 and the first nine months of 2004 because it had, among other things: (a) improperly overstated premium revenue; (b) improperly overstated commission income; (c) improperly accounted for accrued expenses, including, but not limited to, claim expenses, ceded insurance premiums, insurance broker profit sharing, customer incentives, and agent commissions liability; (d) improperly accelerated revenue related to both Corporate fees and referral fees; (e) improperly accounted for home inventory valuation reserve; and (f) failed to establish and maintain adequate internal accounting.

391. In view of "the potential dilution of public confidence in financial statements resulting from restating the financial statements of prior periods," according to GAAP, a retroactive restatement of financial statements, which is what SIRVA did in this case, is reserved for material accounting errors that existed at the time the financial statements were prepared. APB Opinion No. 20, Accounting Changes ¶¶ 18, 27, 34-38 (July 1971). Since GAAP allows only for correction of errors that are "material," by restating its financial statements, SIRVA admitted the materiality of the errors in its previously issued financial statements for years 2000 through the quarter ended September 30, 2004.

392. The cumulative impact of the restatements on SIRVA's previously reported operating results for nine months ended September 30, 2004 is as follows:

($ in thousands)

Income (Expense)	Q1-Q3 2004 As Originally Reported	As Restated	$ Change	% Change
Network Services	$ 15,828	$ 4,684	$(11,144)	-70%
Moving Services North America	66,985	64,170	(2,815)	-4%
Moving Services Europe & Asia Pacific	18,299	15,716	(2,583)	-14%
Global Relocation Services		(3,401)	(3,401)	
Corporate	(5,483)	(5,932)	(449)	8%
Total from continuing operations	$ 95,629	$ 75,237	$(20,392)	-21%

393. The cumulative impact of the restatements on SIRVA's previously reported operating results for the year ended December 31, 2003 is as follows::

($ in thousands)

Income (Expense)	2003 As Originally Reported	As Restated	$ Change	% Change
Network Services	$ 36,700	$ 34,012	$ (2,688)	-7%
Moving Services North America	59,800	57,686	(2,114)	-4%
Moving Services Europe & Asia Pacific	30,200	28,643	(1,557)	-5%
Transportation Solutions	4,100	4,100	-	0%
Global Relocation Services	-	(1,244)	(1,244)	
Corporate	(4,600)	(4,601)	(1)	0%
Total from continuing operations	$ 126,200	$ 118,596	$ (7,604)	-6%

394. Furthermore, SIRVA disclosed in its Form 8-K, that "the Company's pre-tax income from continuing operations will be reduced by a total of $34 million for the periods 2000 through the first nine months of 2004"

395. In addition to the foregoing improper accounting practices, the Company also suffered from a chronic and systematic breakdown of its internal accounting controls throughout the Class Period, which rendered SIRVA's financial reporting inaccurate, unreliable, and subject to manipulation resulting in materially false and misleading financial

statements. Contrary to GAAP and SEC requirements, SIRVA Defendants either failed to implement and maintain an adequate internal accounting control system, or knowingly and/or recklessly tolerated the failure to use existing internal accounting controls in a manner that would ensure compliance with GAAP.

396. SIRVA violated Section 13(b)(2)(A) of the Exchange Act by failing to maintain accurate records concerning its revenue, inventory, accrued expenses, earnings, and net income. SIRVA's inaccurate and false records were not isolated or unique instances because they were improperly maintained for multiple reporting periods, from at least January 1, 2000. In fact, as described above, SIRVA openly admitted its serious problems associated with its internal accounting controls in its September 21, 2005 8-K.

397. According to SEC rules, to accomplish the objectives of accurately recording, processing, summarizing and reporting financial data, a company must establish an internal control structure. Section 13(b)(2) of the 1934 Exchange Act states, in pertinent part, that every reporting company must:

a. make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer; and

b. devise and maintain a system of internal controls sufficient to provide reasonable assurances that:

i) transactions are executed in accordance with management's general or specific authorization; and

ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles…and (II) to maintain accountability for assets.

398. Furthermore, the Company represented in its Form 10-K for 2003, in pertinent part, that "[l]eaders in [their] company are expected to:

> **Prevent compliance problems by:**
>
> Ensur[e] that compliance risks associated with the business processes under the leader's management are systematically identified.
>
> Ensur[e] that policies and procedures, tailored to the particular risk areas faced by a business, are issued and communicated.
>
> **Detect compliance problems by:**
>
> Implement[] appropriate control measures in business processes to detect heightened compliance risks and/or violations.
>
> Promot[e] an effective reporting system that permits associates to raise concerns without fear of retaliation.
>
> Ensur[e] that periodic compliance reviews are conducted, with the assistance of the Company's auditors and legal counsel, to assess the effectiveness of the business' compliance measures and to identify ways of improving them.
>
> **Respond to compliance problems by:**
>
> Tak[e] prompt corrective action to fix any identified weaknesses in compliance measures.
>
> Tak[e] appropriate disciplinary action.
>
> Consult[] with SIRVA legal counsel and making appropriate disclosures to regulators and law enforcement authorities.
>
> At least annually, each officer or manager reporting to the CEO must review policy compliance with his or her direct reports and provide the results of those reviews to the CEO and the Chief Compliance Officer.

399. SIRVA thus violated Section 13(b)(2) of the 1934 Exchange Act and its own disclosed policy by failing to establish an appropriate control environment resulting in significant failures in the Company's internal accounting controls and procedures. The Company's lack of adequate internal accounting controls throughout the Class Period rendered the Company's Class Period financial reporting inaccurate, unreliable, and subject

to manipulation resulting in the issuance of materially false and misleading financial statements. Nonetheless, throughout the Class Period, the Company regularly issued quarterly and annual financial statements without ever disclosing the existence of the significant and material deficiencies in its internal accounting controls and falsely asserted that its financial statements complied with GAAP.

XV. DEFENDANT PWC'S PARTICIPATION IN THE FRAUD AND ITS SCIENTER

400. Defendant PwC is a worldwide firm of certified public accountants, auditors, and consultants. Indeed, PwC's website touts that it "is a truly global organization with member firm offices in 768 cities in 139 countries." Through its Chicago, Illinois office, PwC served as SIRVA's auditor, actuary, and principal accounting firm prior to and during the Class Period. PwC was required to audit the Company's financial statements in accordance with Generally Accepted Auditing Standards ("GAAS"),[8] and to report the audit results to SIRVA, the Board of Directors, the Audit Committee, and the members of the investing public, including Plaintiffs and other members of the Class. With knowledge of SIRVA's true financial condition, or in reckless disregard thereof, PwC certified the materially false and misleading financial statements of SIRVA, described below, and provided unqualified Independent Auditors' Reports, which were included in the SEC filings and publicly disseminated statements. Without these materially false and misleading unqualified audit opinions, the fraud alleged above could not have been perpetrated. Additionally, PwC consented to the use of its unqualified opinions in SIRVA's reports and in Registration Statements and Prospectuses filed with the SEC and otherwise disseminated to the investing public.

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[8] GAAS, as approved and adopted by the American Institute of Certified Public Accountants ("AICPA")' relate to the conduct of the individual audit engagements. Statements on Auditing Standards (codified and referred to as AU § __) are recognized by the AICPA as the interpretation of GAAS.

A. PwC Had Full and Complete Access to SIRVA's Information

401. PwC by virtue of its of its relationship with SIRVA and the nature of the auditing, actuarial, and consulting services rendered to the Company, and the fact that PwC's personnel were regularly present at SIRVA and had intimate knowledge of SIRVA's financial reporting practices based on its access to confidential internal corporate, financial, operating and business information, PwC knew of or recklessly disregarded the following adverse facts concerning the Company's improper financial reporting (detailed at length above) during the Class Period, including the Company's 2001, 2002 and 2003 year-end financial statements and PwC's unqualified audit opinions thereon. Nonetheless, PwC knowingly, or recklessly, issued false unqualified audit opinions during the Class Period.

B. PwC Failed to Render an Accurate Audit Report

402. PwC violated GAAS Standard of Reporting No. 1 that requires the audit report to state whether the financial statements are presented in accordance with GAAP. AU § 508.04. PwC's opinion falsely represented that SIRVA's 2001, 2002 and 2003 financial statements were presented in conformity with GAAP when they were not for the myriad reasons herein alleged.

403. The auditor's report must express an opinion on the financial statements taken as a whole and must contain a clear indication of the character of the auditor's work. The auditor can determine that he is able to express an unqualified opinion only if he has conducted his audit in accordance with GAAS. AU § 508.07.

404. PwC did not render an accurate audit report and thus did not exercise due professional care, because SIRVA's financial statements were not in conformity with GAAP, and because PwC failed to perform sufficient procedures to audit SIRVA's financial statements as of December 31, 2001, 2002 and 2003, in accordance with GAAS.

405. PwC issued its audit opinion, February 7, 2003, except as to Notes 19, 20, and 23, for which the date is August 15, 2003, and except as to Note 24, for which the date is November 24, 2003, on SIRVA's 2002 and 2001 financial statements, which it stated were presented in conformity with GAAP and that PwC's audit was performed in accordance with GAAS:

> In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of SIRVA, Inc. and its subsidiaries at December 31, 2002 and December 31, 2001, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 16(b) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.
>
> As discussed in Note 6 to the consolidated financial statements, the Company changed the manner in which it accounts for goodwill and other intangible assets upon adoption of the accounting guidance of Statement of Financial Accounting Standards No. 142, Goodwill and Other Intangible Assets on January 1, 2002.

406. PwC issued its audit opinion, dated February 13, 2004, on SIRVA's 2002 and 2003 financial statements. PwC's opinion stated that such SIRVA financial statements were

presented in conformity with GAAP and that PwC's audit was performed in accordance with GAAS:

> In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of SIRVA, Inc. and its subsidiaries at December 31, 2003 and December 31, 2002, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2003 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.
>
> As discussed in Note 17, the Company changed its accounting for redeemable junior preferred stock upon adoption of Statement of Financial Accounting Standards No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity," on July 1, 2003. As discussed in Note 7, the Company changed its accounting for goodwill and other intangible assets upon adoption of Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets," on January 1, 2002.

407. PwC also assisted SIRVA in its fraud during the Class Period by issuing a Consent Letter, dated February 13, 2004 that permitted SIRVA to incorporate by reference PwC's materially false and misleading reports into the Company's Registration Statements. For example:

> We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated February 7, 2003, except as to Notes 19, 20, and 23, for which the date is August 15, 2003, and except as to Note 24, for which the date is November 24, 2003, relating to the financial statements and financial statement schedule of SIRVA, Inc., which appears in SIRVA, Inc.'s registration statement on Form S-1, as amended, dated November 24, 2003 (Registration No. 333-108185).

408. PwC willfully ignored the significant deficiencies in the design and operation of SIRVA's internal controls that adversely affected SIRVA's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. See AU § 325.02. Indeed, many of the deficiencies encountered by PwC at SIRVA, as described in the September 21, 2005 8-K, are strikingly similar to the examples cited in AU 325.21 as "significant deficiencies in the design or operation of internal control." For example:

- Evidence of failure of identified controls in preventing or detecting misstatements of accounting information;
- Evidence that a system fails to provide complete and accurate output consistent with the entity's control objectives because of the misapplication of controls;
- Evidence of failure to safeguard assets from loss, damage or misappropriation;
- Evidence of the intentional override of internal control by those in authority to the detriment of the overall objectives of the system;
- Evidence of failure to perform tasks that are part of internal control, such as reconciliations that are not prepared or are not prepared in a timely manner;
- Evidence of manipulation, falsification, or alteration of accounting records or supporting documents;
- Evidence of intentional misapplication of accounting principles;
- Evidence of misrepresentation by client personnel to the auditor;
- Evidence that employees or management lack the qualifications and training to fulfill their assigned functions;
- Absence of a sufficient level of control consciousness within the organization;
- Failure to follow up and correct previously identified internal control deficiencies;

- Evidence of undue bias or lack of objectivity by those responsible for accounting decisions

409. Moreover, PwC ignored the standard auditing guidance that, when management fails to display and communicate an appropriate attitude regarding internal control, such as ineffectively communicating and supporting a company's values or ethics or communicating inappropriate values or ethics, the auditor must consider the fact that, although "such risk factors do not necessarily indicate the existence of fraud, they often have been observed in circumstances where fraud has occurred." AU § 316.11.

410. The consideration of internal controls is so important in conducting audits that AU § 319 contains 110 subparts and spans more than 30 pages in the AICPA's manual of professional standards. Nevertheless, PwC disregarded the fact that SIRVA's internal controls were practically nonexistent.

411. To be sure, PwC was aware of the importance of internal controls. Indeed, on January 15, 2003, PwC placed a full page advertisement in the Los Angeles Times stating its view concerning the importance of effective internal controls:[9]

> Today's topic for conversation: Internal control, i.e., the ability of a company to monitor itself
>
> It is sobering to see how many of last year's Corporate scandals were apparently a result of lax controls or management's override of internal control processes. A better system of internal checks and balances would have caught many of these problems before they became headlines, before they hurt investors.
>
> The Sarbanes-Oxley Act has responded to this situation by putting the accountability of internal financial control squarely on the

[9] A January 1, 2003 article in *The New York Times* concerning PWC's advertisements stated that PWC "faces a significant challenge from continuing public scrutiny of its past work. For instance, it approved of financial disclosures at Tyco International despite the company's use of "aggressive accounting that, even when not erroneous, was undertaken with the purpose and effect of increasing reported results above what they would have been if more conservative accounting were used." Jonathan D. Glater, *Pricewaterhouse Taking a Stand, And a Big Risk*, N.Y. Times, January 1, 2003, at C1.

> shoulders of both company management and, ultimately, in our opinion, its board of directors.
>
> Sarbanes-Oxley is also requiring external auditors to attest to management's assertions regarding the effectiveness of the company's internal control and procedures for financial reporting.
>
> These changes are good, but no one should think the goal here is just a good report card. The opportunity exists to create a higher level of monitoring and control, which, coupled with a spirit of transparency, will create better communications to the marketplace and, ultimately, rebuild investor confidence.
>
> But that is going to require looking at internal control not as a checklist, as many do, but as a dynamic process.
>
> The daily challenges a business faces – new staff, less staff, more demands and an even greater opportunity for conflict – should not be allowed to create opportunities for fraud, confusion or even innocent human error.

412. In SIRVA's 8-K Defendants admitted that "[t]he Company did not maintain an effective control environment based on criteria established in Internal Control—Integrated Framework issued by COSO. Management did not set a culture that extended the necessary rigor and commitment to internal controls over financial reporting. This control deficiency contributed to an environment which allowed journal entries without acceptable support or sufficient documentation to be recorded."[10] SIRVA 8-K at 12.

413. Despite its obvious awareness of the importance of internal controls, PwC, in violation of SAS No. 82, failed to give adequate consideration to the risk that the audited financial statements of SIRVA were free of material misstatement, whether caused by error or fraud. In this regard, PwC knew or recklessly disregarded numerous circumstances that

[10] In 1992, the Committee of Sponsoring Organizations of the Treadway Commission (COSO) developed a model for evaluating internal controls. This model has been adopted as the generally accepted framework for internal control and is widely recognized as the definitive standard against which organizations measure the effectiveness of their systems of internal control.

occurred or existed at SIRVA during the Class Period that are specifically identified in SAS No. 82 as "risk factors relating to misstatements arising from fraudulent financial reporting." These risk factors include, but are not limited to:

- A failure by management to display and communicate an appropriate attitude regarding internal control and the financial reporting process such as inadequate monitoring of significant controls;
- Domination of management by a single person or small group without compensating controls such as effective oversight by the board of directors or audit committee;
- Unusually rapid growth or profitability especially compared with that of other companies in the same industry.

As Plaintiffs have described above, each of these warning signs was applicable to SIRVA during the Class Period. Still, PwC violated GAAS by issuing clean audit reports on SIRVA's financial statements.

414. An audit conducted in accordance with GAAS requires that an auditor consider the effectiveness of the audited company's internal controls systems before issuing an audit report on financial statements derived from such systems. As the SIRVA Defendants have now admitted, the Company's misstatements and violations of GAAP were masked, in large part, by the Company's utter lack of internal controls and accounting systems, which PwC intentionally or recklessly disregarded. In light of the SIRVA Defendants' admissions, it is inconceivable that PwC could have opined that the Company's financial statements were fairly stated when those statements were prepared by fundamentally flawed accounting systems because lack of internal controls "could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements." AU § 325.02. These serious flaws did not develop overnight. Indeed, it is admitted that the internal control

weaknesses were rampant and existed from the beginning of year 2000 through the third quarter of 2004 – encompassing nineteen reporting periods. Moreover, these serious flaws resulted in overstated earnings by "[a]pproximately $36 million of the unanticipated pre-tax charges are related to accounting errors ($34 million related to continuing operations) . . . ."

415. In this regard, the Company admitted that:

> These control deficiencies contributed to the restatement of the Company's 2003, 2002, 2001 and 2000 annual consolidated financial statements and 2004 and 2003 interim consolidated financial statements, as well as adjustments, including audit adjustments, to the Company's 2004 annual consolidated financial statements. Additionally, these control deficiencies could result in a misstatement of account balances or disclosures, including those described above, that would result in a material misstatement to annual or interim financial statements that would not be prevented or detected. Accordingly, these control deficiencies constitute material weaknesses.

416. Even the most basic audit procedures are designed to detect such conduct and occurrences, particularly when, as here, the fraud infected the Company's core operations, occurred over approximately five years, and resulted in materially false and misleading financial statements. For example, PwC acquiesced to Defendants' use of manual journal entries despite the fact that "[n]on-standard journal entries may pose increased risk to the auditor in that they might conceal attempts by management to manipulate earnings and can be recorded in practically any account." AICPA Practice Alert 98-2.

417. Among other things, PwC knew or recklessly disregarded that SIRVA's Class Period financial statements violated GAAP and were materially false and misleading and inherently unreliable because, among other things:

a. improperly failing to take a timely charge to accrue additional liabilities related to SIRVA's multiple-line property and commercial liability insurance;

b. improperly overstating premium revenue;

c. improperly overstating commission income;

d. improperly accounting for accrued expenses, including, but not limited to, claim expenses, ceded insurance premiums, insurance broker profit sharing, customer incentives, and agent commissions liability;

e. improperly accelerating revenue related to both Corporate fees and referral fees;

f. improperly accounting for home inventory valuation reserve;

g. improperly accounting for its facility leases; and

h. failing to establish and maintain adequate internal accounting controls.

418. Because of the pervasiveness of these problems and the utter lack of internal controls evident at the Company, PwC knew of, or recklessly disregarded, the Company's improper financial reporting practices complained of herein, but, nevertheless, proceeded to issue materially false and misleading unqualified audit opinions during the Class Period.

419. Thus, in issuing its "clean" audit opinions on SIRVA's financial statements, PwC knowingly or recklessly (1) failed to investigate sufficiently, evidence of fraud by Defendants or take into account other conspicuous risk factors or "red flags" that would have alerted PwC to the deceptive computations; and (2) impermissibly relied on SIRVA's admittedly deficient internal controls in conducting its audits. In this regard, PwC ignored the following adverse factors:

a. As Defendants have admitted, SIRVA lacked adequate controls over manual entries and the process for documenting the process of making manual entries.

b. As Defendants have now admitted, SIRVA's senior management and employees in finance-related positions failed to follow up on issues and provide adequate oversight.

c. As Defendants have now admitted, SIRVA lacked systems, processes or controls necessary to ensure that the Company's financial statements were reported accurately.

d. As Defendants have now admitted, SIRVA did not hire, train, and supervise personnel necessary to ensure that the Company's financial statements were reported accurately.

e. As Defendants have now admitted, SIRVA placed undue focus on setting aggressive targets, without sufficient consideration of the potential impact on the Company's internal controls.

f. As Defendants have now admitted, SIRVA senior management and employees in finance-related positions failed to instill a Corporate culture that focused on robust internal controls and internal audit procedures.

420. In addition, PwC violated the third standard of reporting requiring that "[i]nformative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report." AU § 431; *see also* APB No. 22. Indeed, PwC knew or recklessly disregarded that SIRVA's Class Period financial statements were false and misleading and failed to comply with GAAP because they improperly failed to disclose "[t]he effect on income before extraordinary items, net income and related per share amounts of the current period . . . for a change in estimate that affects several future periods . . . ." APB No. 20 Accounting Changes ¶ 33 (July 1971). In this regard, the Company disclosed, in pertinent part:

> changes in estimating methodology related to purchased transportation expenses ("PTE") implemented during the 24 month period ended September 30, 2004 were appropriate, improved the quality of the estimates, and were not "reversed engineered" to hit earnings targets. The review did, however, note that Company personnel had made numerous errors such as math errors, inconsistent application of current methodology and use of incorrect or incomplete data when calculating the entries for this account. In addition, the Company did not disclose in its public filings for the third quarter of 2004 that approximately $1.7 million of net income for the quarter resulted from a change in estimating methodology rather than from business operations.
>
> Changes in the cargo claims reserve methodology for several units within Moving Services North America in the fourth quarter of 2002 that increased income by approximately $2.4 million were inadequately disclosed in the Company's public filings.
>
> Changes in the cargo claims reserve methodology for two divisions within Moving Services North America in the second quarter of 2003 that increased income by approximately $771,000 were not disclosed in the Company's public filings.

421. Accordingly, investors were unable to assess the impact on earnings related to the changes in methodologies. Indeed, GAAP states that:

> [c]omparability . . . and consistency in the application of methods over time increases the informational value of comparisons of relative economic opportunities or performance. The significance of information, especially quantitative information, depends to a great extent on the user's ability to relate it to some benchmark.

422. Accordingly, because SIRVA "omit[ted] from the financial statements, including the accompanying notes, information that [was] required by generally accepted accounting principles, [PwC] should [have] express[ed] a qualified or an adverse opinion and should [have] provide[d] the information in [their] report . . . ." AU § 431.03.

423. Also, during the course of PwC's audits of SIRVA, there appeared numerous "red flags" which should have raised questions in the auditors' minds and led them to procure additional evidential matter. In conducting an audit, an auditor must obtain sufficient competent evidential matter through inspection, observation, inquiries and

confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 326.01.

PwC did not obtain sufficient competent evidential matter upon which to base its audit opinions and thus did not exercise due professional care, despite the numerous red flags:

- The Company's "tone at the top" is characterized by a performance culture with an emphasis on setting aggressive targets, tracking performance and meeting commitments. This focus on earnings performance is neither unusual nor problematic; however, the Independent Review concluded that this performance culture did not consistently extend with the same rigor or commitment to the financial reporting and compliance areas. The Company had a regular practice of looking to the balance sheet as a source of earnings.

- The Company did not follow a sufficiently diligent process with respect to the review and approval of manual and nonrecurring journal entries at certain of its accounting locations.

- Some of these accounting entries were made without acceptable support or sufficient documentation.

- This lack of effective controls resulted in the Company's failure to prevent or detect errors in the areas of insurance ceded premium liabilities, home inventory valuation reserves and other accrued liabilities.

- Intercompany accounts: The Company historically attempted to reconcile the amounts due to and due from each of its subsidiaries and affiliates ("intercompany accounts"). However, the intercompany receivables and payables were not always compared to subledger detail at certain accounting locations. Additionally, monthly intercompany variances, often thought to be due to timing differences or currency changes, were not thoroughly analyzed and resolved in a timely manner. After a more comprehensive study and the initiation of a new intercompany reconciliation and settlement policy, the Company recorded an adjustment in the amount of approximately $3 million to increase expense to agree all intercompany accounts. The correction of error impacted Q1 through Q3 of 2004, 2003, and 2002 and prior periods.

424. Moreover, according to the August 2005 Cleary Gottlieb Presentation:

- A number of accounting entries being corrected as part of the restatement were made without acceptable support or sufficient documentation. In a number of instances, while evidence does not demonstrate that the misstatements were made intentionally, it cannot be ruled out.

- The finance function of the Company at the time had insufficient resources and public company accounting expertise.

- Certain accounting personnel with the Company at the time lacked adequate qualifications, supervision and training.

- In some instances, certain senior finance and accounting personnel failed to probe issues beyond general inquiries and failed to provide adequate oversight with regard to accounting and financial matters surrounding post-acquisition integration.

- The Company's internal controls in effect at the time failed to prevent and detect misstatements in a timely manner.

* * *

- These misstatements from the Global Relocation Services segment (approximately $2.9 million reviewed in all phases) arose from excessive reliance on subjective "judgment," misapplications of GAAP at various levels in the financial organization and a failure to inform the Corporate controller's group adequately about certain accounting entries.

- These misstatements in the Network Services Segment (approximately $14.5 million reviewed in all phases) arose from inadequate financial resources in the segment in terms of number, qualifications and experience of personnel. These difficulties, along with shortcomings in financial information systems, resulted in a series of mistakes and supervisory lapses at junior and senior levels.

- These misstatements in the Moving Services Europe & Asia Pacific segment (approximately $1.5 million reviewed in all phases) resulted from a limited understanding of U.S. GAAP by local finance personnel in Europe, inadequate training, failure to consult superiors on U.S. GAAP matters, and in some instances a failure to follow up by U.S. finance personnel.

425. PwC also failed to obtain and evaluate sufficient competent evidential matter to support significant accounting estimates related to assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. To be sure, the Company has admitted that:

> Significant portions of the Company's financial results are the product of estimates that are made at the end of reporting periods. In some instances, the assumptions underlying estimates were not well documented, and in others the estimates appeared subjective. Given the Company's performance culture, the timing of estimates in the reporting cycle and the subjectivity involved in setting these estimates, possibilities for abuse are created.

426. Indeed, PwC knew or recklessly disregarded that "assumptions underlying estimates were not well documented, and in others the estimates appeared subjective," however, PwC failed to evaluate whether the estimates were reasonable, despite the fact that they encompassed "[s]ignificant portions of the Company's financial results . . . ."

427. In evaluating the reasonableness of an estimate, the auditor should focus on key factors and assumptions that are: (1) significant to the accounting estimate; (2) sensitive to variations; (3) deviations from historical patterns; and (4) subjective and susceptible to misstatement and bias. AU § 342.09. In fact, SIRVA's estimates were not reasonable as admitted by the Company in its September 21, 2005 8-K and thus overstated earnings, in direct contradiction to the accounting principles and facts that existed at the time. Accounting Principles Board No. 20: Accounting Changes ¶ 13 (July 1971) (allows for restatements due to "mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared.").

C. PwC Lacked Independence

428. It is a fundamental principle of GAAS that, "[i]n all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors." AU § 220.01. PwC failed to perform its audit in accordance with this principle. In this regard, PwC served as SIRVA's actuary until May 2005, providing actuarial analysis through December 31, 2004. As actuary, PwC performed an actuarial analysis of claims payments and expected claim costs to establish reserve rates used to set SIRVA's insurance loss reserves in the Company's financial statements. In turn, PwC was supposed to evaluate the work of a specialist. AU § 336. In this regard, PwC, among other things, would be required to apply additional procedures if it believed that the determinations made by the specialist were unreasonable. AU § 336.13. In other words, audit its own work. Indeed, it is no surprise that the Sarbanes-Oxley Act lists actuarial services as "unlawful" if provided to a publicly held company by its auditor. PwC's role as SIRVA's actuary was also significant since SIRVA took two separate charges totaling approximately $21 million, related to it loss reserves.

XVI. CLASS ACTION ALLEGATIONS

A. General

429. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the "Class") consisting of all persons who purchased the common stock of SIRVA between November 25, 2003 and January 31, 2005, inclusive (the "Class Period"), including those who purchased SIRVA shares pursuant or traceable to the Company's Registration Statement and Prospectus for its November 25, 2003 IPO of 21,052,632 shares of common stock at $18.50 per share and the June 10, 2004 Secondary Offering of an additional 18,500,000 shares at $22 per share.

Excluded from the Class are the Defendants herein, members of each Individual Defendant's immediate family, any entity in which any Defendant has a controlling interest, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party.

430. Because SIRVA has millions of shares of common stock outstanding, and because the Company's common stock was actively traded on the NASDAQ National Markets during the Class Period, members of the Class are so numerous that joinder of all members is impracticable. As of November 11, 2004, SIRVA had 73,548,844 shares outstanding. While the exact number of Class members can only be determined by appropriate discovery, Plaintiffs believe that Class members number at least in the thousands and that they are geographically dispersed.

431. Plaintiffs' claims are typical of the claims of the members of the Class, because Plaintiffs and all of the Class members sustained damages arising out of Defendants' wrongful conduct complained of herein.

432. Plaintiffs will fairly and adequately protect the interests of the Class members and have retained counsel who are experienced and competent in class and securities litigation. Plaintiffs have no interests that are contrary to or in conflict with the members of the Class Plaintiffs seek to represent.

433. 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 members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

434. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members, in that Defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

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

ii. whether the Registration Statement and Prospectuses for the November 25, 2003 IPO and June 10, 2004 SPO contained material misstatements or omissions;

iii. whether the Company's other publicly disseminated releases and statements during the Class Period omitted and/or misrepresented material facts and whether Defendants breached any duty to convey material facts or to correct material facts previously disseminated;

iv. whether Defendants participated in and pursued the fraudulent scheme or course of business complained of;

v. whether the Defendants acted willfully, with knowledge or recklessly, in omitting and/or misrepresenting material facts;

vi. whether the market prices of SIRVA common stock during the Class Period were artificially inflated due to the material nondisclosures and/or misrepresentations complained of herein; and

vii. whether the members of the Class have sustained damages and, if so, what is the appropriate measure of damages.

B. Applicability of Presumption of Reliance: Fraud on the Market Doctrine

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

a. Defendants made public misrepresentations or failed to disclose facts during the Class Period;

b. The omissions and misrepresentations were material;

c. SIRVA securities traded in an efficient market;

d. The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

e. Plaintiffs and the other members of the Class purchased SIRVA securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

436. At all relevant times, the market for SIRVA securities was an efficient market for the following reasons, among others:

a. SIRVA securities were listed and actively traded during the Class Period on the NASDAQ exchange, an open, highly efficient and automated market. The average daily volume of the SIRVA's common stock during the Class Period was 381,061 shares based on information from the Yahoo Finance website. The total number of shares traded during the Class Period was 113,175,100 shares;

b. As a regulated issuer, SIRVA regularly made public filings, including its Forms 10-K, Forms 10-Q and related press releases, with the SEC.

c. SIRVA was followed by analysts from major brokerages including JP Morgan Americas, Deutsche Bank, Credit Suisse First Boston, Goldman Sachs, Oppenheimer & Co., Prudential Equity Group, Baer Stearns. The reports of these analysts were redistributed to the brokerages' sales force, their customers, and the public at large; and

d. SIRVA regularly communicated with public investors via established market communication mechanisms, including the Company's website, regular disseminations of press releases on the major news wire services, and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services.

437. As a result, the market for SIRVA securities digested current information regarding the Company from the publicly available sources described above and reflected such information in the prices of SIRVA's securities. As would be expected where a security is traded in an efficient market, material news concerning SIRVA's business had an immediate effect on the market price of SIRVA's securities, as evidenced by the rapid decline in the market price in the immediate aftermath of SIRVA's corrective disclosures as described herein. Under these circumstances, all purchasers of SIRVA's securities during the Class Period suffered similar injury due to the fact that the price of SIRVA securities was artificially inflated throughout the Class Period. At the times they purchased or otherwise acquired SIRVA's securities, Lead Plaintiffs and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not reasonably have discovered those facts. As a result, the presumption of reliance applies. Plaintiffs will also rely, in part, upon the presumption of reliance established by a material omission.

XVII. LOSS CAUSATION

438. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated SIRVA's stock price and operated as a fraud or deceit on Class Period purchasers of SIRVA stock by misrepresenting the Company's financial results and business success, including but not limited to misrepresentations regarding the success of its European operations and the adequacy of its insurance reserves. Defendants achieved this façade of success, growth and

strong future business prospects by blatantly misrepresenting the Company's risk and making a series of false and misleading statements regarding these material issues.

439. As a result of Defendants' fraudulent conduct as alleged herein, the prices at which SIRVA securities traded were artificially inflated during the Class Period. When Plaintiffs and other members of the Class purchased their SIRVA securities, the true value of such securities was substantially lower than the prices actually paid by Plaintiffs and the other members of the Class.

440. During the Class Period, Defendants improperly inflated SIRVA's reported results and made numerous false and misleading statements regarding many aspects of its business. Later, however, when the truth gradually leaked out and Defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, SIRVA stock fell precipitously as the prior artificial inflation came out of SIRVA's stock price. As a result of their purchases of SIRVA stock during the Class Period, Plaintiffs and other members of the Class suffered economic loss, *i.e.*, damages under the federal securities laws.

441. By their misrepresentations, the Defendants consistently presented a misleading picture of SIRVA's business and prospects. Thus, instead of truthfully disclosing during the Class Period that SIRVA's business was not as healthy as represented, Defendants caused SIRVA to falsely report revenues and earnings. Defendants also concealed that SIRVA's European operations were struggling, and that its insurance reserves were materially understated.

442. In ignorance of the materially false and misleading nature of the statements and documents made by the Defendants, as well as the adverse, undisclosed information known to the Defendants, Plaintiffs and the other members of the Class relied, to their

detriment on such statements and documents, and/or on the integrity of the market, in purchasing their SIRVA stock at artificially inflated prices during the Class Period. Had Plaintiffs and the other members of the Class known the truth, they would not have taken such actions.

443. These false statements directly or proximately caused, or were a substantial contributing cause of the damages and economic loss sustained by Plaintiffs and the other members of the Class, and maintained the artificial inflation in SIRVA's stock price throughout the fourteen-month Class Period and until the truth leaked into and was revealed to the market, at which time the prior artificial inflation came out of the stock.

444. Concurrent with Defendants' false and misleading statements regarding the adequacy of the Company's insurance reserves and the success of the Company's European operations, Defendants concealed the falsification of SIRVA's financial statements for the fiscal years 2002, 2003 and the first nine months of fiscal year 2004.

445. Defendants' false and misleading statements had the intended effect and directly or proximately caused, or were a substantial contributing cause of SIRVA's stock trading at artificially inflated levels, reaching as high as $26 per share, throughout the Class Period.

446. In mid November 2004, SIRVA's stock price experienced a one-day drop of 24.5%, falling from $23.78 per share to $17.95 per share following the Company's announcement that it was taking a $15.2 million charge to increase its loss reserves and for the difficult operating conditions it was experiencing in Europe, and that it was reducing its 2004 earnings guidance. This drop resulted in a $427,883,574 loss in market capitalization over one day. Later, on January 31, 2005, Defendants revealed that the Company would not meet its previously issued earnings guidance for the fourth quarter of 2004, and that it had

commended a review of its accounting practices and balance sheet accounts. These public revelations indicated that SIRVA's fourth quarter and fiscal year 2004 results would be much worse than prior forecasts. After the January 31, 2005 press release, Credit Suisse First Boston analysts were concerned about the Company's lack of visibility, stating that "[m]ost concerning in our opinion, is the lack of visibility regarding the operating margin in the corporate relo[cation] segment, which we view as the most important value driver for the company."

447. As a direct result of the public revelations regarding the truth about SIRVA's previously reported financial results and its actual business prospects going forward, SIRVA's stock price plummeted an 38.47%, on unusually high volume, falling from $14.40 on January 28, 2005 to $8.86 per share on January 31, 2005, a drop of $17.14 per share from its Class Period high in April 2003. The drop resulted in a one-day market capitalization loss of $407,460,596. Moreover, this drop, and the drop in November 2003, removed the inflation from SIRVA's stock price, causing real economic loss to investors who had purchased the stock during the Class Period, and causing a total loss in market capitalization over the Class Period of $651,504,032.

448. The 51% decline in SIRVA's stock price between November 25, 2003 and January 31, 2005 was a direct results of the nature and extent of Defendants' fraud finally being revealed to investors and the market. The timing and magnitude of SIRVA's stock price declines negate any inference that the loss suffered by Plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the Defendants' fraudulent conduct. During the same period in which SIRVA's stock price fell 51% as a result of Defendants' fraud being revealed, the Standard & Poor's 500 index **increased** by over 12%. The economic loss, *i.e.*,

damages, suffered by Plaintiff and other members of the Class was a direct result of Defendants' fraudulent scheme to artificially inflate SIRVA's stock price and the subsequent significant decline in the value of SIRVA's stock when Defendants' prior misrepresentations and other fraudulent conduct was revealed and the artificial inflation came out of SIRVA's stock.

449. In other words, there were no changed economic circumstances, changed investor expectations, new industry-specific facts of SIRVA-specific facts, conditions or other events, which taken separately or together account for the declines in the price of SIRVA stock described herein.

XVIII. EXCHANGE ACT CLAIMS

COUNT IV

VIOLATION OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B 5 PROMULGATED THEREUNDER AGAINST SIRVA, THE INDIVIDUAL DEFENDANTS, CD&R AND PWC

450. Lead Plaintiff repeats and reiterates the Exchange Act Claims set forth above as though fully set forth herein. This claim is asserted against Defendants SIRVA, the Individual Defendants, CD&R and PwC.

451. During the Class Period, SIRVA, the Individual Defendants, CD&R and PwC carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period which did: (a) deceive the investing public, including Lead Plaintiff and other Class members, as alleged herein; (b) artificially inflate and maintain the market price of SIRVA's publicly traded securities; and (c) cause Lead Plaintiff and other members of the Class to purchase SIRVA's publicly traded securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants SIRVA, the Individual Defendants, CD&R and PwC took the actions set forth herein. Defendants

SIRVA, the Individual Defendants, CD&R and PwC are sued as primary participants in the wrongful and illegal conduct charged herein.

452. In addition to the duty of full disclosure imposed on Defendants SIRVA, the Individual Defendants, CD&R and PwC as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 *et seq.*), S-K (17 C.F.R. § 229.10 *et seq.*) and other SEC regulations, including accurate and truthful information with respect to SIRVA's operations, financial condition and performance so that the market prices of the Company's publicly traded securities would be based on truthful, complete and accurate information.

453. Defendants SIRVA, the Individual Defendants, CD&R and PwC, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, business practices, performance, operations and future prospects of SIRVA as specified herein.

454. These Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of SIRVA's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about SIRVA and its business operations and future prospects in the light of the circumstances under which they were

made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of SIRVA's securities during the Class Period.

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

456. At the time of said misrepresentations and omissions, Lead Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Lead Plaintiff, the other members of the Class and the marketplace known of the true performance, business practices, future prospects and intrinsic value of SIRVA stock, which were not disclosed by Defendants, Lead Plaintiff and other members of the Class would not have purchased or otherwise acquired their SIRVA publicly traded securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

457. By virtue of the foregoing, Defendants SIRVA, the Individual Defendants, CD&R and PwC have each violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

458. As a direct and proximate result of these Defendants' wrongful conduct, Lead Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

COUNT V

FOR VIOLATIONS OF SECTION 20(a) OF THE 1934 ACT AGAINST THE INDIVIDUAL DEFENDANTS AND CD&R

459. Lead Plaintiff repeats and reiterates the Exchange Act Claims set forth above as if set forth fully herein. This claim is asserted against the Individual Defendants and CD&R.

460. The Individual Defendants and CD&R each acted as a controlling person of SIRVA within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high level positions with the Company, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's actual performance, the Individual Defendants and CD&R had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements which Lead Plaintiff contends are false and misleading. Each of these Defendants was provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Lead Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

461. In addition, each of these Defendants had direct involvement in the day to day operations of the Company and/or control over major corporate decision and policy making, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

462. As set forth above, SIRVA, the Individual Defendants, CD&R and PwC each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their controlling positions, the Individual Defendants and CD&R are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of the Individual Defendants and CD&R's wrongful conduct, Lead Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

463. By reason of such wrongful conduct, the Individual Defendants and CD&R are liable pursuant to Section 20(a) of the Exchange Act.

COUNT VI

VIOLATION OF SECTION § 20A OF THE EXCHANGE ACT AGAINST DEFENDANT CD&R

464. Lead Plaintiff repeats and realleges the Exchange Act Claims contained above. This claim is asserted against Defendant CD&R.

465. Defendant CD&R, by virtue of its positions as a control person of SIRVA, had access to, and was in possession of, material non-public information about SIRVA at the time of its sales of 21,427,837 shares of SIRVA stock for proceeds of $448,994,893 during the Class Period.

466. By virtue of its participation in the scheme to defraud investors described herein and its sales of stock while in possession of material non-public information about SIRVA, Defendant CD&R violated § 10(b) of the Exchange Act and applicable rules and regulations thereunder.

467. Defendant CD&R's sale of 15,022,831 shares of SIRVA stock on June 15, 2004 was made contemporaneously with Lead Plaintiff's purchases of 21,100 shares on June 15, 2004, and 2,200 shares on June 18, 2004.

468. Lead Plaintiff, as well as all other members of the Class who purchased shares of SIRVA stock pursuant to the SPO or contemporaneously with sales of SIRVA stock by Defendant CD&R: (a) has suffered substantial damages in that, in reliance on the integrity of the market, it paid artificially inflated prices for SIRVA stock as a result of the violations of §10(b) and Rule 10b-5 herein; and (b) would not have purchased SIRVA securities at the prices it paid, or at all, if it had been aware that the market prices had been artificially and falsely inflated by these Defendants' misleading statements and concealment of material facts. At the time of the purchases by Lead Plaintiff and Class Members, the fair market value of the SIRVA securities was substantially less than the price paid for them.

REQUEST FOR RELIEF

WHEREFORE, Lead Plaintiff requests a judgment, as follows:

a. Determining that this action is a proper class action, and certifying proposed class representatives under Rule 23 of the Federal Rules of Civil Procedure;

b. Awarding compensatory damages in favor of Lead 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. Pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. §7243, require SIRVA's CEO (Defendant Kelley) and CFO (Defendant Ryan) to reimburse SIRVA for (1) any bonus or other incentive-based or equity-based compensation received by Defendant Kelley or Defendant Ryan from SIRVA during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and (2) any profits realized from the sale of SIRVA securities during that 12-month period;

d. Awarding Lead Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

e. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Lead Plaintiff hereby demands a trial by jury.

Dated: October 23, 2006

Respectfully submitted,

CENTRAL LABORERS' PENSION FUND, Individually and on Behalf of all Others Similarly Situated, Lead Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 23, 2006, I filed this document on the Court's CM/ECF system, and the system will serve all counsel listed on the following service list by electronic mail.

By: s/ *Christopher S. Jones*
Christopher S. Jones

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