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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 In re UBIQUITI NETWORKS, INC. )  
 SECURITIES LITIGATION )

Master File No. 12-cv-04677-YGR

17 \_\_\_\_\_ )

CLASS ACTION

18 This Document Relates To: )

) CONSOLIDATED SECOND AMENDED  
 ) COMPLAINT FOR VIOLATIONS OF THE  
 ) FEDERAL SECURITIES LAWS

19 ALL ACTIONS. )

20 \_\_\_\_\_ )

DEMAND FOR JURY TRIAL

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**Page**

X. JURY DEMAND .....40

1 Plaintiff has alleged the following based upon the investigation of Plaintiff's counsel, which  
2 included a review of United States Securities and Exchange Commission ("SEC") filings by Ubiquiti  
3 Networks, Inc. ("Ubiquiti" or the "Company"), as well as regulatory filings and reports, securities  
4 analysts' reports and advisories about the Company, press releases and other public statements  
5 issued by the Company; media reports about the Company; pleadings and documents filed in the  
6 Company's litigation against Kozumi USA Corp. ("Kozumi"); and information provided by former  
7 Ubiquiti distributors. Plaintiff believes that substantial additional evidentiary support will exist for  
8 the allegations set forth herein after a reasonable opportunity for discovery.

9 **I. INTRODUCTION**

10 1. This is a securities class action on behalf of all persons who purchased or otherwise  
11 acquired shares of Ubiquiti common stock pursuant or traceable to the Company's false and  
12 misleading Registration Statement and Prospectus issued in connection with its October 14, 2011  
13 initial public offering ("IPO"), seeking to pursue remedies under the Securities Act of 1933 ("1933  
14 Act").

15 2. Ubiquiti designs, manufactures and sells broadband wireless solutions worldwide.  
16 The Company offers a portfolio of wireless networking products and solutions, including systems,  
17 high performance radios, antennas and management tools, designed for wireless networking and  
18 other applications in the unlicensed radio frequency ("RF") spectrum. The Company offers  
19 solutions that incorporate its RF technology, antenna design and firmware technologies, which it  
20 refers to as AirTechnologies and includes its proprietary AirMax systems.

21 3. The Company sold a majority of its products in emerging markets outside the United  
22 States (70% in 2011) and reported increasing revenues from 2009 (\$63.1 million) through 2011  
23 (\$197.9 million).<sup>1</sup> The Company used contract manufacturers in China and Taiwan to manufacture  
24 its products. In addition, the Company did not have a sales force and instead relied on distributors to  
25

26  
27 <sup>1</sup> The Company's fiscal year ends on June 30, so its first fiscal quarter runs from July 1 to  
28 September 30, its second fiscal quarter runs from October 1 to December 31, its third fiscal quarter  
runs from January 1 to March 31 and its fourth fiscal quarter runs from April 1 to June 30.

1 sell its products. Distributors accounted for 97% of the Company's revenues in fiscal 2011  
2 ("FY11").

3 4. On or about October 14, 2011, Ubiquiti filed its Prospectus for the IPO, which  
4 formed part of the Registration Statement and which became effective on October 13, 2011. At least  
5 7.038 million shares of Ubiquiti common stock were sold to the public at \$15 per share, raising  
6 \$105.6 million in gross proceeds for the Company and the selling shareholders. Ubiquiti's officers  
7 and directors signed the Registration Statement. The four Underwriter Defendants helped draft and  
8 disseminate the Registration Statement and Prospectus.

9 5. In the Registration Statement and Prospectus, defendants made materially inaccurate  
10 and misleading statements and omissions about Ubiquiti's business practices and financial results.  
11 They created the misleading impression that the sale of counterfeit Ubiquiti products was not a  
12 current problem by representing that Ubiquiti's ability to sell its products at competitive prices and  
13 to be the sole provider of its products *might* be adversely affected – and that its business, operating  
14 results and financial condition *could* be materially and adversely affected – *if* the Company were  
15 unsuccessful in stopping counterfeit products by monitoring and enforcing its intellectual property  
16 rights in China.

17 6. Other representations in the Registration Statement and Prospectus reinforced the  
18 misleading impression that the sale of counterfeit products was not a current problem. Defendants  
19 represented that Ubiquiti's ability to compete *could* be impaired *if* the Company failed to protect its  
20 intellectual property rights adequately, which in turn *could* reduce revenues and increase costs.  
21 They also represented that sales of counterfeit products *could* continue largely unimpeded *if*  
22 enforcement of the Company's intellectual property rights in China required an extensive amount of  
23 time. In addition, defendants represented that effective trademark protection *might* not be available  
24 in every country in which the Company sold its products, that others *might* develop technologies that  
25 infringed Ubiquiti's intellectual property and that the Company's legal efforts *might* not be  
26 successful against possible infringers.

27 7. These representations were important to investors because Ubiquiti was particularly  
28 susceptible to counterfeiting for several reasons. First, the Company had less control over the

1 manufacturing process because it did not manufacture its own products and instead used contract  
2 manufacturers in China and Taiwan, where enforcement of intellectual property rights was more  
3 difficult. Second, the Company had less control over the sale and distribution of its products  
4 because it did not have a direct sales force and instead used third-party distributors that acquired  
5 Ubiquiti products from the contract manufacturers and then delivered them to resellers and end  
6 users. Third, a majority of the Company's products was sold in emerging markets outside the United  
7 States, where it was more difficult to detect counterfeit products and enforce intellectual property  
8 rights. Fourth, the Company did not have registered trademarks for its name or all of its products in  
9 the various countries in which its products were sold. Fifth, the Company was an attractive  
10 counterfeit target because it reported increasing sales and earnings from 2009 to 2011.

11 8. Information provided by the Company in litigation against Kozumi and its owner,  
12 Shao Wei Hsu ("Hsu"), establishes that, since November 2009 and at the time of the IPO, Ubiquiti  
13 was unable to adequately protect and enforce its intellectual property rights in China and other  
14 countries and that sales of counterfeit products by Kozumi and others were adversely affecting  
15 Ubiquiti's ability to sell its products at competitive prices and to be the sole provider of its products,  
16 which, in turn, adversely affected the Company's business, operating results and financial condition.

17 9. In its lawsuit filed in May 2012, Ubiquiti stated that Kozumi and Hsu had  
18 "masterminded an international counterfeiting scheme" by stealing source code and proprietary  
19 designs, manufacturing and selling millions of dollars' worth of counterfeit products throughout the  
20 world, demanding millions of dollars from Ubiquiti to stop the counterfeiting and spreading false  
21 rumors about Ubiquiti and defendant Robert J. Pera ("Pera"). Exs. 1-10.<sup>2</sup> See *Ubiquiti Networks,*  
22 *Inc. v. Kozumi USA Corp.*, No. 12-cv-2582 CW (JSC) (N.D. Cal. 2012). The Company also stated  
23 that the international counterfeiting scheme was causing substantial and irreparable harm to  
24

25  
26 <sup>2</sup> All "Ex. \_\_" references are to Exhibits 1-11 included in the Appendix of Exhibits filed herewith.  
27 Exhibits 1-10 are pleadings filed in the Kozumi litigation, including declarations filed by several  
28 Ubiquiti executives, Ubiquiti's counsel and Hsu. All "ex. \_\_" references are to the exhibits attached  
to the declarations filed in the Kozumi litigation. Exhibit 11 is a compilation of e-mails provided by  
Asim Sajwani ("Sajwani"), a former Ubiquiti distributor, and portions of his blog.

1 Ubiquiti's financial results – including lost sales and increased costs – and devastating damage to the  
2 Company's goodwill and reputation.

3 10. Sworn declarations by Ubiquiti executives and internal Company documents filed in  
4 that litigation establish that the counterfeiting problems were causing substantial, irreparable and  
5 devastating harm at the time of the IPO. Indeed, defendants had been taking numerous actions in an  
6 attempt to stop the counterfeiting since 2009. The counterfeiting was particularly important to Pera,  
7 who e-mailed Hsu in December 2011 that he had “personally dedicated the last several months of  
8 [his] time focusing on [Kenny Deng],” the owner of Hoky Technology (“Hoky”), who was  
9 manufacturing thousands of counterfeit Ubiquiti products at a facility in Shenzhen, China.

10 11. Defendants also knew the efforts to stop the counterfeiting were unsuccessful and that  
11 increasing amounts of counterfeit product were being sold in more and more countries throughout  
12 the world, including China, Argentina, Paraguay, Turkey, Greece, Iran, Iraq, Saudi Arabia, Ukraine,  
13 Pakistan, Macedonia, Kosovo, India and Albania. By the time of the IPO, the problem had become  
14 so bad that Ubiquiti had retained Chinese counsel to prepare a criminal complaint and had made  
15 arrangements with Chinese law enforcement officials – the Shenzhen Public Security Bureau  
16 (“SPSB”) – to raid and shut down the Hoky manufacturing facility. The actual raid occurred on  
17 November 17, 2011, a month after the IPO. Thousands of counterfeit Ubiquiti products were found  
18 at the Hoky plant during the raid along with documentation showing that thousands of additional  
19 counterfeit products had already been shipped.

20 12. Other pleadings and documents filed by Ubiquiti in its lawsuit against Kozumi and  
21 Hsu establish that counterfeit products were being manufactured at the time of the IPO by at least  
22 one other facility in Huizhou, China owned by Huizhou China Eagle Electronic Technology Co. Ltd.  
23 According to Sajwani, the owner and CEO of former Ubiquiti distributor X-Concepts, as many as 13  
24 factories in China were manufacturing counterfeit Ubiquiti products. Sajwani also said that resellers  
25 told him there was a growing availability of counterfeit Ubiquiti products from 2010 to 2011 at  
26 prices 20% to 25% lower than Ubiquiti's prices.

27 13. Ubiquiti and its officers and directors were responsible for the content and  
28 dissemination of the materially inaccurate and misleading Registration Statement. The four

1 Underwriter Defendants were paid more than \$7 million to underwrite the IPO and failed to require  
2 disclosure of the international counterfeiting scheme, which was adversely impacting Ubiquiti's  
3 business at the time of the IPO. Public investors relied on the Underwriter Defendants to conduct a  
4 reasonable investigation, to obtain and verify the information contained in the Registration Statement  
5 and Prospectus and to make sure essential facts about the Company were disclosed. Indeed, the  
6 Underwriter Defendants had access to the adverse information at a critical time in Ubiquiti's  
7 corporate life – the first time it sought to raise capital from the public. The Underwriter Defendants  
8 either knew about the international counterfeiting scheme and its adverse impacts on the Company's  
9 business and failed to require disclosure or did not know by failing to conduct a reasonable  
10 investigation and independently verifying the representations in the Registration Statement and  
11 Prospectus. Either way, the Underwriter Defendants failed to meet their “gatekeeper” function of  
12 protecting investors.

13 14. Following the IPO, the Company's stock price remained inflated due to the  
14 undisclosed international counterfeiting problems. On November 10, 2011 and January 31, 2012,  
15 defendants reported Ubiquiti's results for the first and second quarters of fiscal 2012 (“1Q12” and  
16 “2Q12,” the quarters ending September 30, 2011 and December 31, 2012, respectively); repeated the  
17 same false statements that were included in the Registration Statement and Prospectus; and did not  
18 disclose the counterfeiting problems or their impact on the Company.

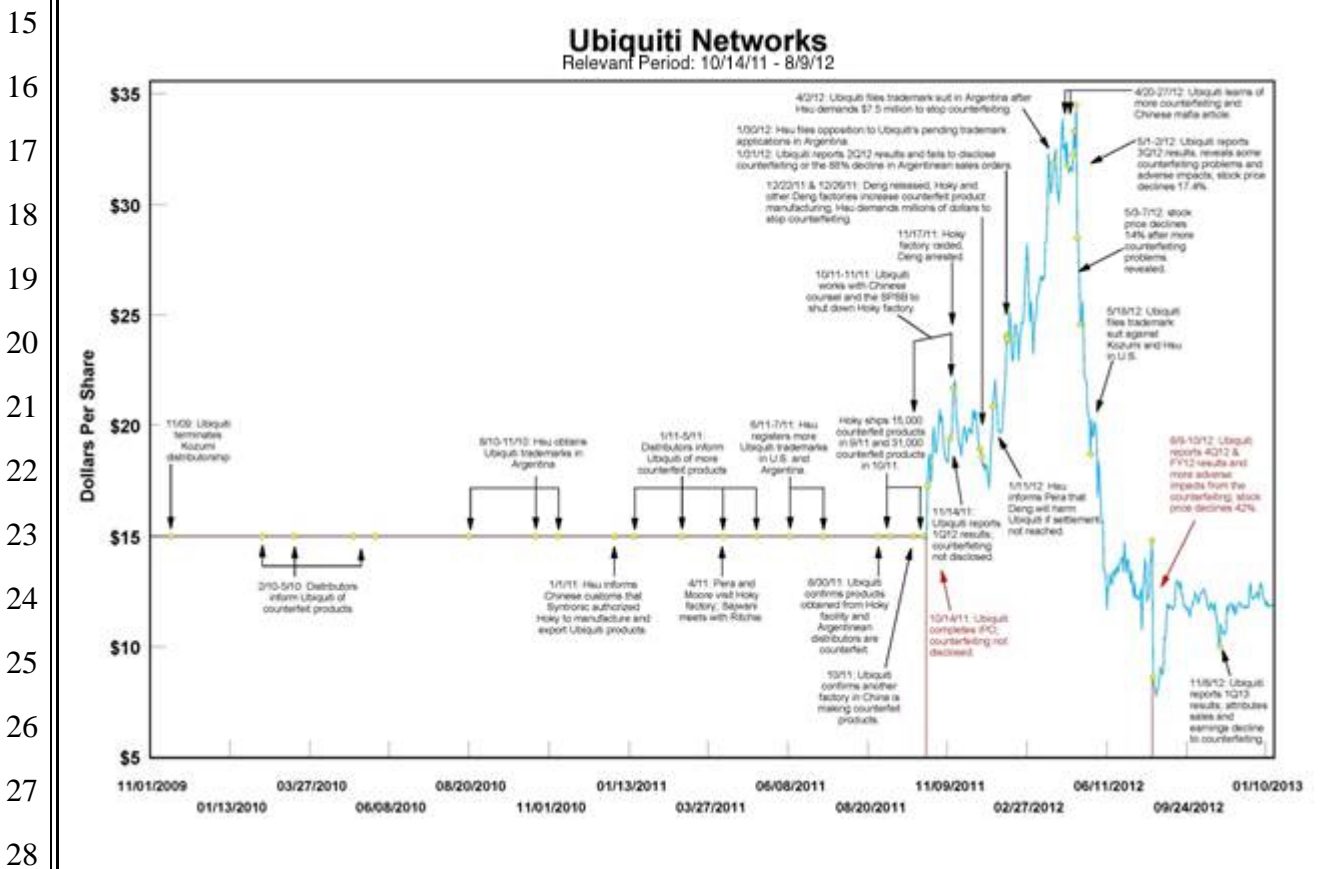
19 15. The continued sale of counterfeit Ubiquiti products and other events forced  
20 defendants to reveal some, but not all, of the counterfeiting problems and their impact on the  
21 Company's business. After the market closed on May 1, 2012, Ubiquiti announced disappointing  
22 3Q12 results and publicly acknowledged the international counterfeiting scheme for the first time.  
23 The Company revealed that it planned to increase its legal efforts and financial commitment to  
24 aggressively defend its intellectual property and to protect its customers from counterfeiters. After  
25 this unexpected negative news, Ubiquiti's stock price declined \$6.10 per share to close at \$28.90 per  
26 share on May 2, 2012, a one-day decline of 17.4% on volume of nearly 4.1 million shares.  
27 However, the stock price continued to be artificially inflated because defendants assured investors  
28



1 that the Company had the matter contained and minimized the effect the counterfeit activities would  
 2 have on the Company's operations.

3 16. On August 9, 2012, Ubiquiti announced its 4Q12 financial results and disappointing  
 4 guidance for 1Q13. Ubiquiti admitted that the international counterfeiting scheme was more  
 5 widespread than previously disclosed and would have a detrimental impact on the Company's future  
 6 results. As a result of this unexpected negative news, Ubiquiti stock declined \$6.30 per share to  
 7 close at \$8.71 per share on August 10, 2012, a one-day decline of nearly 42%, on volume of over 7.6  
 8 million shares. This represented a 42% decline in Ubiquiti's stock price from the IPO price of \$15  
 9 per share. Analysts downgraded the stock, lowered their price targets and reported that the  
 10 Company's revelations on August 9, 2012 showed that the earlier statements about the counterfeiting  
 11 had underestimated the magnitude of the challenges as it related to the prevalence of counterfeit  
 12 products and concerns regarding Ubiquiti's business model.

13 17. The following chart illustrates the primary events before, during and after the  
 14 Relevant Period and their impact on Ubiquiti's stock price.



1 **II. JURISDICTION AND VENUE**

2 18. The claims asserted herein arise under and pursuant to §§11 and 15 of the 1933 Act  
3 [15 U.S.C. §§77k and 77o]. This Court has jurisdiction over the subject matter of this action  
4 pursuant to 28 U.S.C. §1331 and §22 of the 1933 Act.

5 19. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because defendants  
6 maintain an office in this District and many of the acts and practices complained of herein occurred  
7 in substantial part in this District.

8 20. In connection with the acts and conduct alleged in this complaint, defendants, directly  
9 or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited  
10 to, the mails and interstate wire and telephone communications.

11 **III. PARTIES**

12 21. Inter-Local Pension Fund GCC/IBT (“Inter-Local”) and Bristol County Retirement  
13 System (“Bristol County”) were appointed Lead Plaintiff by the Court on November 30, 2012. Dkt.  
14 No. 30. As set forth in the certifications filed with the Court on November 6, 2012, Inter-Local  
15 purchased 18,910 shares during the Relevant Period (Dkt. No. 24-2) and Bristol County purchased  
16 16,079 shares during the Relevant Period (Dkt. No. 10-1) and were damaged thereby.

17 22. Plaintiff Steven N. Bell, as set forth in the certification attached to a complaint filed  
18 on September 7, 2012, purchased the common stock of Ubiquiti during the Relevant Period and has  
19 been damaged thereby.

20 23. Plaintiff Brian Goecker, as set forth in the certification attached to a complaint filed  
21 on September 13, 2012, purchased the common stock of Ubiquiti and has been damaged thereby.

22 24. Defendant Ubiquiti designs, manufactures and sells broadband wireless solutions  
23 worldwide. Ubiquiti’s principal executive offices are located at 2580 Orchard Parkway, San Jose,  
24 California 95131. The Company’s stock trades on the NASDAQ under the symbol UBNT.

25 25. Defendant Robert J. Pera founded the Company and serves as Chief Executive  
26 Officer (“CEO”) and a director of Ubiquiti. Pera signed the false and misleading Registration  
27 Statement; was quoted in the Company’s quarterly earnings releases issued on November 10, 2011,  
28

1 January 31, 2012, May 1, 2012 and August 9, 2012; spoke during the Company's quarterly earnings  
2 conference calls; and signed the Forms 10-Q and 10-K filed with the SEC.

3 26. Defendant John Ritchie ("Ritchie") is the Chief Financial Officer ("CFO") of  
4 Ubiquiti. In the IPO, Ritchie sold 82,500 shares of his Ubiquiti stock for gross proceeds of \$1.2  
5 million. Ritchie signed the false and misleading Registration Statement; signed the Forms 8-K filed  
6 with the SEC that attached the Company's quarterly earnings releases issued on November 10, 2011,  
7 January 31, 2012, May 1, 2012 and August 9, 2012; was quoted in the earnings releases issued on  
8 November 10, 2011 and May 1, 2012; spoke during the Company's quarterly earnings conference  
9 calls; and signed the Forms 10-Q and 10-K filed with the SEC. On November 8, 2012, the Company  
10 announced Ritchie had resigned and would leave Ubiquiti at the end of the year. On December 28,  
11 2012, the Company announced that Ritchie would stay through February 28, 2013.

12 27. Defendant Peter Y. Chung ("Chung") serves as a director of Ubiquiti. Chung signed  
13 or authorized the signing of the false and misleading Registration Statement.

14 28. Defendant Christopher J. Crespi ("Crespi") served as a director of Ubiquiti from  
15 October 2010 to December 1, 2011. Crespi signed or authorized the signing of the false and  
16 misleading Registration Statement.

17 29. Defendant Charles J. Fitzgerald ("Fitzgerald") serves as a director of Ubiquiti.  
18 Fitzgerald signed or authorized the signing of the false and misleading Registration Statement.

19 30. Defendant John L. Ocampo ("Ocampo") serves as a director of Ubiquiti. Ocampo  
20 signed or authorized the signing of the false and misleading Registration Statement.

21 31. Defendant Robert M. Van Buskirk ("Van Buskirk") serves as a director of Ubiquiti.  
22 Van Buskirk signed or authorized the signing of the false and misleading Registration Statement.

23 32. Pera and Ritchie are referred to herein as the "Officer Defendants."

24 33. Chung, Crespi, Fitzgerald, Ocampo and Van Buskirk are referred to herein as the  
25 "Director Defendants" and are named as defendants solely for violations of the 1933 Act.

26 34. Defendant UBS Securities LLC ("UBS") is a leading global investment banking and  
27 securities firm, and one of the largest global asset managers. UBS acted as an underwriter for  
28 Ubiquiti's IPO, helping to draft and disseminate the offering documents.

1           35. Defendant Deutsche Bank Securities Inc. (“Deutsche Bank”) is the U.S. investment  
2 banking and securities arm of Deutsche Bank AG. Deutsche Bank provides investment banking  
3 products and services. Deutsche Bank acted as an underwriter for Ubiquiti’s IPO, helping to draft  
4 and disseminate the offering documents.

5           36. Defendant Raymond James & Associates, Inc. (“RJA”) is a financial investment  
6 advisory firm. RJA acted as an underwriter for Ubiquiti’s IPO, helping to draft and disseminate the  
7 offering documents.

8           37. Defendant Pacific Crest Securities LLC (“Pacific Crest”) provides investment  
9 banking products and services. Pacific Crest acted as an underwriter for Ubiquiti’s IPO, helping to  
10 draft and disseminate the offering documents.

11           38. UBS, Deutsche Bank, RJA and Pacific Crest are referred to herein as the  
12 “Underwriter Defendants.”

13           39. Defendant Ubiquiti and the Officer and Director Defendants who signed the  
14 Registration Statement are strictly liable for the false and misleading statements incorporated into the  
15 Registration Statement. The Underwriter Defendants drafted and disseminated the offering  
16 documents and were paid more than \$7 million in connection therewith. UBS, Deutsche Bank and  
17 RJA acted as joint book-running managers for the IPO. Pursuant to an underwriting agreement, the  
18 four Underwriter Defendants agreed to purchase all of the shares in the IPO at a discounted price of  
19 \$13.9875 per share and then sold them to the public. The Underwriter Defendants’ failure to  
20 conduct an adequate due diligence investigation was a substantial factor leading to the harm  
21 complained of herein.

#### 22 **IV. RELEVANT NONPARTIES**

23           40. Kozumi USA Corp. is a Florida corporation that was a Ubiquiti distributor from May  
24 2008 until November 2009.

25           41. Shao Wei Hsu (who also goes by the names William Wu Hsu, William Hsu Wu and  
26 Guillermo Hsu, among others) is the founder, sole owner and director of Kozumi. As detailed  
27 below, Ubiquiti filed suit against Kozumi and Hsu in May 2012 alleging that Kozumi was  
28 substantially and irreparably harming Ubiquiti’s business and goodwill by selling counterfeit

1 Ubiquiti products. As also detailed below, Ubiquiti's allegations in its first amended complaint  
2 against Kozumi and Hsu, sworn statements made by Ubiquiti executives in declarations filed with  
3 the Court and internal Company documents filed as exhibits to the declarations establish that the  
4 manufacture and sale of counterfeit products by Kozumi was occurring from 2009 through 2012.  
5 Hsu filed a declaration in the Kozumi litigation, which included various exhibits. Ex. 9.

6 42. Kenny (Kai) Deng ("Deng") is the owner of Hoky and a manufacturing facility  
7 located in Shenzhen, China. As detailed below, Ubiquiti alleges in its lawsuit against Hsu and  
8 Kozumi that Hsu worked with Deng to steal Ubiquiti's proprietary product designs from one of the  
9 Company's approved contract manufacturers and then used the stolen designs to make counterfeit  
10 Ubiquiti products at the Hoky manufacturing facility from 2009 through July 2012. Ubiquiti also  
11 alleges that it worked with Chinese law enforcement authorities to shut down the Hoky factory and  
12 detain Deng in November 2011 and July 2012. Ex. 1, ¶¶70-83.

13 43. Benjamin Moore ("Moore") is the Vice President of Business Development at  
14 Ubiquiti. As detailed below, the sworn statements made by Moore in his May 18, 2012 declaration  
15 filed in the litigation against Kozumi and Hsu, and the internal Company documents attached as  
16 exhibits to the declaration, establish that the manufacture and sale of counterfeit Ubiquiti products  
17 was occurring from 2009 through 2012. Ex. 3.

18 44. Yu Cheng Lin ("Lin") is a vice president of operations at Ubiquiti. As detailed  
19 below, Lin filed a declaration in the Kozumi litigation in which he stated that Pera told him in March  
20 2011 that there was a potential counterfeit issue in China and asked him to assist in the investigation  
21 of counterfeiting operations taking place at the Hoky factory in Shenzhen, China. Ex. 4.

22 45. Mike Taylor ("Taylor") is a Senior Software Engineer at Ubiquiti. As detailed below,  
23 Taylor filed a declaration in the Kozumi litigation in which he stated that in August 2011 he  
24 analyzed products manufactured by Hoky and sold by Kozumi and confirmed they were counterfeit  
25 Ubiquiti products. Ex. 5.

26 46. Patrick G. Jabbaz ("Jabbaz") is a Hardware Manager at Ubiquiti. As detailed below,  
27 Jabbaz filed a declaration in the Kozumi litigation and attached as exhibits e-mails between Pera and  
28 Hsu in December 2011, April 2012 and May 2012. Ex. 6.

1           47. Asim Sajwani (“Sajwani”) is the founder, owner, President, Chief Executive Officer  
2 and Chairman of X-Concepts. X-Concepts is a company registered to do business in the United  
3 Arab Emirates with a principal place of business in Dubai. X-Concepts was a Ubiquiti distributor  
4 from March 2008 through February 2011. As detailed below, in his blog  
5 (<http://ubntfacts.blogspot.com/>) and during conversations with lead counsel, Sajwani stated that  
6 multiple factories in China were manufacturing counterfeit Ubiquiti products that were sold to  
7 customers in numerous countries from 2009 to the present. Ex. 11.

8 **V. DEFENDANTS VIOLATED THE 1933 ACT BY ISSUING AN**  
9 **INACCURATE AND MATERIALLY MISLEADING REGISTRATION**  
10 **STATEMENT AND PROSPECTUS**

11 **A. Ubiquiti’s Business Model Made it Particularly Susceptible to**  
12 **Counterfeit Product Sales that Could Harm the Company’s**  
13 **Reputation and Financial Results**

14           48. Ubiquiti was particularly susceptible to counterfeiting for several reasons. First, the  
15 Company had less control over the manufacturing process because it did not manufacture its own  
16 products and instead used contract manufacturers in China and Taiwan, where enforcement of  
17 intellectual property rights was more difficult.

18           49. Second, Ubiquiti had less control over the sale and distribution of its products  
19 because it did not have a direct sales force and instead used a worldwide network of distributors to  
20 market and distribute its products. The distributors acquired Ubiquiti products from the contract  
21 manufacturers and then delivered them to resellers and end users. Distributors accounted for 93% of  
22 total revenues in FY10, 97% of total revenues in FY11 and 98% of total revenues in FY12.

23           50. Third, a majority of the Company’s products were sold in emerging markets outside  
24 the United States, where it was more difficult to detect counterfeit products and enforce intellectual  
25 property rights. The Company’s products are offered in the United States and in over 65 other  
26 countries, with a particular focus on emerging economies in South America, such as Argentina,  
27 Brazil and Paraguay. Ex. 1, ¶23. As shown in the following chart, the amount of revenues from  
28 outside North America grew from 55% in 2009 to 75% in 2012 (\$s in 000s).



Region	2009	2010	2011	2012
North America <sup>3</sup>	\$28,476 (45%)	\$56,995 (42%)	\$61,920 (31%)	\$88,309 (25%)
South America	\$3,916 (6%)	\$13,520 (10%)	\$50,824 (26%)	\$88,325 (25%)
EMEA	\$27,801 (44%)	\$55,089 (40%)	\$68,297 (35%)	\$130,494 (37%)
APAC	\$2,928 (5%)	\$11,348 (8%)	\$16,833 (8%)	\$46,389 (13%)
Total	\$63,121	\$136,952	\$197,874	\$353,517

51. Fourth, the Company did not have registered trademarks for all its products in the various countries in which its products were sold. In its lawsuit against Kozumi, Ubiquiti stated that it had made “substantial intellectual property investments” to protect its corporate name and product name, including the filing of numerous trademark applications in the United States and abroad. Ex. 1, ¶¶24-35. The Company alleged that it had registered various trademarks with the United States Patent and Trademark Office (“USPTO”), including AIROS, AIRMAX, UBNT, AIRGRID, AIRCONTROL, AIRVIEW, UNIFI and AIRVISION. *Id.*, ¶¶25-33. But it did not have approved trademarks in the United States for numerous other hardware and software products (Airblast, Aircam, Airfiber, Airmaxsync, Bullet 2, Edgemax, Innerstation, MFI, Msensor, Mpower, Mport, Nanobridge, Nanostation, Picostation, Powerbridge, Rocket and Unitel) or even the Company’s name (Ubiquiti and Ubiquiti Networks). *Id.*, ¶34. The Company also did not have approved trademarks in the numerous countries outside the United States in which it sold a majority of its products. *Id.*, ¶35.

52. Fifth, as shown in the following chart, the Company reported increasing revenues and high margins, which made it an attractive target for counterfeiters. Revenues more than tripled from \$63.1 million in 2009 to \$197.9 million in 2011. The gross margin was approximately 40%, and the operating margin was about 30% excluding 2010. Counterfeiters could potentially generate even higher margins because they would not incur research and development costs, which totaled \$31.7 million in 2010 and \$11.4 million in 2011 for Ubiquiti. They could also produce counterfeit products at lower costs by using cheaper materials and not obtaining regulatory certifications for the products. Ubiquiti’s products were certified by Underwriters Laboratories. *Id.*, ¶21.

<sup>3</sup> Revenue from sales in the United States was \$28.2 million in FY09, \$56.2 million in FY10, \$60.0 million in FY11 and \$84.3 million in FY12. During a November 17, 2011 presentation, Ritchie stated that about one-half of the product sold in the United States was subsequently shipped outside the United States.

<b>\$ in 000s</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Revenues	\$63,121	\$136,952	\$197,874	\$353,517
Cost of Revenues	\$37,181	\$82,404	\$117,062	\$202,514
Gross Profit	\$25,940	\$54,548	\$80,812	\$151,003
Gross Margin	41.1%	39.8%	40.8%	42.7%
Operating Expenses	\$8,112	\$49,866	\$18,732	\$25,711
Operating Income	\$17,828	\$4,682	\$62,080	\$125,292
Operating Margin	\$28.2%	3.4%	31.4%	35.4%

53. Ubiquiti was also an attractive target for counterfeiters because sales of its flagship AirMax product line were growing significantly. The AirMax product line consists of a number of products, including the Nanostation, NanoStation M, NanoStation Loco M, PowerBridge M series, PicoStation M series, AirGrid M series, Rocket M series, NanoBridge M series and Bullet M series. As shown in the following chart, Ubiquiti's AirMax product line generated an increasing amount of revenues and represented a majority of the Company's revenues in FY11 and FY12 (\$ in 000s).

<b>Product</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
AirMax	\$0 (0%)	\$37,525 (27%)	\$113,001 (57%)	\$223,743 (63%)
Other Systems	\$49,764 (79%)	\$75,368 (55%)	\$47,397 (24%)	\$81,551 (23%)
Embedded Radio	\$12,958 (20%)	\$14,047 (10%)	\$14,762 (7%)	\$10,056 (3%)
Antennas/Other	\$399 (1%)	\$10,012 (8%)	\$22,714 (12%)	\$38,167 (11%)
Total	\$63,121	\$136,952	\$197,874	\$353,517

**B. An International Counterfeiting Scheme that Had Grown in Size from 2009 to 2011 Was Adversely Affecting Ubiquiti's Business at the Time of the IPO**

**1. Pleadings and Documents Filed in the Kozumi Litigation Establish that Kozumi and Others Were Making and Selling Millions of Dollars of Counterfeit Ubiquiti Products that Were Causing Substantial Harm to Ubiquiti at the Time of the IPO**

54. On May 18, 2012, Ubiquiti filed suit against Kozumi and Hsu claiming that they had been masterminding an international counterfeiting scheme by manufacturing and selling millions of dollars of counterfeit Ubiquiti products – primarily AirMax products – that caused substantial and irreparable harm to the Ubiquiti brand and business. In the first paragraph of Ubiquiti's first amended complaint, the Company stated the following:

Defendants have masterminded an international counterfeiting scheme to profit illegally from Ubiquiti's established trademarks and goodwill in the wireless and networking technology markets. Using stolen source code and proprietary



1 designs, Defendants have been manufacturing millions of dollars' worth of  
2 counterfeit Ubiquiti products, packaging them in boxes that are virtually identical to  
3 genuine Ubiquiti packaging, and selling them to unsuspecting customers throughout  
4 the world. These customers are deceived into believing that they are purchasing  
genuine Ubiquiti products when they are actually buying substandard counterfeit  
goods. The availability of these counterfeit products in the marketplace is causing  
substantial harm to the Ubiquiti brand and needs to be stopped immediately.

5 Ex. 1, ¶1.

6 55. Ubiquiti stated in its lawsuit that each counterfeit product sold represented a lost sale  
7 of a genuine Ubiquiti product and also directly harmed the Company's goodwill because the  
8 counterfeit products experienced more malfunctions than genuine Ubiquiti products, which increased  
9 complaints from customers who believed they were purchasing genuine Ubiquiti products. The  
10 Company stated that malfunctions and customer complaints could easily escalate and destroy  
11 Ubiquiti's reputation while increasing costs because the Company processed all warranty claims on  
12 counterfeit product to protect its goodwill:

13 Each counterfeit product sold by Defendants represents not only a lost sale of  
14 a genuine Ubiquiti product, but also direct harm to Ubiquiti's goodwill. On  
15 information and belief, the counterfeit products do not undergo testing and are made  
16 from low quality materials that are certain to cause a lot more product malfunctions  
17 than genuine Ubiquiti products. In fact, Ubiquiti recently received a report of a  
18 failure rate of 12% on counterfeit products purchased by a longstanding Ubiquiti  
19 customer. Because Ubiquiti is dependent on word of mouth promotion for many of  
20 its sales, increases in product complaints from customers who believe they are  
21 purchasing genuine Ubiquiti products could easily escalate and destroy Ubiquiti's  
22 reputation. Furthermore, customer who bought counterfeit products can send them  
23 back back [sic] to Ubiquiti for warranty returns because they believe that such  
24 products are genuine products. To protect its goodwill, Ubiquiti processes all  
25 warranty returns in the same fashion – regardless of whether the products are genuine  
26 Ubiquiti products or Defendants' counterfeit products. Each "return" of a counterfeit  
27 product thus results in an additional out-of-pocket cost to Ubiquiti [when]  
28 Defendants are the ones to have reaped the profits.

29 *Id.*, ¶69.

30 56. In a brief filed in support of the Company's application for a temporary restraining  
31 order ("TRO"), Ubiquiti stated that the international counterfeiting scheme stretched far beyond the  
32 United States, was growing like an epidemic and causing irreparable harm to the Company each day,  
33 including significant lost revenue and devastating damage to its goodwill and reputation.

34 This is no ordinary trademark infringement action. This case is about an  
35 international counterfeiting scheme with a U.S.-based ringleader who has stolen,  
36 defamed, blackmailed, and is willing to do anything to further his illegal agenda,  
37 including manipulating the U.S. stock market. Through this application for a [TRO],  
38

1 Ubiquiti . . . is seeking to stop the irreparable harm being caused to it each day. The  
2 ring leader is [Hsu], who is orchestrating the counterfeiting together with his wife  
3 Lilia Kung and through his company Kozumi USA Corp. The counterfeiting is  
4 masterminded by Hsu but stretches far beyond the U.S. borders and is growing like  
5 an epidemic. In addition to significant lost revenue, it is causing devastating damage  
6 to the good will and reputation of San Jose-based Ubiquiti.

7 Ex. 2 at 1.

8 57. Sworn statements made by Ubiquiti executives in the Kozumi litigation and internal  
9 Company documents filed therein establish that the international counterfeiting scheme was causing  
10 substantial, irreparable and devastating harm to Ubiquiti’s brand and business in 2010 and 2011.  
11 They also show that Company executives were making substantial efforts to stop the counterfeiting,  
12 including defendant Pera, who wrote in December 2011 that he had “personally dedicated the last  
13 several months of [his] time focusing on [Kenny Deng],” the owner of the Hoky facility in  
14 Shenzhen, China that was manufacturing thousands of counterfeit Ubiquiti products. Ex. 6, ¶3 & ex.  
15 A. The counterfeiting had become such a problem at the time of the October 14, 2011 IPO that  
16 defendants had retained Chinese counsel to prepare a criminal complaint and had made arrangements  
17 with law enforcement authorities in China – the SPSB – to raid the Hoky manufacturing facility.  
18 The raid occurred on November 17, 2011, just one month after the IPO.

19 58. **Ubiquiti terminates distributor agreement with Kozumi in November 2009 after**  
20 **learning Kozumi was selling counterfeit products.** According to Moore, Ubiquiti’s Vice  
21 President of Business Development, in May 2008 Ubiquiti and Kozumi entered into a distribution  
22 agreement under which Kozumi was a nonexclusive distributor of Ubiquiti products in Latin  
23 America. Ex. 3, ¶¶41-42 & ex. L. In addition to its office in Florida, Kozumi had offices in  
24 Argentina, Paraguay, Peru, Europe, Taiwan, Colombia and Brazil. Ex. 1, ¶41. Hsu also owned,  
25 managed and/or operated Syntronic S.A. (“Syntronic”), Tech Depot S.A. (“Tech Depot”) and Omega  
26 Technology, companies in Argentina; Redemax S.A. (“Redemax”), a company in Paraguay; and  
27 Netcom, Inc. (“Netcom”), a company in Asia. *Id.*, ¶¶51, 64.

28 59. While a Ubiquiti distributor, Kozumi sold the Company’s products in Argentina,  
Paraguay and Brazil through Syntronic and Redemax. *Id.*, ¶¶50-51. Kozumi placed 12 orders with  
Ubiquiti for \$1,487,891.50 of product while a distributor. Ex. 3, ¶50 & ex. R.

1           60. In November 2009, however, Moore terminated the distribution agreement after  
2 learning Kozumi was offering copycat Ubiquiti products under the Kozumi name. Ex. 3, ¶48; Ex. 9,  
3 ¶10 & ex. I. Moore stated that he terminated the distributor relationship with Kozumi because he  
4 was concerned Hsu would use the strength of the Ubiquiti brand to draw resellers to its product  
5 offerings but then actually sell them Kozumi-branded products. *Id.*

6           61. **Ubiquiti executives learn that Kozumi and others continue to sell counterfeit**  
7 **products in 2010.** According to the Company, Kozumi and Hsu devised a worldwide scheme to sell  
8 counterfeit Ubiquiti products after Ubiquiti terminated Kozumi's distributor agreement in November  
9 2009. Ex. 1, ¶56. Hsu worked with Deng, the owner of the Hoky Technology manufacturing  
10 facility located in Shenzhen, China, and their scheme involved: (a) stealing Ubiquiti's proprietary  
11 product designs from one of its approved contract manufacturers; (b) manufacturing counterfeit  
12 Ubiquiti products at the Hoky manufacturing facility; (c) selling the counterfeit Ubiquiti products in  
13 South America; and (d) fraudulently obtaining the trademark rights to the Ubiquiti brand in South  
14 America and the United States. *Id.*, ¶¶56-57.

15           62. Throughout 2010, Ubiquiti executives were told by the Company's distributors that  
16 counterfeit products were being sold throughout the world. On February 12, 2010, Moore received  
17 an e-mail from Pushker Tiwari, a Ubiquiti distributor in India, informing him that a company called  
18 GO.IP Global Services was advertising a Kozumi product that was very similar to Ubiquiti products.  
19 Ex. 3, ¶49 & ex. Q.

20           63. On March 13, 2010, Sajwani, the owner and CEO of former Ubiquiti distributor  
21 X-Concepts, blind carbon copied Moore on his e-mail response to Hsu in which Sajwani wrote that  
22 X-Concepts could not sell Ubiquiti products to Kozumi because Kozumi was outside its distribution  
23 territory. *Id.*, ¶52 & ex. S. In addition, Sajwani wrote that X-Concepts had been receiving e-mails  
24 from clients inquiring why "the shape of [Kozumi's] devices looks like [Ubiquiti's] M Series a lot so  
25 most of our resellers have returned devices to us." *Id.*

26           64. On May 7, 2010, Moore noticed that Netcom WISP, a company that placed an order  
27 for Ubiquiti products, had the same bank information for wire transfers that was used by Kozumi  
28 when Kozumi was a Ubiquiti distributor. *Id.*, ¶53 & ex. T. Moore e-mailed Steve Shaw, Ubiquiti's

1 contact with Netcom WISP, and asked him if he were affiliated with Hsu. Shaw responded that  
2 Netcom WISP was not an affiliate of Hsu but did business with Hsu's Asian company, Netcom; that  
3 Hsu introduced him to Ubiquiti; and that Hsu was no longer with Kozumi. *Id.* Moore believed  
4 Shaw and fulfilled the order. *Id.*

5 65. On May 27, 2010, Moore received an e-mail forwarded from Dimitrios Sidiropoulos  
6 of Aerial, a Ubiquiti distributor in Greece. *Id.*, ¶54 & ex. U. The forwarded e-mail was from a  
7 Kozumi sales manager inquiring whether Aerial would be interested in helping Kozumi establish a  
8 market presence in Greece. *Id.*

9 66. Moore stated that he contacted Ubiquiti distributors and asked them not to do  
10 business with Kozumi in response to Hsu's attempts to covertly and improperly acquire Ubiquiti  
11 products through authorized Ubiquiti distributors. *Id.*, ¶55. However, Kozumi and others continued  
12 to engage in the counterfeiting scheme.

13 67. In the second half of 2010, Hsu and his affiliates filed various Ubiquiti trademark  
14 applications in Argentina. On August 20, 2010, Jung Hsin Ping (a relative of Hsu, former Syntronic  
15 employee and shareholder of Tech Depot) filed three trademark applications in Argentina for the  
16 marks NANOSTATION, NANOBRIDGE and AIRGRID. Ex. 1, ¶87; Ex. 8, ex. E.

17 68. On October 20, 2010, Hsu acquired the Argentinean registration for UBIQUITI  
18 NETWORKS & Design from Ditelco Informatica S.R.L. ("Ditelco"), which had registered the  
19 trademark in May 2008. Ex. 1, ¶¶85-86; Ex. 8, exs. C-D. The next month, Hsu filed documents  
20 with the Argentina Trademark Office to record the assignment of the UBIQUITI NETWORKS &  
21 Design trademark. Ex. 1, ¶86.

22 69. **In 2011, the counterfeiting problems escalate, and Ubiquiti works with Chinese**  
23 **law enforcement authorities to raid the Hoky factory.** After obtaining the UBIQUITI  
24 NETWORKS & Design trademark in October 2010, Hsu sent a letter to Chinese customs authorities  
25 from Syntronic on January 1, 2011, in which he wrote that "We request that this letter serve as  
26 notification to all customs authorities that Syntronic S.A. has authorized Hoky Technology Ltd. to  
27 manufacture and export Ubiquiti Networks and UBNT products." Ex. 10, ex. D; Ex. 1, ¶62.

28

1           70. On January 19, 2011, Moore received an e-mail from Federico Sanguinetti  
2 (“Sanguinetti”) of Laufquen Internet, a Ubiquiti distributor in Argentina, informing him that a  
3 competitor of Laufquen Internet in Argentina was selling Ubiquiti products with “Kozumi” labels on  
4 them that were made with a cheaper Power Over Ethernet (“POE”) adapter and were offered for sale  
5 at lower prices. Ex. 3, ¶56 & ex. V. Sanguinetti said the Kozumi products created confusion among  
6 consumers, expressed concern that the Kozumi products were harming his business and asked if  
7 Ubiquiti could do something about it. *Id.* Moore responded that the “Kozumi guys have been doing  
8 all sorts of sneaky stuff” and that Ubiquiti would try to get it stopped. *Id.*

9           71. On March 4, 2011, Moore received an e-mail from Sebastian Tabellone  
10 (“Tabellone”) of Microcom, another Ubiquiti distributor in Argentina. *Id.*, ¶57 & ex. W.  
11 Tabellone asked whether Ubiquiti had an agreement with Kozumi because Kozumi was selling  
12 Ubiquiti products in Argentina at much lower prices than Tabellone was able to offer for Ubiquiti  
13 products. *Id.* He also wrote that the Kozumi sales were “causing huge discredit to the [Ubiquiti]  
14 brand.” *Id.* Tabellone attached a spreadsheet of imports from Syntronic that showed the price  
15 differences. *Id.* Moore responded that Ubiquiti was not supplying products to Syntronic and that  
16 ***Ubiquiti was doing everything it could to stop the sale of Kozumi’s knockoff products.*** *Id.*

17           72. The increase in counterfeiting activities being communicated to Ubiquiti by its  
18 distributors caused Company executives to take additional steps to address the problem. In March  
19 2011, Ubiquiti hired Lin as a vice president of operations. He previously worked at Cameo, a  
20 Ubiquiti contract manufacturer located in Taiwan. Ex. 4, ¶2. Lin stated that, after he joined  
21 Ubiquiti, Pera told him there was a potential counterfeit issue in China and asked him to assist in the  
22 investigation of counterfeiting operations taking place at the Hoky factory in Shenzhen, China. *Id.*

23           73. As Ubiquiti was increasing its efforts to address the growing counterfeiting problems,  
24 its distributors continued to inform the Company’s executives that counterfeit products were being  
25 manufactured in China and sold throughout the world. In late March 2011 or early April 2011,  
26 Moore was contacted by an employee at Lanbowan, a Ubiquiti distributor in China, and was  
27 informed that Hoky was manufacturing counterfeit Ubiquiti products at its factory and using the  
28 Ubiquiti brand on the products. Ex. 1, ¶70; Ex. 3, ¶58.

1 74. Moore and Pera visited the Hoky factory in April 2011 to investigate the  
2 counterfeiting allegations and were initially told by Hoky owner Deng that Hoky was not making  
3 counterfeit Ubiquiti goods. Ex. 3, ¶¶59-60. However, Deng then told them that “everybody does it.”  
4 *Id.* Moore and Pera suspected counterfeit Ubiquiti products were being manufactured by Hoky  
5 because, during their taxi ride to the Hoky factory, the taxi driver called the factory and warned them  
6 that he was bringing two Americans to the factory. *Id.*

7 75. According to Moore, those suspicions were confirmed in late summer 2011, when  
8 Ubiquiti sent someone to the Hoky factory who reported that Hoky was making counterfeit Ubiquiti  
9 products. *Id.*, ¶61. Ubiquiti then arranged for a person to pose as a potential distributor for Hoky’s  
10 Ubiquiti products and received Hoky-manufactured Ubiquiti products. *Id.* Moore also worked with  
11 authorized Ubiquiti distributors in Argentina to acquire fake products for inspection. *Id.*, ¶62. On  
12 August 30, 2011, Moore provided the products manufactured by Hoky and sold by Kozumi to  
13 Taylor, Ubiquiti’s Senior Software Engineer. *Id.*, ¶63; Ex. 5, ¶2. Taylor analyzed the products and  
14 confirmed they were counterfeit Ubiquiti products. *Id.*

15 76. In October 2011, Lin acquired counterfeit products from Tech Depot, an Argentinean  
16 company affiliated with Hsu, and determined that they were produced at another factory in Huizhou,  
17 China owned by Huizhou China Eagle Electronic Technology Co., Ltd. (“CEE”). Ex. 4, ¶¶3-4.  
18 CEE told Lin that it produced four different models of Ubiquiti printed circuit boards (“PCBs”) for  
19 Hoky and that CEE produced 30,000 Ubiquiti PCBs for Hoky from June 2011 to August 2011. *Id.*  
20 Lin then sent someone to investigate the Hoky facility, and she sent Lin pictures of products made at  
21 that facility. *Id.*, ¶5 & ex. A.

22 77. According to the Company and Moore, in September 2011, Hoky shipped 15,000  
23 counterfeit Ubiquiti products to Syntronic with a total value of \$680,000; and in October 2011, Hoky  
24 shipped 31,000 counterfeit products with a total value of about \$1 million to various countries in the  
25 Middle East and to Paraguay, Turkey, Ukraine and China. Ex. 1, ¶72; Ex. 3, ¶64.

26 78. Moore stated that after Ubiquiti confirmed the products manufactured by Hoky and  
27 sold by Kozumi were counterfeit, Ubiquiti retained a law firm in China that worked with the SPSB  
28 to shut down the Hoky facility. Ex. 3, ¶63. Lin stated the products obtained from Hoky were



1 “virtually indistinguishable” from genuine Ubiquiti products. Ex. 4, ¶8. The actual raid on the Hoky  
2 factory occurred on November 17, 2011.

3 79. As he had done in 2010, Hsu registered Ubiquiti trademarks in Argentina and the  
4 United States in 2011. In June 2011, Lilia Kung, Hsu’s former wife, filed an application in the  
5 United States for the UBIQUITI trademark. Ex. 1, ¶94; Ex. 8, ex. G. The next month, Hsu filed  
6 another trademark application in Argentina for UBNT in International Class 9. Ex. 1, ¶88; Ex. 8, ex.  
7 F.

8 80. Thus, at the time of the IPO, the international counterfeiting scheme had become such  
9 a problem that Ubiquiti had retained Chinese counsel and was working with the SPSB to shut down  
10 the Hoky facility. Further, there were other facilities manufacturing and distributing counterfeit  
11 Ubiquiti products. Defendants misled investors by concealing the counterfeiting problems and their  
12 adverse impact on Ubiquiti’s business and representing in the Registration Statement and Prospectus  
13 that the sale of counterfeit products was only a risk that could adversely impact the Company’s  
14 business.

15 **2. A Former Ubiquiti Distributor Confirms the Counterfeiting**  
16 **Problems and Claims They Were Much More Widespread**  
**than Ubiquiti Alleges in its Lawsuit Against Kozumi**

17 81. Sajwani, the owner and CEO of former Ubiquiti distributor X-Concepts, knew about  
18 the counterfeiting problems. Information provided by Sajwani indicates the counterfeiting problems  
19 were even more widespread than Ubiquiti claims in its lawsuit against Kozumi. X-Concepts was an  
20 exclusive master distributor for Ubiquiti from 2008 until February 2011 and sold over \$40 million of  
21 Ubiquiti products in 27 countries in the Middle East.

22 82. Sajwani said that Pera told him in 2009 to not sell Ubiquiti products to Kozumi  
23 because Ubiquiti had terminated its distributor agreement with Kozumi after learning Kozumi was  
24 selling copycat products. According to Sajwani, however, Kozumi was just one of many companies  
25 in a counterfeiting ring that had registered a Ubiquiti trademark in Argentina and sold counterfeit  
26 products there beginning in 2009. Sajwani said that Hoky sold Ubiquiti product designs to two other  
27 factories in China and that there were as many as 13 factories in China manufacturing counterfeit  
28

1 Ubiquiti products. Sajwani also said that he discussed counterfeiting with Pera and Moore in 2010  
2 and 2011 and with Ritchie during a face-to-face meeting in April 2011 at Ubiquiti's San Jose offices.

3 83. Sajwani said that the owner of Airlink Systems, a distributor in Pakistan, told him in  
4 mid-2009 that duplicate Ubiquiti products were available in China for 75% of the price at which  
5 Ubiquiti sold product to X-Concepts. Sajwani reviewed the product, determined it was identical to  
6 Ubiquiti's product and immediately e-mailed Pera and Moore. Sajwani also said that from 2009 to  
7 2010, he continued to hear from resellers in Iraq, Saudi Arabia, Turkey and Europe that there was a  
8 growing availability of counterfeit Ubiquiti products in China and that he had telephone  
9 conversations with Pera and Moore throughout 2009 and 2010 about the problem. Sajwani also said  
10 that, in 2010, duplicates of Ubiquiti's AirMax products became available for the Nano Station, Nano  
11 Station Loco and NanoBridge, and cost 20% to 25% less than Ubiquiti's products. Sajwani said the  
12 counterfeiting problems became so severe that Ubiquiti approached internet service providers  
13 ("ISPs") directly rather than through its distributors and offered the ISPs reduced pricing.

14 84. Emails provided by Sajwani (and the Company in the Kozumi litigation) show that he  
15 discussed counterfeiting with Ubiquiti executives in 2010. On March 3, 2010, Moore sent an e-mail  
16 to Sajwani in which he wrote that he saw Kozumi products at a trade show and that it made him sick  
17 seeing how similar the packaging and designs were. Ex. 11 at 25. Moore sent Sajwani a follow-up  
18 e-mail the next day and wrote that it did not look good for a Ubiquiti partner to support companies  
19 that were intentionally copying Ubiquiti products. *Id.* at 27.

20 85. Pera also sent Sajwani an e-mail on March 4, 2010, writing that he had been receiving  
21 "more and more information confirming [Sajwani was] supporting the introduction of Ubiquiti clone  
22 competitors" and that Sajwani should protect Ubiquiti's market interests, "especially against  
23 companies who steal and copy our product designs." *Id.* at 26.

24 86. On March 8, 2010, Sajwani emailed Moore that he had a serious complaint about  
25 Lanbowan, a Ubiquiti distributor in China, because Lanbowan was e-mailing customers that it could  
26 supply Ubiquiti product at very low prices. Ex. 11 at 28. He also wrote that one of his customers,  
27 Pakistan Airlinxsys, went to Lanbowan's warehouse and was offered original and "duplicate"

28



1 Ubiquiti products. *Id.* Sajwani reported that the “duplicate” products were almost 30% cheaper than  
2 the original products. *Id.* Moore responded that he would look into it. *Id.*

3 87. On March 13, 2010, Sajwani emailed Hsu (and blind copied Moore) that X-Concepts  
4 would not sell Ubiquiti product to Kozumi because Sajwani did not want any problems with  
5 Ubiquiti. Ex. 3, ¶52 & ex. S. Sajwani also wrote that he had been getting e-mails from clients in  
6 Iraq and Iran that the shape of Kozumi devices looked like Ubiquiti products and that it was a big  
7 problem. *Id.* In addition, Sajwani wrote that his sales team had complained that Kozumi’s products  
8 looked exactly the same as Ubiquiti products. *Id.*

9 88. Sajwani posted documents to his blog showing that Pera and other Ubiquiti  
10 executives knew counterfeit products were also being sold in Iran. According to Sajwani, a  
11 company named Lavan Network (“Lavan”) registered the Ubiquiti logo in Iran in November 2009.  
12 At that time, X-Concepts was Ubiquiti’s exclusive distributor in Iran and sold product in Iran though  
13 a company named Alfa Technologies (“Alfa”). In November 2009, Iranian authorities confiscated  
14 Ubiquiti products Alfa tried to sell in Iran because of the Ubiquiti logo registered by Lavan.

15 89. As a result, Ubiquiti took steps to register its name and logo in Iran, as reflected in  
16 e-mail communications between Pera and others in 2009 and 2010. On December 24, 2009, Sajwani  
17 e-mailed Don Gibson at dgibson@patent-tech.com (and copied Pera and Moore) that Ubiquiti and  
18 X-Concepts wanted to file a complaint against a company that Senao/Engenius was supporting in  
19 Iran. Ex. 11 at 1. Pera authorized Gibson to conduct an Iranian trademark search on December 25,  
20 2009. *Id.* Two days later, Pera forwarded to Gibson (and copied Sajwani and Moore) an e-mail  
21 received from Ariya, the manager of Alfa, asking Gibson to prepare documents for Ubiquiti to  
22 register its trademark in Iran and to prove Alfa was an authorized reseller of Ubiquiti product in Iran.  
23 *Id.* at 2.

24 90. On January 8, 2010, Ariya emailed the law offices of Dr. Laghaee & Associates Inc.  
25 Int’l located in Tehran, Iran and provided the firm with the Ubiquiti brand and trademark registration  
26 history. *Id.* at 3. On January 12, 2010, the Laghaee law firm responded that the documents were of  
27 no use in Iran and that the trademark owner must file a trademark application in Iran and then  
28 provide a certified and legalized version of the trademark certifications. *Id.* at 4. Ariya forwarded

1 the Laghaee response to Moore on January 14, 2010 and told him to contact the firm directly if he  
2 had any questions. *Id.* at 7. He also wrote that the person who had registered Ubiquiti's logo in Iran  
3 was trying to use it on low quality products, such as hub switches, passive products, etc., and that  
4 everyone was worried because this "scenario [was] becoming public all around the region & world,"  
5 and that Ubiquiti needed to take "fast action" to "keep [its] brand top & clean from these types of  
6 dirty competition." *Id.*

7 91. On January 14, 2010, Sajwani emailed Moore and Ariya that all clients in the region  
8 were getting worried, suggested Ubiquiti hire a law firm to handle the case and noted that Ariya  
9 recommended the Laghaee law firm. *Id.* at 5. On January 15, 2010, Moore e-mailed Ariya that  
10 Ubiquiti's lawyers were preparing documents and asked why "they are stopping sale of products in  
11 Iran for this" and whether the next step was to register in Iran right away. *Id.* at 11. The next day,  
12 Ariya e-mailed Moore and Sajwani contact information for the Laghaee law firm and a list of  
13 documents needed from Ubiquiti. *Id.* at 13-14.

14 92. On January 19, 2010, Ariya e-mailed Moore and Sajwani to clarify the problem and  
15 explain what needed to be done. *Id.* at 16-17. Ariya wrote that a company named Lavan had  
16 registered the Ubiquiti brand name and logo in Iran to take advantage of Ubiquiti's name  
17 recognition. *Id.* He wrote that Ubiquiti product shipped to Iran by his company and X-Concepts  
18 was being held by the Iranian court because of the Ubiquiti registration by Lavan and that Ubiquiti  
19 needed to pursue the illegal registration so Ubiquiti could sell product in Iran and protect its name  
20 and reputation in Iran and the entire Middle East. *Id.* Moore responded that Ubiquiti would do what  
21 was necessary to get the problem resolved and had already started the process of getting registered in  
22 Iran. *Id.* at 18.

23 93. According to Sajwani, he, Moore, Ariya and representatives from Lavan met at the  
24 Atlantis Hotel in Dubai in January 2010 in an attempt to negotiate an agreement, but the parties were  
25 unable to reach an agreement. As a result, Ubiquiti, X-Concepts and Alfa retained legal counsel to  
26 invalidate the logo registered by Lavan.

27 94. On March 10, 2010, Pera, Moore and others received an e-mail from Ariya informing  
28 them that he had visited Ubiquiti's lawyer in Tehran and that "UBNT" had been registered in Iran

1 instead of Ubiquiti's known logo, which Ubiquiti needed to register. *Id.* at 29. Ariya also wrote that  
2 he was not getting cooperation from Ubiquiti's Tehran lawyer to get his goods released. Ariya  
3 concluded the e-mail by stating that Alfa had sold a huge quantity of Ubiquiti products and now felt  
4 that no one cared about it.

5 95. On April 12, 2010, Ariya e-mailed Moore steps that could be taken to get Ubiquiti's  
6 known logo registered in Iran. *Id.* at 30. On June 8, 2010, Ariya emailed Sajwani that Alfa was still  
7 trying to solve the problem, was asked by the Laghaee law firm to provide Ubiquiti invoices for Alfa  
8 purchases in 2008 and asked if Sajwani could provide the invoices. *Id.* at 31. On August 11, 2010,  
9 Moore e-mailed Sajwani that Ubiquiti had received confirmation that all was complete and that the  
10 Company was just waiting for certifications. *Id.* at 32. On September 3, 2010, Ariya e-mailed  
11 Moore (and copied Sajwani, Gibson and Fitzgerald) and asked for an update on the Ubiquiti  
12 registration in Iran. *Id.* at 33.

13 96. Sajwani stated that Pera and Moore stopped communicating with him at the end of  
14 2010 and that Ritchie became his Ubiquiti contact. Ubiquiti terminated its distribution agreement  
15 with X-Concepts in February 2011 and reported in the Registration Statement and Prospectus that it  
16 did so after discovering X-Concepts was selling Ubiquiti's products in Iran in violation of U.S.  
17 export controls and economic sanctions laws. The Company acknowledged in the Registration  
18 Statement and Prospectus that it allowed sales to Iran until early 2010 and that it "overlooked"  
19 various emails from X-Concepts that showed X-Concepts (and another distributor) continued to sell  
20 Ubiquiti product in Iran in 2010 and 2011.

21 97. Sajwani stated that Pera and Ritchie knew X-Concepts was selling Ubiquiti product in  
22 Iran in 2010 and 2011 and that he personally discussed the sales with Ritchie in April 2011 at  
23 Ubiquiti's offices in San Jose. He received an e-mail from Ritchie on April 26, 2011 in which  
24 Ritchie claimed he was surprised about sales of Ubiquiti product in Iran. *Id.* at 34.

25 98. Sajwani also stated that Pera met him in Dubai in October 2011 and told him that:  
26 (a) Ubiquiti "played innocent" during the federal investigation of the Company's sales to Iran;  
27 (b) Ubiquiti blamed X-Concepts for the illegal sales to Iran; and (c) Pera would destroy X-Concepts,  
28 Sajwani and his family if Sajwani did not agree to shut down X-Concepts or if he disputed

1 Ubiquiti's claims that it was not aware of the sales to Iran. Sajwani said he reported the incident to  
2 Dubai authorities and that he was interviewed by the SEC and FBI in July 2012 about Ubiquiti's  
3 sales in Iran.

4 99. Although Ubiquiti terminated X-Concepts' distributorship in February 2011, the  
5 information provided by Sajwani shows that he and Ariya discussed the sale of counterfeit products  
6 in Iran and other countries with Pera, Ritchie and Moore in 2010 and 2011.

7 **C. Defendants Failed to Disclose the International Counterfeiting**  
8 **Scheme in the Registration Statement and Prospectus and Falsely**  
9 **Represented that the Sale of Counterfeit Products Was Just a**  
10 **Possibility that Could Adversely Affect Ubiquiti's Business**

11 100. Defendants began preparing the Registration Statement and Prospectus months before  
12 the October 14, 2011 IPO while the international counterfeiting scheme was adversely affecting  
13 Ubiquiti's business. On June 17, 2011, Ubiquiti filed with the SEC a Form S-1 Registration  
14 Statement ("Registration Statement"). The Registration Statement was subsequently amended on  
15 July 28, 2011, August 12, 2011, September 16, 2011, October 4, 2011 and October 13, 2011. The  
16 October 13, 2011 amendment that Ubiquiti filed with the SEC on Form S-1/A was the fifth and final  
17 amendment to the Registration Statement and was signed by Ubiquiti's officers and directors. The  
18 four Underwriter Defendants helped draft and disseminate the Registration Statement and  
19 Prospectus.

20 101. The Registration Statement incorporated by reference all subsequently filed  
21 prospectuses. On October 14, 2011, Ubiquiti filed its Prospectus for the IPO, which formed part of  
22 the Registration Statement and which became effective on October 14, 2011.

23 102. The IPO was successful for the Company, its insiders and the underwriter. At least  
24 7.038 million shares of Ubiquiti common stock were sold to the public at \$15 per share, raising  
25 \$105.6 million in gross proceeds for the Company and the selling shareholders. In the IPO, several  
26 of Ubiquiti's officers and directors sold shares of their personally held Ubiquiti stock. Defendant  
27 Ritchie sold 82,500 shares of his Ubiquiti stock for gross proceeds of \$1.2 million. John Sanford,  
28 the Company's Chief Technology Officer, sold 123,145 shares of his Ubiquiti stock for gross

1 proceeds of \$1.8 million. Moore, Vice President of Business Development, sold 374,370 shares of  
2 his Ubiquiti stock for gross proceeds of \$5.6 million.

3 103. However, defendants misled investors by failing to disclose the international  
4 counterfeiting scheme that had been adversely affecting Ubiquiti's business for two years and by  
5 falsely representing that the sale of counterfeit products was just a possibility that could adversely  
6 affect the Company's business. Those material misrepresentations and omissions created the false  
7 impression that counterfeiting was not a current problem in October 2011 but merely a potential risk.  
8 Specifically, defendants created that false impression by representing that Ubiquiti's ability to sell its  
9 products at competitive prices and to be the sole provider of its products *might* be adversely affected  
10 – and that its business, operating results and financial condition *could* be materially and adversely  
11 affected – *if* the Company were unsuccessful in stopping counterfeit products by monitoring and  
12 enforcing its intellectual property rights in China:

13 ***If our contract manufacturers do not respect our intellectual property and***  
14 ***trade secrets and if they or others produce competitive products reducing our sales***  
15 ***or causing customer confusion, our business, operating results and financial***  
16 ***condition could be materially adversely affected.***

17 Because our contract manufacturers operate in China, where prosecution of  
18 intellectual property infringement and trade secret theft is more difficult than in the  
19 United States, certain of our contract manufacturers, their affiliates, their other  
20 customers or their suppliers may attempt to use our intellectual property and trade  
21 secrets to manufacture our products for themselves or others without our knowledge.  
22 Although we attempt to enter into agreements with our contract manufacturers to  
23 preclude them from using our intellectual property and trade secrets, ***we may be***  
24 ***unsuccessful in monitoring and enforcing our intellectual property rights in***  
25 ***China. We have in the past found and expect in the future to find counterfeit***  
26 ***goods in the market being sold as Ubiquiti products. Although we take steps to***  
27 ***stop counterfeits, we may not be successful*** and network operators and service  
28 providers who purchase these counterfeit goods may have a bad experience and our  
brand may be harmed. ***If such an impermissible use of our intellectual property or***  
***trade secrets were to occur, our ability to sell our products at competitive prices***  
***and to be the sole provider of our products may be adversely affected and our***  
***business, operating results and financial condition could be materially and***  
***adversely affected.***

104. Defendants also misled investors by representing that Ubiquiti's ability to compete  
effectively and to defend the Company from litigation *could* be impaired *if* the Company failed to  
protect its intellectual property rights adequately. They further perpetuated the false impression that  
counterfeiting was not a current problem by stating that unauthorized use of the Company's

1 intellectual property had occurred in the past, that it might occur in the future without the Company's  
2 knowledge and that the steps Ubiquiti had taken might not prevent unauthorized use of its  
3 intellectual property:

4 ***If we fail to protect our intellectual property rights adequately, our ability to***  
5 ***compete effectively or to defend ourselves from litigation could be impaired, which***  
6 ***could reduce our revenues and increase our costs.***

7 ***We rely primarily on patent, copyright, trademark and trade secret laws, as***  
8 ***well as confidentiality and non-disclosure agreements and other methods, to***  
9 ***protect our proprietary technologies and know-how.*** As of June 30, 2011, we had  
10 six patents pending in several countries, including the United States, and two issued  
11 patents. The prospective rights sought in our pending patent applications may not be  
12 meaningful or provide us with any commercial advantage and they could be opposed,  
13 contested, circumvented or designed around by our competitors or be declared  
14 invalid or unenforceable in judicial or administrative proceedings. Any failure of our  
15 patents to adequately protect our technology might make it easier for our competitors  
16 to offer similar products or technologies. In addition, patents may not issue from any  
17 of our current or future applications.

18 Monitoring unauthorized use of our intellectual property is difficult and  
19 costly. ***Unauthorized use of our intellectual property has occurred in the past and***  
20 ***may occur in the future without our knowledge. The steps we have taken may not***  
21 ***prevent unauthorized use of our intellectual property.*** Further, we may not be able  
22 to detect unauthorized use of, or take appropriate steps to enforce our intellectual  
23 property rights. Our competitors may also independently develop similar  
24 technology. ***Our failure to effectively protect our intellectual property could reduce***  
25 ***the value of our technology in licensing arrangements or in cross-licensing***  
26 ***negotiations, and could impair our ability to compete. Any failure by us to***  
27 ***meaningfully protect our intellectual property could result in competitors offering***  
28 ***products that incorporate our most technologically advanced features, which could***  
***seriously reduce demand for our products.*** We may in the future need to initiate  
infringement claims or litigation. Litigation, whether we are a plaintiff or a  
defendant, can be expensive and time-consuming and may divert the efforts of our  
technical staff and managerial personnel, which could result in lower revenues and  
higher expenses, whether or not such litigation results in a determination favorable to  
us.

105. Similarly, defendants misled by representing that enforcement of Ubiquiti's  
intellectual property rights abroad, particularly in China, was limited and often difficult, which ***could***  
allow intellectual property infringers to continue unimpeded:

***Enforcement of our intellectual property rights abroad, particularly in***  
***China, is limited and it is often difficult to protect and enforce such rights.***

Patent protection outside the United States is generally not as comprehensive  
as in the United States and may not protect our intellectual property in some  
countries where our products are sold or may be sold in the future. Even if patents  
are granted outside the United States, effective enforcement in those countries may  
not be available. Many companies have encountered substantial intellectual property



1 infringement in countries where we sell, or intend to sell, products or have our  
2 products manufactured:

3 *In particular, the legal regime relating to intellectual property rights in*  
4 *China is limited and it is often difficult to protect and enforce such rights.* The  
5 regulatory scheme for enforcing China's intellectual property laws may not be as  
6 developed as regulatory schemes in other countries. *Any advancement of an*  
7 *intellectual property enforcement claim through China's regulatory scheme may*  
8 *require an extensive amount of time, allowing intellectual property infringers to*  
9 *continue largely unimpeded, to our commercial detriment in the Chinese and other*  
10 *export markets.* In addition, rules of evidence may be unclear, inconsistent or  
11 difficult to comply with, making it difficult to prove infringement of our intellectual  
12 property rights. As a result, enforcement cases involving technology, such as  
13 copyright infringement of software code, or unauthorized manufacture or sale of  
14 products containing patented inventions, may be difficult or not possible to sustain.

9 These factors may make it increasingly complicated for us to enforce our  
10 intellectual property rights against parties misappropriating or copying our  
11 technology or products without our authorization, allowing competing enterprises to  
12 harm our business in the Chinese or other export markets by affecting the pricing for  
13 our products, reducing our own sales and diluting our brand or product quality  
14 reputation.

15 106. Defendants also misled by representing that effective trademark protection *might* not  
16 be available in every country in which the Company sold its products, that others *might* develop  
17 technologies that infringed Ubiquiti's intellectual property and that the Company's legal efforts  
18 *might* not be successful against possible infringers:

17 We rely on a combination of patent, copyright, trademark and trade secret  
18 laws, as well as confidentiality procedures and contractual restrictions, to establish  
19 and protect our proprietary rights. These laws, procedures and restrictions provide  
20 only limited protection and the legal standards relating to the validity, enforceability  
21 and scope of protection of intellectual property rights are uncertain and still evolving.  
22 Furthermore, *effective patent, trademark, copyright and trade secret protection may*  
23 *not be available in every country in which our services and products are available.*

24 \* \* \*

22 We endeavor to enter into agreements with our employees and contractors  
23 and with parties with whom we do business in order to limit access to and disclosure  
24 of our proprietary information. *We cannot be certain that the steps we have taken*  
25 *will prevent unauthorized use or reverse engineering of our technology. Moreover,*  
26 *others may independently develop technologies that are competitive with ours or*  
27 *that infringe on our intellectual property. The enforcement of our intellectual*  
28 *property rights also depends on the success of our legal actions against these*  
*infringers, but these actions may not be successful, even when our rights have*  
*been infringed.*

27 107. Each of the above representations was materially inaccurate and misleading,  
28 contained untrue statements of material fact and omitted other facts necessary to make the

1 representations not misleading. Specifically, the representations were materially inaccurate and  
 2 misleading because they failed to disclose that: (a) Ubiquiti's business had already been adversely  
 3 impacted by the growing international counterfeiting scheme occurring in China and elsewhere;  
 4 (b) Kozumi and others were using the Company's intellectual property to manufacture and sell  
 5 thousands of counterfeit Ubiquiti products at prices substantially lower than Ubiquiti's prices; and  
 6 (c) Ubiquiti's efforts to enforce its intellectual property rights had not prevented the unauthorized  
 7 use of its intellectual property by Kozumi and others that were selling counterfeit products largely  
 8 unimpeded.

9 **VI. THE TRUTH IS REVEALED THROUGH A SERIES OF PARTIAL**  
 10 **DISCLOSURES**

11 108. Following the IPO, the inflation introduced into the stock price remained due to the  
 12 still-undisclosed international counterfeiting problems. On November 10, 2011 and January 31,  
 13 2012, defendants reported Ubiquiti's results for the first and second quarters of fiscal 2012 ("1Q12"  
 14 and "2Q12," the quarters ending September 30, 2011 and December 31, 2012, respectively);  
 15 repeated the same false statements that were included in the Registration Statement and Prospectus;  
 16 and did not disclose the counterfeiting problems or their impact on the Company.<sup>4</sup>

17 **A. May 2012: Defendants Report Ubiquiti's 3Q12 Results and Reveal**  
 18 **Some of the Adverse Information**

19 109. On May 1, 2012, after the market closed, defendants reported the Company's 3Q12  
 20 results and began to reveal some of the information about the counterfeiting and its adverse impact  
 21 on the Ubiquiti's business. The press release reporting Ubiquiti's 3Q12 results was filed with the  
 22 SEC on a Form 8-K signed by Ritchie. During the conference call, Pera told investors that Ubiquiti

23 <sup>4</sup> Pursuant to the Court's January 24, 2017 Order (Dkt. No. 93), plaintiffs have removed the post-  
 24 IPO allegations of fraud brought under the Securities Exchange Act of 1934. Dkt. No. 54, ¶¶115-  
 25 171. Though false for the same reasons as the IPO statements, the post-IPO statements were held to  
 26 be inactionable on grounds that the Consolidated Amended Complaint failed to plead scienter. Dkt.  
 27 No. 75 at 28-33; *In re Ubiquiti Networks Sec. Litig.*, No. 14-15962, 2016 U.S. App. LEXIS 19141, at  
 28 \*3 (9th Cir. Oct. 24, 2016). The allegations which remain regarding post-IPO events have been set  
 forth with brevity in compliance with Fed. R. Civ. P. 8(a), as directed by the Court, and contain no  
 allegations of knowledge or mental state. The events which occurred after the IPO remain relevant  
 to the elements of falsity, materiality and damages and plaintiffs reserve the right to seek discovery  
 relating to these events. Further, consistent with the Court's order that no new allegations be added,  
 the post-IPO allegations contained herein were previously referenced in paragraphs incorporated into  
 plaintiffs' 1933 Act claims. See Dkt. No. 54, ¶¶172-179, 189, 210.



1 planned to increase its legal efforts and aggressively defend its intellectual property to protect the  
2 Company's brand and customers from counterfeiters, and Ritchie reported that operating expenses  
3 would increase by approximately \$1.5 million as a result. In response to this unexpected negative  
4 news, Ubiquiti's stock price declined \$6.10 per share or 17.4% from \$35 on May 1, 2012 to \$28.90  
5 on May 2, 2012, on volume of nearly 4.1 million shares.

6 110. Wunderlich Securities analyst Matthew Robison issued a report on May 2, 2012 in  
7 which he downgraded Ubiquiti's stock from Buy to Hold due to aggressive product line and  
8 intellectual property rights initiatives that were stunting prospects for continued operating margin  
9 expansion. Robison reported that the expense increases were a function of formalizing and  
10 enforcing intellectual property rights.

11 111. On May 2, 2012, an article accusing Pera of sending the Chinese mafia to  
12 competitors' factories to intimidate, harass and threaten them appeared in the United States on sites  
13 like Yahoo! Finance. Ex. 1, ¶97. After the market closed on May 2, 2012, Forbes reported that  
14 rumors were swirling on various blogs that Ubiquiti was mixed up with the Chinese mafia. Forbes  
15 also reported that Pera denied the allegations in an internal memorandum to employees. That  
16 memorandum was leaked and disclosed that the counterfeiting problems had existed since before the  
17 IPO and that the counterfeiting problems were worse than reported:

18 As you know, we have been battling counterfeiters in China. The criminals  
19 are very clever; both former Ubiquiti distributors. One is Chinese living in  
20 DongGuan, China where are [sic] contract manufacturers (CM's) are based, the other  
is Taiwanese living in the United States running a WISP distributor in Argentina.  
They are working as a team.

21 In 2011, we stopped doing business with both individuals because they broke  
22 our distributor agreement rules.

23 Later that year, we discovered they had setup a factory in DongGuan  
24 producing exact 100% identical versions of our products. We believe they had paid  
25 someone inside our CM's, stole our PCB design files, schematics, BOM's, artwork,  
26 Factory CD; everything. They even hired former production engineers from LiteOn  
27 (our largest CM) to setup their manufacturing testing and processes. And, they used  
28 their Ubiquiti reseller connections to blend the counterfeit products into the Ubiquiti  
sales channel. Because the counterfeit products were based on our designs, artwork,  
and manufacturing processes; customers were not able to tell the products were  
counterfeit. They thought they were buying genuine Ubiquiti products.

1           When we discovered what was going on, we hired legal counsel in China to  
2 aggressively shut them down. We were successful and the Chinese individual (based  
in DongGuan, China) went to jail where he stayed awaiting trial.

3           We tried our best to make the case public to remove the possibility the  
4 criminal could pay his way out of trouble, but unfortunately, the criminal was able to  
pay off the judge in DongGuan and was released early this year.

5           Following the release, the criminals now feel empowered and are attempting  
6 to ramp up their operations. We also have ramped up our legal efforts to fight them.  
7 Jessica Zhou (our new General Counsel) was hired in March and she has been very  
aggressive in building a team in China and putting legal pressure on the criminals  
and their supply chains.

8           112. On May 3, 2012, Ubiquiti issued a press release in which it reported that it had  
9 reiterated to its customers the discovery of counterfeit products and its worldwide campaign to  
10 aggressively defend its intellectual property and protect its customers.

11           113. In response to this new negative news, Ubiquiti's stock price declined another 14%  
12 over the next three days, declining from \$28.90 on May 2, 2012 to \$24.91 on May 7, 2012. By  
13 comparison the CCMP declined 3.2% and the IXK declined 3.9%. However, the Company's stock  
14 price continued to trade at artificially inflated prices because the true extent of the problems caused  
15 by the counterfeiting had not been revealed.

16           **B. August 9, 2012: Ubiquiti Reveals Additional Adverse Impacts from**  
17 **the Counterfeiting, Which Causes Further Declines in the Company's**  
**Stock Price**

18           114. On August 9, 2012, investors learned that the international counterfeiting scheme  
19 caused additional adverse impacts on Ubiquiti's business and would continue to adversely impact the  
20 business in the future. That day, Ubiquiti issued a press release announcing its 4Q12 and FY12  
21 financial results for the year ended June 30, 2012. Pera acknowledged that the international  
22 counterfeiting scheme had adversely affected Ubiquiti's business:

23           Added Mr. Pera: "The Ubiquiti brand is dominant in our markets and demand  
24 for our technology is stronger than ever. This dominance has led to an unfortunate  
25 side effect whereby a few *previously terminated distributors setup counterfeit*  
26 *AirMax manufacturing operations. Although they have impacted our sales*  
27 *channel and caused some marketplace confusion, we have made substantial and*  
28 *tangible progress in diminishing their activities through a comprehensive legal*  
*strategy that has resulted in imprisonment, injunctions, and asset freezes of the*  
*counterfeiters. In addition, Ubiquiti has implemented sophisticated anti-counterfeit*  
*manufacturing processes to substantially protect all of our new platforms and new*  
*AirMax products against any future counterfeit attempts."*

1 115. During the conference call on August 9, 2012, Pera acknowledged that the  
2 counterfeiting had damaged Ubiquiti for the entire year, stating the counterfeiters had “made damage  
3 for three or four quarters that culminated into the situation we have now.” He also acknowledged  
4 that the damage could continue for more than the next two quarters.

5 116. As a result of this unexpected negative news, Ubiquiti stock declined \$6.30 per share  
6 to close at \$8.71 per share on August 10, 2012, a one-day decline of nearly 42%, on volume of over  
7 7.6 million shares.

8 117. Analysts reported that the Company’s revelations showed they had underestimated  
9 the magnitude of the international counterfeiting scheme’s impact on Ubiquiti’s business. On  
10 August 9, 2012, Deutsche Bank downgraded its rating on the stock to Hold, lowered its stock price  
11 target from \$30 to \$12 and reported that it was disappointed by the guidance and felt there was long-  
12 term risk surrounding the counterfeiting issues.

13 118. On August 10, 2012, Wedbush Securities downgraded its rating on Ubiquiti from  
14 Outperform to Neutral, lowered its price target from \$17.00 to \$8.00 and reported that it “clearly  
15 underestimated the magnitude of the company’s challenges as it relates to the prevalence of  
16 counterfeit products in the channel and concerns regarding Ubiquiti’s distribution model.” Capstone  
17 Investments and Wunderlich Securities also issued reports downgrading the stock and lowering price  
18 targets due to the uncertainty surrounding the counterfeiting issues.

## 19 **VII. ECONOMIC LOSS**

20 119. As detailed above, defendants’ false representations and omissions of material facts  
21 about the sales of counterfeit products caused Ubiquiti’s stock to issue and trade at artificially  
22 inflated prices. After closing at \$17.50 on October 14, 2011, Ubiquiti’s stock price traded between  
23 \$17.44 and \$34.35, reaching its Relevant Period high of \$35 on May 1, 2012. After the market  
24 closed on May 1, 2012, Ubiquiti began to reveal some of the previously concealed adverse facts  
25 regarding the international counterfeiting scheme and its adverse impact on Ubiquiti’s business and  
26 financial results. When Ubiquiti revealed additional adverse facts on May 2-3, 2012 and August 9,  
27 2012, Ubiquiti’s stock price declined further. Ubiquiti’s stock price declined 75% from its \$35 peak  
28 to \$8.71 on August 10, 2012 as the artificial inflation was removed from the Company’s stock price.

1 Class members who purchased Ubiquiti stock pursuant or traceable to the IPO suffered economic  
2 loss, *i.e.*, damages, under the federal securities laws.

3 120. Defendants' false and misleading statements were made without any reasonable basis  
4 and caused Ubiquiti's common stock to trade at artificially inflated levels through the Relevant  
5 Period. As a direct result of Defendants' disclosures set forth above, and a materialization of the  
6 undisclosed risk of investing in Ubiquiti, the price of Ubiquiti's common stock declined. These  
7 drops removed the inflation from the price of Ubiquiti common stock, causing real economic loss to  
8 investors who had acquired Ubiquiti common stock pursuant or traceable to the IPO.

9 121. After defendants made materially false and misleading statements and omissions  
10 about Ubiquiti on November 10, 2011, the Company's stock price increased \$0.86, or 4.6%, from  
11 \$18.60 on November 10, 2011 to \$19.46 on November 11, 2011.<sup>5</sup> By comparison, the NASDAQ  
12 Composite Index ("CCMP") and NASDAQ Computer Index ("IXK") each increased by only 2.0%.<sup>6</sup>  
13 The Company's stock continued to trade at artificially inflated prices after Ubiquiti filed its 1Q12  
14 Form 10-Q on November 14, 2011, which included representations that perpetuated the false  
15 impression that counterfeiting was not a current problem.

16 122. After defendants reported the Company's 2Q12 results on January 31, 2012,  
17 Ubiquiti's stock price declined 0.7% on February 1, 2012, compared to a 1.2% increase in the  
18 CCMP and a 1.3% increase in the IXK. The stock price was still artificially inflated by defendants'  
19 materially false and misleading statements and their failure to disclose the counterfeiting problems  
20 and their adverse impact on Ubiquiti's business.

21 123. On May 1, 2012, Ubiquiti reported its 3Q12 financial results and began to reveal  
22 some of the previously concealed adverse information about the counterfeiting problems. The  
23 Company reported that Ubiquiti planned to increase its legal efforts and aggressively defend its  
24 intellectual property to protect the Company's brand and customers from counterfeiters, and Ritchie

25 <sup>5</sup> The inactionable post-IPO false statements which maintained the inflation introduced by the  
26 actionable false statements in the IPO are set forth in full in the Consolidated Amended Complaint  
27 with respect to November 10, 2011(Dkt. No. 54, ¶¶117-118) and January 31, 2012 (*id.*, ¶¶133, 135-  
136), as well as the reasons why false.

28 <sup>6</sup> In Ubiquiti's 2012 Form 10-K, the Company compared its stock price to the CCMP and the IXK.

1 reported that operating expenses would increase by approximately \$1.5 million as a result. In  
2 response to this unexpected negative news, Ubiquiti's stock price declined \$6.10 per share, or  
3 17.4%, from \$35 on May 1, 2012 to \$28.90 on May 2, 2012 on volume of nearly 4.1 million shares.  
4 By comparison, the CCMP and IXK each increased 0.3%.

5 124. On May 2, 2012, investors learned that the counterfeiting problems were worse than  
6 reported the previous day when an internal memorandum prepared by Pera was leaked. Pera wrote  
7 in the memorandum that Ubiquiti had been battling counterfeiters in China, that they were former  
8 distributors, that one of the counterfeiters had been released from custody and that the counterfeiters  
9 were attempting to ramp up their operations and threatening to damage the Company's public  
10 reputation. On May 3, 2012, Ubiquiti issued a press release in which it reported that it had reiterated  
11 with its customers the discovery of counterfeit products and its worldwide campaign to aggressively  
12 defend its intellectual property and protect its customers. In response to these disclosures that  
13 revealed the counterfeiting problems were more severe than reported by the Company during the  
14 May 1, 2012 conference call, Ubiquiti's stock price declined \$3.99 per share, or 14%, from \$28.90  
15 on May 2, 2012 to \$24.91 on May 7, 2012. By comparison, the CCMP declined 3.2% and the IXK  
16 declined 3.9%.

17 125. On August 9, 2012, Ubiquiti reported its 4Q12 and FY12 results and revealed more of  
18 the previously concealed information, including that the counterfeit products had impacted sales and  
19 would continue to do so for the next two quarters. As a result of disclosing the true condition of the  
20 effects of the counterfeiting scheme on Ubiquiti's business, the Company's stock price declined  
21 \$6.30 per share or 42%, from \$15.01 on August 9, 2012 to \$8.71 on August 10, 2011. By  
22 comparison, the CCMP rose 0.1% and the IXK rose 0.2%

23 126. The declines in Ubiquiti's stock price following the partial disclosures compared to  
24 the changes in the CCMP and the IXK indices negate any inference that the losses suffered by class  
25 members were caused by changed market or industry conditions or Company-specific facts unrelated  
26 to the fraudulent conduct.

27

28

1 **VIII. CLASS ACTION ALLEGATIONS**

2 127. Plaintiff bring this action as a class action pursuant to Rule 23 of the Federal Rules of  
3 Civil Procedure on behalf of all persons who acquired Ubiquiti common stock pursuant or traceable  
4 to the IPO and were damaged thereby (the “Class”). Excluded from the Class are defendants,  
5 directors and officers of Ubiquiti and their families and affiliates.

6 128. The members of the Class are so numerous that joinder of all members is  
7 impracticable. The Company issued more than seven million shares in the IPO, which were owned  
8 by hundreds or thousands of persons and institutions. Thus, the disposition of their claims in a class  
9 action will provide substantial benefits to the parties and the Court.

10 129. There is a well defined community of interest in the questions of law and fact  
11 involved in this case. Questions of law and fact common to the members of the Class that  
12 predominate over questions that may affect individual Class members include:

- 13 (a) Whether the federal securities laws were violated by defendants;  
14 (b) Whether the Prospectus and Registration Statement issued by defendants to  
15 the investing public in connection with the IPO negligently omitted and/or misrepresented material  
16 facts about Ubiquiti and its business;  
17 (c) Whether defendants’ statements omitted material facts necessary to make the  
18 statements made, in light of the circumstances under which they were made, not misleading; and  
19 (d) the extent of damages sustained by Class members and the appropriate  
20 measure of damages.

21 130. Plaintiff’s claims are typical of those of the Class because Plaintiff and the Class  
22 purchased Ubiquiti common stock pursuant or traceable to the IPO and sustained damages from  
23 defendants’ wrongful conduct. Plaintiff will adequately protect the interests of the Class and has  
24 retained counsel who are experienced in class action securities litigation. Plaintiff has no interest  
25 that conflict with those of the Class.

26 131. A class action is superior to other available methods for the fair and efficient  
27 adjudication of this controversy. A class action will achieve economies of time, effort and expense  
28 and provide uniformity of decision to the similarly situated members of the Class without sacrificing

1 procedural fairness or bringing about other undesirable results. Class members have not indicated an  
2 interest in prosecuting separate actions as none have been filed. The number of Class members and  
3 the relatively small amounts at stake for individual Class members make separate suits  
4 impracticable. No difficulties are likely to be encountered in the management of this action as a  
5 class action.

6 132. In addition, a class action is superior to other methods of fairly and efficiently  
7 adjudicating this controversy because the questions of law and fact common to the Class  
8 predominate over any questions affecting only individual Class members. Although individual Class  
9 members have suffered disparate damages, the misrepresentations and omissions causing damages  
10 are common to all Class members. Further, there are no individual issues of reliance that could  
11 make this action unsuited for treatment as a class action because all Class members relied on the  
12 integrity of the market and are entitled to the fraud-on-the-market presumption of reliance.

13 133. The market for Ubiquiti's common stock was open, well developed and efficient at all  
14 relevant times. Ubiquiti's stock met the requirements for listing, and was listed and actively traded,  
15 on the NASDAQ, a highly efficient and automated market. As a regulated issuer, Ubiquiti filed  
16 periodic public reports with the SEC. Ubiquiti regularly communicated with public investors via  
17 established market communication mechanisms, including through regular disseminations of press  
18 releases on the national circuits of major newswire services and through other wide-ranging public  
19 disclosures, such as communications with the financial press and other similar reporting services.

20 134. As alleged above, the change in the price of Ubiquiti's stock – compared to the  
21 changes in the two indices – in response to the release of unexpected material positive and negative  
22 information about the Company shows there was a cause-and-effect relationship between the public  
23 release of the unexpected information about Ubiquiti and the price movement in the Company's  
24 stock. The average weekly trading volume of Ubiquiti's stock during the Relevant Period was  
25 approximately 2.4 million shares, or approximately 2.6% of the average total outstanding shares.  
26 Ubiquiti was followed by analysts who attended the Company's conference calls and issued reports  
27 throughout the Relevant Period. The average market capitalization of Ubiquiti was \$1.793 billion.  
28 Institutional investors owned between 29 million and 33 million of Ubiquiti's shares during the



1 Relevant Period, or between 31% and 36% of the average total outstanding shares. The “float” or  
2 shares not owned by insiders comprised 7.9%. The Relevant Period bid/ask spread median was  
3 \$0.03.

4 135. As a result of the foregoing, the market for Ubiquiti common stock promptly digested  
5 current information regarding Ubiquiti from all publicly available sources and reflected such  
6 information in the Company’s stock price. Under these circumstances, all purchasers of Ubiquiti  
7 common stock pursuant or traceable to the IPO suffered similar injury through their purchases of  
8 Ubiquiti common stock at artificially inflated prices and the subsequent revelations concerning  
9 declines in price, and a presumption of reliance applies.

10 **COUNT I**

11 **For Violation of Section 11 of the 1933 Act**  
12 **Against All Defendants**

13 136. Plaintiff incorporates ¶¶1-135 by reference.

14 137. This Count is brought pursuant to §11 of the 1933 Act, 15 U.S.C. §77k, on behalf of  
15 the Class, against all defendants.

16 138. This Count does not sound in fraud. Plaintiff does not allege that the Officer  
17 Defendants, Director Defendants or the Underwriter Defendants had scienter or fraudulent intent,  
18 which are not elements of a §11 claim.

19 139. The Registration Statement for the IPO was inaccurate and misleading, contained  
20 untrue statements of material facts, omitted to state other facts necessary in order to make the  
21 statements made not misleading, and omitted to state material facts required to be stated therein.

22 140. Ubiquiti is the registrant for the IPO. The defendants named herein were responsible  
23 for the contents and dissemination of the Registration Statement.

24 141. As issuer of the shares, Ubiquiti is strictly liable to Plaintiff and the Class for any  
25 misstatements and omissions.

26 142. None of the defendants named herein made a reasonable investigation or possessed  
27 reasonable grounds for the belief that the statements contained in the Registration Statement were  
28 true and without omissions of any material facts and were not misleading.



1 143. By reason of the conduct herein alleged, each defendant violated, and/or controlled a  
2 person who violated, §11 of the 1933 Act.

3 144. Plaintiff acquired Ubiquiti shares pursuant and/or traceable to the Registration  
4 Statement for the IPO.

5 145. Plaintiff and the Class have sustained damages. The value of Ubiquiti common stock  
6 has declined substantially subsequent to and due to defendants' violations.

7 146. At the time of their purchases of Ubiquiti shares, Plaintiff and other members of the  
8 Class were without knowledge of the facts concerning the wrongful conduct alleged herein and  
9 could not have reasonably discovered those facts prior to May 1, 2012. Less than one year has  
10 elapsed from the time that Plaintiff discovered or reasonably could have discovered the facts upon  
11 which this complaint is based to the time that Plaintiff filed the Consolidated Amended Complaint.  
12 Less than three years elapsed between the time that the securities upon which this Count is brought  
13 were offered to the public and the time Plaintiff filed the Consolidated Amended Complaint.

14 **COUNT II**

15 **For Violation of Section 15 of the 1933 Act**  
16 **Against Ubiquiti and the Officer and Director Defendants**

17 147. Plaintiff repeats and realleges ¶¶1-146 by reference.

18 148. This Count is brought pursuant to §15 of the 1933 Act against Ubiquiti, the Officer  
19 Defendants and the Director Defendants.

20 149. The Officer Defendants and the Director Defendants each were control persons of  
21 Ubiquiti by virtue of their positions as a director and/or senior officer of Ubiquiti. The Officer  
22 Defendants and the Director Defendants each had a series of direct and/or indirect business and/or  
23 personal relationships with other directors and/or officers and/or major shareholders of Ubiquiti.  
24 Ubiquiti controlled the Officer Defendants, the Director Defendants and all of Ubiquiti's employees.

25 150. Defendants each were culpable participants in the violations of §11 of the 1933 Act  
26 alleged in the Count above, based on their having signed or authorized the signing of the  
27 Registration Statement and having otherwise participated in the process which allowed the IPO to be  
28 successfully completed.

1           151. Pera controlled Ritchie and Ubiquiti through his position of power and control as the  
2 Company's founder, director and CEO. He had supervisory authority over other Ubiquiti  
3 executives, including Ritchie. He also had the power to control Ubiquiti and exercised that power by  
4 signing the Registration Statement.

5           152. Ritchie controlled Ubiquiti through his position of power and control as the  
6 Company's CFO. He had supervisory authority over other Ubiquiti executives. He also had the  
7 power to control Ubiquiti and exercised that power by signing the Registration Statement.

8           153. The Director Defendants had the power to control and influence Ubiquiti, Pera,  
9 Ritchie and other Company executives through their powers set forth in the Company's Amended  
10 and Restated Bylaws adopted on June 25, 2010. It is stated in the Amended and Restated Bylaws  
11 that the business and affairs of Ubiquiti shall be managed by or under the direction of the board of  
12 directors and its committees. The Amended and Restated Bylaws also give the board the power to  
13 appoint, remove and designate the authority of the Company's officers. The Director Defendants  
14 exercised their power by appointing officers and signing the Registration Statement.

15 **IX. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 17           A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;  
18           B. Awarding Plaintiff and the members of the Class damages and interest;  
19           C. Awarding Plaintiff's reasonable costs, including attorneys' fees;  
20           D. Awarding rescission or a rescissory measure of damages; and  
21           E. Awarding such equitable/injunctive or other relief as the Court may deem just and  
22 proper.

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1 **X. JURY DEMAND**

2 Plaintiff hereby demands a trial by jury.

3 DATED: January 30, 2017

ROBBINS GELLER RUDMAN  
& DOWD LLP  
CHRISTOPHER P. SEEFER  
DANIEL J. PFEFFERBAUM

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2017, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 30, 2017.

\_\_\_\_\_  
s/ Daniel J. Pfefferbaum  
DANIEL J. PFEFFERBAUM

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**Mailing Information for a Case 4:12-cv-04677-YGR In re Ubiquiti Networks, Inc. Securities Litigation****Electronic Mail Notice List**

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