No. 15-___

IN THE

Supreme Court of the United States

HARMAN INTERNATIONAL INDUSTRIES, INC., ET AL.,

Petitioners,

v.

ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

ROBERT C. MICHELETTO
KELLY A. CARRERO
IAN SAMUEL
JONES DAY
222 East 41st Street
New York, NY 10017

TRACI L. LOVITT
Counsel of Record
JONES DAY
100 High Street
21st Floor
Boston, MA 02110-1781
(617) 449-6900
tlovitt@jonesday.com

Counsel for Petitioners

QUESTIONS PRESENTED

The Private Securities Litigation Reform Act ("PSLRA") provides safe harbor for forward-looking statements that are accompanied by meaningful cautionary language. This petition presents two questions regarding the safe harbor:

1. Whether a purported misrepresentation is sufficient to preclude safe harbor protection?

2. Whether courts can consider an issuer's alleged knowledge to determine whether cautionary statements are "meaningful"?

In addition, this petition presents a separate question regarding the puffery doctrine, under which vague statements and self-congratulatory hyperbole are immaterial as a matter of law:

3. Whether a vague and immeasurable characterization of results, such as sales were "very strong," is immaterial puffery as a matter of law?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners, who were Defendants and Appellees in the courts below, are Harman International, Inc. (a Delaware corporation), the late Dr. Sidney Harman, Kevin Brown, Sandra B. Robinson, and Dinesh Paliwal. Respondent, who was Plaintiff and Appellant in the courts below, is the Arkansas Public Employees Retirement Systems.

Pursuant to this Court's Rule 29.6, Petitioner declares as follows:

Harman International, Inc. is a publicly held corporation that has no parent corporation and no publicly held company owns more than 10% of its stock.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES vii

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

A. Harman And The Statements At Issue 2

B. APERS' Complaint 7

C. Procedural History 9

REASONS FOR GRANTING THE PETITION 11

I. THIS COURT SHOULD RESOLVE THE CONFLICTS IMPLICATED BY THE D.C. CIRCUIT'S DECISION REGARDING THE MEANINGFUL CAUTIONARY STATEMENT SAFE HARBOR 14

A. The D.C. Circuit's Decision Creates A Conflict In The Federal Appellate Courts Over The Safe Harbor 15

1. The D.C. Circuit's safe harbor decision deepens a conflict between the Second Circuit and the Third, Seventh and Eleventh Circuits 15

TABLE OF CONTENTS
(continued)

Page

2. The D.C. Circuit departed from the majority approach to knowledge under the safe harbor. 17

B. The D.C. Circuit's Decision Is Erroneous With Respect To The Safe Harbor 22

1. The Allegedly False or Misleading Nature Of A Cautionary Statement Cannot Preclude Safe Harbor. 23

2. The Issuer's Knowledge Is Irrelevant To The Safe Harbor. 24

3. Harman's forward-looking statements were accompanied by meaningful cautionary statements. 27

II. THE D.C. CIRCUIT'S PUFFERY DECISION INDEPENDENTLY MERITS REVIEW 28

A. The D.C. Circuit's Puffery Decision Departs From The Majority Of Appellate Courts In Result And Analytical Approach 29

B. The D.C. Circuit's Puffery Decision Was Erroneous 33

III. THE PETITION CONCERNS ISSUES OF EXCEPTIONAL IMPORTANCE 34

CONCLUSION 36

TABLE OF CONTENTS
(continued)

Page

APPENDIX A: Opinion of the United States Court of Appeals for the District of Columbia Circuit 1a

APPENDIX B: Opinion of the United States District Court for the District of Columbia 41a

APPENDIX C: Order of the United States Court of Appeals for the District of Columbia Circuit Denying Rehearing En Banc 109a

APPENDIX D: Order of the United States Court of Appeals for the District of Columbia Circuit Denying Panel Rehearing 111a

APPENDIX E: Consolidated Class Action Complaint 113a

APPENDIX F: Excerpt from Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act for the fiscal year ended June 30, 2006 .... 207a

APPENDIX G: Earnings Release Conference Call Apr. 26, 2007 .... 218a

APPENDIX H: Excerpt from Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act for the fiscal year ended June 30, 2007 .... 243a

APPENDIX I: Guidance Announcement Sept. 27, 2007 .... 268a

TABLE OF CONTENTS
(continued)

Page

APPENDIX J: Excerpt from Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act for quarter ended Sept. 30, 2007 .... 303a

APPENDIX K: Excerpt from Earnings Call Transcript for quarter ended Sept. 30, 2007 .... 305a

APPENDIX L: Press Release Jan. 14, 2008 .... 314a

APPENDIX M: Press Release Feb. 5, 2008 .... 317a

APPENDIX N: Excerpt from Earnings Call Transcript for quarter ended Dec. 31, 2007 .... 331a

TABLE OF AUTHORITIES

Page(s)

CASES

Ansfield v. Omnicare, Inc.,
769 F.3d 455 (6th Cir. 2014) 20

Asher v. Baxter Int'l Inc.,
377 F.3d 727 (7th Cir. 2004) 16, 19

Basic Inc. v. Levinson,
485 U.S. 224 (1988) 20

City of Monroe Emps. Ret. Sys. v. Bridgestone Corp.,
399 F.3d 651 (6th Cir. 2005) 33

City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG,
752 F.3d 173 (2d Cir. 2014)................................. 32

Custis v. United States,
511 U.S. 485 (1994) 26

Dole Food Co. v. Patrickson,
538 U.S. 468 (2003) 24

Dura Pharm., Inc. v. Broudo,
544 U.S. 336 (2005) 35

Edward J. Goodman Life Income Trust v. Jabil Circuit, Inc.,
594 F.3d 783 (11th Cir. 2010) ....*passim*

Ehlert v. Singer,
245 F.3d 1313 (11th Cir. 2001) 17, 21

Galati v. Commerce Bancorp, Inc.,
220 F. App'x 97 (3d Cir. 2007) 29, 30

TABLE OF AUTHORITIES (continued)

Page(s)

Gozlon-Peretz v. United States,
498 U.S. 395 (1991) 26

Harris v. Ivax Corp.,
182 F.3d 799 (11th Cir. 1999) 18, 22

In re Cutera Sec. Litig.,
610 F.3d 1103 (9th Cir. 2010) 18, 21, 22, 30

In re Level 3 Commc'ns, Inc. Sec. Litig.,
667 F.3d 1331 (10th Cir. 2012) 32, 35

Institutional Investors Grp. v. Avaya, Inc.,
564 F.3d 242 (3d Cir. 2009) 16, 17, 19

Janus Capital Grp., Inc. v. First Derivative Traders,
131 S. Ct. 2296 (2011) 34

Ley v. Visteon Corp.,
543 F.3d 801 (6th Cir. 2008), *abrogated on other grounds by Matrixx Initiatives, Inc. v. Siracusano*,
131 S. Ct. 1309 (2011) 30

Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit,
547 U.S. 71 (2006) 35

Meyer v. JinkoSolar Holdings Co.,
761 F.3d 245 (2d Cir. 2014) 15

Miller v. Champion Enters., Inc.,
346 F.3d 660 (6th Cir. 2003) 18, 21, 22

TABLE OF AUTHORITIES (continued)

Page(s)

Morrison v. Nat'l Australia Bank Ltd., 561 U.S. 247 (2010) 34

Next Century Commc'ns Corp. v. Ellis, 318 F.3d 1023 (11th Cir. 2003) (per curiam) 30, 33, 35

Phila. Fin. Mgmt. of S.F., LLC v. DJSP Enters., Inc., 572 F. App'x 713 (11th Cir. 2014) (per curiam) 20

Police Ret. Sys. of St. Louis v. Intuitive Surgical, Inc., 759 F.3d 1051 (9th Cir. 2014) 32, 33

Pub. Sch. Teachers' Pension & Ret. Fund of Chicago v. Ford Motor Co., 381 F.3d 563 (6th Cir. 2004) 31

Raab v. General Physics Corp., 4 F.3d 286 (4th Cir. 1993) 30

Rombach v. Chang, 355 F.3d 164 (2d Cir. 2004)................................. 15

Rosenzweig v. Azurix Corp., 332 F.3d 854 (5th Cir. 2003) 30, 31

Slayton v. American Express, 604 F.3d 758 (2d Cir. 2010)................................. 19

Southland Sec. Corp. v. INSpire Ins. Solutions Inc., 365 F.3d 353 (5th Cir. 2004) 18

TABLE OF AUTHORITIES (continued)

Page(s)

Stoneridge Inv. Partners, LLC v. Scientific-Alaska, Inc., 552 U.S. 148 (2008) 34, 35

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308 (2007) 23, 34

United States v. Garcia, 718 F.2d 1528 (11th Cir. 1983), *aff'd* 469 U.S. 70 (1984) 25

STATUTES

28 U.S.C. § 1254(1) 1

Private Securities Litigation Reform Act, 15 U.S.C. § 78u-5 .... *passim*

15 U.S.C. § 77z-2 16

OTHER AUTHORITIES

17 C.F.R. § 240.10b-5 23

H.R. Rep. No. 104-369 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730. Part 11, 12, 27

Memorandum from Paul V. Niemeyer, Chair, Advisory Comm. on Civ. Rules, to Hon. Anthony J. Scirica, Chair, Comm. on Rules of Practice and Procedure (May 11, 1999), 192 F.R.D. 354 (2000) 35

S. Rep. No. 104-98 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679 11

OPINIONS BELOW

The court of appeals' opinion (Pet. App. 1a) is reported at 791 F.3d 90. The district court's opinion granting Petitioners' motion to dismiss (Pet. App. 41a) is reported at 27 F. Supp. 3d 26.

JURISDICTION

The court of appeals entered judgment on June 23, 2015, and denied rehearing *en banc* on August 26, 2015. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-5, provides in relevant part:

(c) Safe harbor

(1) In general — Except as provided in subsection (b) of this section, in any private action arising under this chapter that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (a) of this section shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that—

(A) the forward-looking statement is—

> **(i)** identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or
>
> **(ii)** immaterial; or

(B) the plaintiff fails to prove that the forward-looking statement—

(i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(ii) if made by a business entity; was—

(I) made by or with the approval of an executive officer of that entity; and

(II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

…

(e) Dispositive motion. On any motion to dismiss based upon subsection (c)(1) of this section, the court shall consider any statement cited in the complaint and any cautionary statement accompanying the forward-looking statement, which are not subject to material dispute, cited by the defendant.

STATEMENT OF THE CASE

A. Harman And The Statements At Issue

This case is a consolidated securities class action in which the Arkansas Public Employees Retirement System ("APERS") seeks damages from Harman International, Inc. ("Harman"), the late Dr. Sidney Harman ("Dr. Harman"), Kevin Brown ("Brown"), Sandra B. Robinson ("Robinson"), and Dinesh Paliwal ("Paliwal") (collectively, Petitioners) for alleged securities fraud. The following facts are as alleged in the complaint. Petitioners assume their truth for purposes of this Petition only.

Harman is a leading manufacturer of high-quality automotive, consumer, and professional products, including information and entertainment systems for automobiles. Pet. App. 114a. This case concerns Harman's Portable Navigation Devices, or "PNDs," in particular its PND sales in Europe. PNDs provide Global Positioning System ("GPS") navigation, traffic information, video, and other audiovisual capabilities, and were at the time of the Complaint sold as after-market automotive parts. Pet. App. 114a, 133a–34a.

In 2006, Harman first started marketing PNDs in Europe, selling 35,000 in the first three months of the year, and an additional 95,000 by October 2006. Pet App. 133a–34a. Dr. Harman projected that Harman would sell "well over 500,000" PNDs during fiscal year 2007 ("FY2007"), which spanned from July 1, 2006, to June 30, 2007. Pet App. 133a. By December 2006, Harman sold an additional 130,000 PNDs and revised its FY2007 projected PND sales to over 650,000. *Id.*

On April 26, 2007, Harman conducted an earnings call to discuss its results for third quarter FY2007, which ended on March 31, 2007. Pet App. 136a–42a. The call's moderator warned that the speakers would make forward-looking statements about "[Harman's] beliefs and expectations as to future events and trends affecting the company's business [that] are subject to risks and uncertainties." Pet. App. 218a. The moderator directed attendees to review Harman's SEC filings to evaluate those risks and uncertainties. *Id.*

During the call, Dr. Harman made the following statement, which is at issue here:

> I had indicated in earlier conference calls that the PND environment in Europe was not as margin challenged as it is in the United States, but that we could surely anticipate it. There was reasonable foresight in that observation. In the recent quarter, the European PND market has become extremely competitive. We are working extraordinarily hard to increase sales and to maintain adequate margins in that environment. In our earnings call three months ago, it was noted that Harman Becker PND inventories in Europe had grown substantially. We said then that the inventory had been developed to support a vigorous sales effort and that we planned to reduce it to normal levels at year-end. The plan forecasts total unit sales of 618,000 units for the fiscal '07 year, and that plan is proceeding. Where March 31 inventory was $75 million, we expect April 30 inventory to be approximately $50 million, May 31 inventory to be approximately $30 million, and June 30 inventory to be approximately $15 million, that a very normal level.

Pet. App. 227a-28a.

On August 29, 2007, Harman filed its FY2007 annual report. Pet. App. 243a. In the report's opening section, Harman observed that the report "contains forward-looking statements . . . [that] are not guarantees of performance or results . . . [and] involve risks, uncertainties and assumptions." Pet. App. 245a. It also noted the numerous "[f]actors that may cause fluctuations in our operating results

and/or the price of our common stock," such as "competition in the automotive, consumer or professional markets in which [Harman] operate[s]." *Id.* at 246a, 248a. In the report's section on "Risk Factors," Harman disclosed specific risks to its business and share price. Pet. App. 251a–63a. For example: (i) "[t]he audio and video product markets that [Harman] serve[s] are fragmented, highly competitive, rapidly changing and characterized by intense price competition"; (ii) "[Harman's] products may not satisfy shifting consumer demand or compete successfully with competitors' products"; (iii) "[i]f [Harman] fail[s] to introduce new products, misinterpret[s] consumer preferences or fail[s] to respond to changes in the marketplace, consumer demand for [its] products could decrease"; and, (iv) "[Harman] may lose market share if [it is] unable to compete successfully against [its] current and future competitors." Pet. App. 252a–54a.

As part of its discussion of net sales, Harman disclosed its overall sales results, including its sales in the automotive business segment. Pet. App. 264a. Thereafter, it stated that "[s]ales of aftermarket products, particularly PNDs, were very strong during fiscal 2007." Pet. App. 265a. That statement is at issue here.

On September 27, 2007, Harman conducted an analyst and investor call after a previously-announced merger was abandoned. Pet. App. 268a. The moderator stated that the call would include forward-looking statements that were "subject to risks and uncertainties." Pet. App. 269a. The moderator encouraged listeners to review Harman's SEC filings regarding those risks and uncertainties. *Id.*

CFO Brown stated during the call that Harman had forecast first quarter FY2008 sales to be $950 million, up 15 percent compared to the first quarter of FY2007. When an analyst observed that "the $950 million of revenue expectation is the highest number [Harman had] ever achieved" and asked whether "that observation [is] correct" and "to what degree did the spillover of [Mercedes Benz] C Class revenues influence that number," Pet. App. 282a, Brown gave the following response, which is at issue here:

> Yes, Peter, you are correct that that is a very strong first quarter on the top line for us, reflecting getting fully up the ramp curve on Mercedes C Class but also reflecting the fact that we are bringing additional business on-stream at Chrysler as we ramp up our Missouri plant and in the PND business, where we continue the growth and expansion of that business primarily in Europe.

Id.

On September 30, 2007, Harman disclosed its actual first quarter FY2008 results. Pet. App. 305a. As Brown predicted, net sales were approximately $947 million, an increase of approximately 15% compared to first quarter FY2007. *See* Pet. App. 308a.

On January 14, 2008, Harman issued a press release revising its overall guidance for FY2008. Pet. App. 314a. In the release, Harman stated that "[t]he change in guidance was prompted primarily by a major shift in the market for Portable Navigation Devices (PNDs)," and that "[i]n recent months this sector has experienced significant pricing pressure affecting the entire industry." *Id.* Harman also stated that it would be "launching a record number of automotive

infotainment platforms in 2008" and that the company was "not happy with the [associated] higher than planned R&D engineering and material costs." Pet. App. 175a. Harman's share price dropped that day from $68.97 to $43.00. Pet. App. 183a.

On February 5, 2008, Harman released its actual financial results for the FY2008 second quarter (October through December 2007). Pet. App. 317a. Harman stated that "[a]lthough [the company] continue[d] to increase sales across all divisions, [its] automotive earnings [were] under pressure due to portable navigation devices (PND), product mix, and higher engineering and material costs during a period of record launch activity." Pet. App. 318a. The company also explained that "PND sales and margins decreased due to aggressive price reductions by competitors, the delay of new products, and the sale of older products at substantial discounts." Pet. App. 321a. Harman's share price fell from $45.73 to $38.70. Pet. App. 177a.

B. APERS' Complaint

On May 2, 2008, APERS commenced this consolidated securities class action on behalf of individuals who purchased Harman common stock between April 26, 2007, and February 5, 2008 (the "Class Period").

As is relevant here, [1] APERS claims that the following three statements were false and misleading: (i) Dr. Harman's forward-looking April 26, 2007, statement that "[t]he plan forecasts total unit sales of

---

[1] APERS identified a large number of statements, covering a variety of issues, as false or misleading in its Complaint. Pet. App. 114a–20a. On appeal, APERS narrowed its claims to the three statements at issue here.

618,000 units for the fiscal '07 year, and that plan is proceeding," Pet. App. 138a; (ii) Harman's August 29, 2007 statement in its FY2007 Annual Report that "[s]ales of aftermarket products, particularly PNDs, were very strong during fiscal 2007," Pet. App. 157a; and, (iii) CFO Brown's forward-looking September 27, 2007 statement that the first quarter reflected "the fact that we are bringing additional business on stream at Chrysler as we ramp up our Missouri plant and in the PND business, where we continue the growth and expansion of that business primarily in Europe." Pet. App. 170a.

According to APERS, at the time of the April statement, Harman had made a modification that "rendered all of the older-generation units in inventory obsolete." Pet. App. 147a. In addition, APERS alleged that Harman's 2006 PND sales had been lower than anticipated, which purportedly resulted in Harman storing PNDs in a warehouse. *Id.* APERS also alleged that Harman had released five different PND versions between March 2006 and July 2007, but at the time of the first conference call, it had not sold "a significant number." *Id.* The Complaint alleges that by early 2007, a sales engineer had conversations with a sales representatives regarding the need to lower PND prices. Pet. App. 134a. In addition, according to the complaint, by June 2007, Harman had agreed to sell 100,000 PNDs for $110 less than their sticker price. Pet. App. 135a. APERS alleges that a former Harman accounting manager indicated that "the Company had on hand hundreds of millions of dollars worth of obsolete Generation 2 PNDs which were being superseded by newer Generation 3 PNDs in August 2007." Pet. App. 159a.

C. Procedural History

On July 3, 2008, Petitioners filed a motion to dismiss, arguing in relevant part that Dr. Harman's April 26, 2007 statement and Brown's September 27, 2007 statement fell within the statutory safe harbor for forward-looking statements that are "accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement." 15 U.S.C. § 78u-5(c). In addition, Harman argued that its FY2007 Annual Report statement that its "[s]ales of aftermarket products, particularly PNDs, were very strong during fiscal 2007" was immaterial puffery. Pet. App. 157a.

On January 17, 2014, the district court granted Harman's motion. The district court acknowledged that the parties were "not in dispute as to whether any particular statement is 'forward-looking." Pet. App. 60a.

The court rejected APERS' argument that Harman's alleged knowledge of facts undermining its statements removed them from the safe harbor. Pet. App. 60a–69a. The court acknowledged that "the circuits are split as to whether there is room to consider the issuer's state of mind in determining whether cautionary language is sufficiently 'meaningful'" under the safe harbor. Pet. App. 63a. The "Sixth, Ninth, and Eleventh Circuits have all held that the issuer's state of mind is irrelevant to whether his cautionary language is meaningful," but the Seventh Circuit requires issuers to "disclose the major risks the issuer objectively faced at the time of its forward-looking statement," which could include those known

to the defendant. Pet. App. 63–64a. The district court joined the majority, reasoning that the relevant safe harbor made "no explicit reference to the consideration of the issuer's state of mind" and that the legislative history provided that "[c]ourts *should not* examine the state of mind of the person making the statement." Pet. App. 66a (internal quotation marks and citation omitted).

The court also rejected APERS' claim that the forward-looking statements were not accompanied by sufficient warnings. Citing Dr. Harman's specific statements about Harman's large PND inventory and the extremely competitive European market, the court found that Harman was warning "not merely . . . about general market risks, but . . . [making cautionary statements] specific to the European PND market of which Plaintiffs complain." Pet. App. 74a. "A reasonable investor would know that 'extreme' price pressure could substantially affect sales, margins, or both." *Id.*

With respect to the statement that Harman's PND sales were "very strong," the district court held that the statement was immaterial puffery. The statement "provide[d] no standard against which a comparison can be drawn." Pet. App. 84a. "Indeed, the description of Harman's PND sales as 'strong' could have signified a truthful comparison to sales of the products in earlier quarters." Pet. App. 85a.

The D.C. Circuit reversed. In its view, Harman's cautionary statements "were not meaningful because they were misleading in light of historical fact." Pet. App. 23a. According to the court, Harman was required to warn "of actual obsolescence that had al-

ready manifested itself." *Id.* The court further held that it "need not reach the parties' arguments regarding the role of actual knowledge under the safe harbor" given the statements' purportedly misleading nature. *Id.* Nonetheless, for support, the court cited allegations concerning internal-only Harman discussions and documents that allegedly reflected Harman's knowledge. *Id.*

In addition, the D.C. Circuit reversed the district court's puffery decision, reasoning that the "critical inquiry is whether the statement could have misled a reasonable investor." Pet. App. 34a (internal citation and quotation marks omitted). "[G]iven the context in which it was made," the court held that "the 'very strong' statement in the FY 2007 Annual Report is plausibly understood as a description of historical fact rather than unbridled corporate optimism, i.e., immaterial puffery." *Id.*

On August 26, 2015, the court denied rehearing and rehearing *en banc*, and this petition timely followed. Pet. App. 109a–112a.

REASONS FOR GRANTING THE PETITION

Congress passed the PSLRA to stem a growing tide of abusive strike suits involving meritless securities fraud claims. S. Rep. No. 104-98, at 4 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 683. In Congress's view, the judicial system was being "undermined by those who seek to line their own pockets by bringing abusive and meritless suits" whenever an issuer's stock price drops. H.R. Rep. No. 104-369, at 31 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 730. Part and parcel of that abuse was "the abuse of the discovery process to impose costs so burdensome that it is

often economical for the victimized party to settle." *Id.* Part of Congress's solution was to create, at the pleadings stage, a "safe harbor for forward looking statements, to encourage issuers to disseminate relevant information to the market without fear of open-ended liability." *Id.* at 32, 1995 U.S.C.C.A.N at 731.

This case is an opportunity to fulfill Congress's goal of weeding out meritless securities actions at the pleadings stage, while resolving divisions among the federal appellate courts on three exceptionally important questions.

First, the Court should decide the role of alleged misleading statements in the safe harbor analysis. The Third, Seventh and Eleventh Circuits have held that a cautionary statement is not outside the meaningful cautionary statement safe harbor merely because it is misleading. The Second Circuit, and now the D.C. Circuit, have held the opposite. According to the D.C. Circuit, Harman's cautionary statements were insufficient because they were allegedly misleading. This holding is in direct conflict with those of the Third, Seventh and Eleventh Circuits.

The D.C. Circuit's approach effectively guts the safe harbor. Plaintiffs must allege a falsity or misrepresentation to plead an element of a securities fraud claim, and the existence of a falsity or misrepresentation is presumed by the meaningful cautionary statement safe harbor. If alleging an element or threshold requirement can bar the safe harbor, it is meaningless.

Second, the Court should resolve the role of alleged issuer knowledge in the safe harbor analysis. The Fifth, Sixth, Ninth, and Eleventh Circuits have

held knowledge irrelevant to whether cautionary statements are meaningful. While the D.C. Circuit disclaimed any reliance on Harman's alleged knowledge, it could not have avoided the issue. The court could have concluded that Harman had a duty to disclose alleged obsolescence only if it found that Harman had new information in its possession establishing obsolescence; thus, the obsolescence allegations are all based on Harman's asserted knowledge.

The D.C. Circuit's approach threatens to moot the safe harbor. Since knowledge must be affirmatively pled to avoid a different safe harbor (and is inevitably subject to a dispute of fact), the meaningful cautionary statement safe harbor would provide no protection against costly discovery or litigation if knowledge allegations could preclude its application.

In all events by examining alleged historical facts and knowledge, the court departed from the majority's evidentiary approach. The Fifth, Sixth, Ninth, and Eleventh Circuits have all held that courts can examine only the statements at issue to determine whether the cautionary statements were meaningful.

Third, the Court should resolve a direct conflict over the puffery doctrine's scope. The D.C. Circuit held that a self-congratulatory statement, incapable of being objectively measured, regarding "very strong" sales was material. The Third and Fifth Circuits, however, have held that the term "strong" is well recognized puffery in the investment community. In addition, the Second, Sixth, Ninth, and Tenth Circuits have held more generally that rosy prognostications are too vague and too subjective to be actionable. Here, too, the court erred. Because there is no way to

measure Harman's "very strong" characterization, a reasonable investor would not rely on it.

On each of these issues, the D.C. Circuit departed from the majority of federal appellate courts, and on each, it erred. The Court should resolve these conflicts now in light of the safe harbor's and puffery doctrine's importance to issuers.

I. THIS COURT SHOULD RESOLVE THE CONFLICTS IMPLICATED BY THE D.C. CIRCUIT'S DECISION REGARDING THE MEANINGFUL CAUTIONARY STATEMENT SAFE HARBOR.

No matter how one reads it, the D.C. Circuit's decision implicates a division among the federal appellate courts. The D.C. Circuit held that Harman's cautionary statements were not meaningful because they were purportedly misleading in light of alleged "historical facts." This holding directly conflicts with Third, Seventh and Eleventh Circuit decisions holding that the alleged misleading nature of a cautionary statement cannot preclude the safe harbor's application.

In all events, the D.C. Circuit necessarily imported Harman's alleged knowledge into its analysis, because Harman's statement could be misleading only if it had a duty to disclose. This case does not involve an affirmative misstatement of historical fact, but an omission. Here, Harman would have a duty to disclose obsolescence only if it knew of it. The court's conclusion was thus necessarily motivated by Harman's alleged knowledge, and its decision implicated a growing split regarding knowledge's role in evaluating cautionary statements. Accordingly, the D.C.

Circuit departed from the majority approach and erred.

A. The D.C. Circuit's Decision Deepens A Conflict In The Federal Appellate Courts Over The Safe Harbor.

While the D.C. Circuit attempted to avoid resolving the conflict over actual knowledge's role under the safe harbor, its opinion either deepened a conflict on a different issue or implicated the conflict it was trying to avoid

1. The D.C. Circuit's safe harbor decision deepens a conflict between the Second Circuit and the Third, Seventh and Eleventh Circuits.

By relying only on the supposedly "misleading" nature of Harman's cautionary statements to preclude safe harbor, the D.C. Circuit deepened an existing conflict between the Second Circuit and the Sixth, Seventh and Eleventh Circuits over the role of falsity in the safe harbor analysis.

The D.C. Circuit's ultimate conclusion was that "the purportedly cautionary statements were not meaningful *because they were misleading* in light of historical fact." Pet. App. 23a (emphasis supplied). For support, the D.C. Circuit cited (Pet. App. 20a) the Second Circuit's decision in *Rombach v. Chang*, 355 F.3d 164 (2d Cir. 2004), in which the court held that "[c]autionary words about future risk cannot insulate from liability the failure to disclose that the risk has transpired." *Id.* at 173; *see also Meyer v. JinkoSolar Holdings Co.*, 761 F.3d 245, 251 (2d Cir. 2014) ("One cannot, for example, disclose in a securities offering a business's peculiar risk of fire, the installation of a

comprehensive sprinkler system to reduce fire danger, and omit the fact that the system has been found to be inoperable, without misleading investors.").

In contrast, the Third, Seventh and Eleventh Circuits have held that a false or misleadingly incomplete statement is assumed for safe harbor protection and cannot preclude its application. *See Asher v. Baxter Int'l Inc.*, 377 F.3d 727, 729 (7th Cir. 2004); *Edward J. Goodman Life Income Trust v. Jabil Circuit, Inc.*, 594 F.3d 783, 795 (11th Cir. 2010) ("*Goodman Life*"); *Institutional Investors Grp. v. Avaya, Inc.*, 564 F.3d 242, 256 n.23 (3d Cir. 2009). As the Seventh Circuit has explained:

> A safe harbor matters only when the firm's disclosures (including the accompanying cautionary statements) are false or misleadingly incomplete; yet whenever that condition is satisfied, one can complain that the cautionary statement must have been inadequate. The safe harbor loses its function. Yet it would be unsound to read the statute so that the safe harbor never works; then one might as well treat § 77z-2 and § 78u-5 as defunct.

Asher, 377 F.3d at 729; *see also Goodman Life*, 594 F.3d at 795 ("[A]llowing an allegation of knowledge of falsity to prevent safe harbor would also produce a counterintuitive result.").

The Third Circuit has expressly adopted this aspect of *Asher*, holding that "the *Asher* court acknowledged the intuitive appeal of [s]hareholders' position," but that "such a view would divest the [s]afe [h]arbor of any function, since there is no potential liability—and thus no need for [s]afe [h]arbor protection—where there is nothing false or misleading about a

firm's statements." *Avaya*, 564 F.3d at 256 n.23. "In other words, if the [s]afe [h]arbor were automatically inapplicable whenever a firm's disclosures actually misled investors, then the [s]afe [h]arbor would be superfluous." *Id.*

The Eleventh Circuit has adopted the same analysis in a case where the "[p]laintiffs' primary claim [wa]s that the challenged statements were misleading because [the defendant] failed to warn investors that [it] had decided not to provide free upgrades to Version 8 to make it Year 2000 compliant." *See Ehlert v. Singer*, 245 F.3d 1313, 1318 (11th Cir. 2001). That is, the fact of "no free upgrades" was established at the time of its statements, allegedly rendering them misleading. The Third Circuit held that "a material and misleading omission can fall within the forward-looking safe-harbor," so long as the requisite cautionary statements are present, and concluded that the "challenged statements were forward-looking and were accompanied by meaningful cautionary statements." *Id.*

The D.C. and Second Circuits' approach is flatly inconsistent with these holdings.

2. The D.C. Circuit departed from the majority approach to knowledge under the safe harbor.

Despite the D.C. Circuit's claim that it was relying solely on the purportedly misleading nature of the cautionary statements, not Harman's asserted knowledge, the court's reasoning necessarily depends on Harman's alleged knowledge. Thus, notwithstanding its disclaimer, the D.C. Circuit effectively departed from the majority view that knowledge is

irrelevant to the meaningful cautionary statement safe harbor.

The majority of federal appellate courts—namely, the Fifth, Sixth, Ninth, and Eleventh Circuits—have held that an issuer's state of mind is irrelevant to whether its cautionary statements are meaningful. *See In re Cutera Sec. Litig.*, 610 F.3d 1103, 1112 (9th Cir. 2010) ("Under subsection (A)(i), . . . if a forward-looking statement is identified as such and accompanied by meaningful cautionary statements, then the state of mind of the individual making the statement is irrelevant, and the statement is not actionable regardless of the plaintiff's showing of scienter."); *Goodman Life*, 594 F.3d at 795 ("So long as the language accompanying the projections is meaningfully cautionary, the law requires us to be unconcerned with the speaker's state of mind at the time he makes the projections"); *Miller v. Champion Enters., Inc.*, 346 F.3d 660, 678 (6th Cir. 2003) ("[S]ince we conclude that the statements . . . were accompanied by meaningful cautionary language, the statements are subject to the safe harbor provisions of the PSLRA and are therefore not actionable. No investigation of defendant's state of mind is required."); *Southland Sec. Corp. v. INSpire Ins. Solutions Inc.*, 365 F.3d 353, 371 (5th Cir. 2004) ("The safe harbor has two independent prongs: one focusing on the defendant's cautionary statements and the other on the defendant's state of mind. "); *Harris v. Ivax Corp.*, 182 F.3d 799, 803 (11th Cir. 1999) ("[I]f a [forward-looking] statement is accompanied by 'meaningful cautionary language,' the defendants' state of mind is irrelevant.").

The Seventh Circuit has taken a different approach. *See Asher*, 377 F.3d at 734. It has held that

meaningful cautionary statements must, at a minimum, disclose "the major risks [the issuer] *objectively* faced" and has held that discovery is required to determine those risks. *Id.* (emphasis supplied); *see also id*. ("[I]f after discovery Baxter establishes that the cautions did not reveal what were, *ex ante*, the major risks, the safe harbor may yet carry the day.").

While not deciding the issue, the Second Circuit has noted a tension between Congress's intent that courts evaluate whether language is meaningfully cautionary and the court's need to examine what the defendants knew "in order to determine what risks the defendants faced." *Slayton v. American Express*, 604 F.3d 758, 771-72 (2d Cir. 2010). In *dicta*, the Second Circuit has expressed its view that:

> We think that the most sensible reference is the major factors that the defendants faced at the time the statement was made. But this requires an inquiry into what the defendants knew because in order to determine what risks the defendants faced, we must ask of what risks were they aware.

Id. at 772. The Third Circuit, likewise, had noted the same tension but avoided the issue. *See Institutional Investors Grp.*, 564 F.3d at 258–59.

The D.C. Circuit did not take issue with these decisions. It attempted to avoid them by holding that "the purportedly cautionary statements were not meaningful because they were misleading in light of historical fact." Pet. App. 23a. But the court necessarily relied on Harman's alleged knowledge to conclude that Harman had a duty to "convey that inventory was obsolete." *Id.*

There is no misstatement of historical fact at issue here. There is no claim that Harman affirmatively misstated its inventory or claimed that its inventory contained only the latest models. As the D.C. Circuit recognized, "[APERS] did not characterize the two statements at issue as pertaining to current or historical facts." Pet. App. 14a.

Rather, the D.C. Circuit held that Harman's cautionary statements were misleading because they omitted information about alleged obsolescence. Pet. App. 23a. But, here, Harman would have a duty to disclose obsolescence only if it had knowledge of obsolescence. *See Phila. Fin. Mgmt. of S.F., LLC v. DJSP Enters., Inc.*, 572 F. App'x 713, 716 (11th Cir. 2014) (per curiam) ("[A] defendant's omission to state a material fact is proscribed only when the defendant has a duty to disclose. Some of the factors that we consider in determining whether a duty to disclose exists include the extent of the defendant's knowledge . . . .") (internal quotation marks and citation omitted); *Ansfield v. Omnicare, Inc.*, 769 F.3d 455, 471 (6th Cir. 2014) (observing that an actionable omission arises "when a person or corporation comes *into possession of*" new information) (emphasis supplied); *see also Basic Inc. v. Levinson*, 485 U.S. 224 , 239 n.17 (1988) ("Silence, absent a duty to disclose, is not misleading under Rule 10b-5.").

Thus, those cases deciding the role of issuer knowledge under the safe harbor usually involve omissions of "historical fact" that allegedly render cautionary statements misleading. *See Goodman Life*, 594 F.3d at 795 (alleging that forecasts were false when made); *In re Cutera*, 610 F.3d at 1107 (alleging inadequate disclosure of actual, current prob-

lems with sales staff that disproved projections); *Miller*, 346 F.3d at 667-68 (alleging actual over inventory of homes that issuer failed to disclose in cautionary statements); *Ehlert*, 245 F.3d at 1318 (alleging statements misleading in light of current decision to charge for upgrades).

But unlike the D.C. Circuit, the courts in those cases did not begin and end their analysis citing the omission of "historical facts" from the cautionary statement. They held that determining whether the cautionary statements were meaningful in light of those alleged facts required impermissibly delving into the issuer's state of mind.

For example, in *Miller*, the court held that the issuer's failure to disclose an actual and known over inventory of homes, which the issuer later cited as causing it to miss its forecasted results, did not preclude the safe harbor's application. 346 F.3d at 677-78. In the court's view, the issuer's knowledge of that fact was irrelevant to the safe harbor. *See id.* And general disclosures regarding the risk of over inventory provided the requisite caution. *Id.* at 678.

Here, too, the allegation is not that Harman misstated a historical fact, such as by misstating its inventory levels or characterizing the inventory as containing only new generation PNDs. The D.C. Circuit held that Harman's cautionary statements were misleading because Harman failed to disclose what it allegedly knew, that a 2007 modification "rendered all of the older-generation units in inventory obsolete." Pet. App. 147a.

In addition, the allegations on which the court relied were all derived from Harman's purported

knowledge. APERS' obsolescence allegations were supposedly based on non-public inventory, sales, and pricing information, and confidential discussions between employees. Pet. App. 146a–47a; *see id.* at 23a–24a. There is no way to ascertain the supposed "historical facts" without resort to discovery into Harman's internal records—the company's knowledge.

In all events by going outside the four corners of the cautionary statements to analyze alleged historical facts and Harman's purported knowledge, the D.C. Circuit directly conflicted with the evidentiary approach of the Fifth, Sixth, Ninth, and Eleventh Circuits. In their view, courts must examine "*only* the cautionary statement accompanying the forward-looking statement" to determine the safe harbor's applicability. *Goodman Life*, 594 F.3d at 795 (emphasis supplied); *see also Miller*, 346 F.3d at 672 ("[I]f the statement qualifies as 'forward-looking' and is accompanied by sufficient cautionary language, a defendant's statement is protected."); *id.* at 677-78 (examining only statements); *Harris*, 182 F.3d at 807 (same); *In re Cutera*, 610 F.3d at 1112 (same).

As the Eleventh Circuit has explained, "Congress contemplated that [courts] would consider the cautionary language accompanying forward-looking statements at the pleadings stage." *Goodman Life*, 594 F.3d at 795. And, "[s]o long as the language accompanying the projections is meaningfully cautionary," the safe harbor applies. *Id.*

B. The D.C. Circuit's Decision Is Erroneous With Respect To The Safe Harbor.

The D.C. Circuit decided both issues incorrectly.

1. The Allegedly False or Misleading Nature Of A Cautionary Statement Cannot Preclude Safe Harbor.

The D.C. Circuit erred by holding that a cautionary statement cannot be meaningful if it is allegedly misleading.

A false or misleading statement is an element of a § 10(b) claim. Under § 10(b) it is unlawful:

> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) *To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made . . . not misleading,* or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5 (emphasis supplied); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318 (2007). Thus, to avoid dismissal for failure to plead an element, the plaintiff must plead a misrepresentation or falsity.

In addition, the safe harbor applies only to an action "that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading." 15 U.S.C. § 78u-5(c)(1). Thus, a false or misleading statement is a prerequisite to safe harbor.

If, as the D.C. Circuit held, allegations of a misrepresentation were sufficient to defeat the meaningful cautionary statements safe harbor, it would serve no function. The elements of the § 10(b) claim and the

safe harbor's own threshold requirements would preclude the safe harbor's application. A court, however, "should not construe the statute in a manner that . . . would render a statutory term superfluous." *Dole Food Co. v. Patrickson*, 538 U.S. 468, 476-77 (2003) (citing *United States v. Nordic Village, Inc.*, 503 U.S. 30, 36 (1992), and *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 258 (1993)).

2. The Issuer's Knowledge Is Irrelevant To The Safe Harbor.

The court separately erred by importing issuer knowledge into its analysis. The text, structure and history of the PSLRA all demonstrate that actual knowledge is irrelevant to whether cautionary statements are meaningful. The PSLRA's forward-looking statement safe harbor provides that no liability can attach to a forward-looking statement where:

> (A) the forward-looking statement is—
>
> (i) identified as a forward-looking statement, and accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or . . ."
>
> (ii) immaterial . . .

15 U.S.C. § 78u-5(c)(1).

By its terms, the statute contemplates an examination of only the cautionary statement's language. The court is directed to examine whether the statements, themselves, "identify[] important factors." *Id.* The safe harbor fails to identify any other factor, such as the speaker's mental state or the speaker's purported knowledge as relevant to the analysis.

The PSLRA's structure confirms this interpretation. Immediately after the above-quoted provision, the PSLRA continues:

> ***or***
>
> (B) the plaintiff fails to prove that the forward-looking statement—
>
> (i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or
>
> (ii) if made by a business entity; was—
>
> (I) made by or with the approval of an executive officer of that entity; and
>
> (II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

15 U.S.C. § 78u-5(c)(1) (emphasis supplied). By using the disjunctive "or" between separately numbered provisions, the PSLRA creates separate safe harbors: where the forward-looking statement is accompanied by meaningful cautionary language, *or* it is immaterial, *or* the plaintiff fails to prove (or plead) that the issuer had actual knowledge that the statement was false or misleading when made. *See United States v. Garcia*, 718 F.2d 1528 (11th Cir. 1983), *aff'd* 469 U.S. 70 (1984).

The presence of a separate safe harbor specifically relating to the defendant's state of mind is significant. It shows both that Congress knew how to integrate knowledge into the safe harbors and that it failed to do so in the provision requiring meaningful cautionary statements. And, "[w]here Congress includes particular language in one section of a statute

but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) (internal quotation marks and citation omitted); *see also Custis v. United States*, 511 U.S. 485, 492 (1994) (same).

In addition, the separate safe harbor for the absence of actual knowledge would deprive the meaningful cautionary statements safe harbor of meaning if actual knowledge were relevant to the latter. The plaintiff must allege knowledge of a statement's falsity to prevent the defendant from invoking the subsection (B) safe harbor. *See* Pet. App. 66a–67a. If the same allegations blocked the (A)(i) safe harbor for meaningful cautionary statements, the provision would have no independent function. *See Goodman Life*, 594 F.3d at 796.

In all events, the D.C. Circuit erred by going outside the four corners of the relevant statements to determine whether they were meaningful. The PSLRA's text and structure demonstrate that Congress intended courts to stay within the four corners of the statements. The meaningful cautionary statements safe harbor contemplates examination of only the language of the cautionary statement.

Section 78u-5's special procedure for motions to dismiss confirms this reading of the text. It provides that on "any motion to dismiss based upon subsection (c)(1) of this section"—the safe harbor—a district court "shall consider any statement cited in the complaint and any cautionary statement accompanying the forward-looking statement, which are not subject

to material dispute, cited by the defendant." 15 U.S.C. § 78u-5(e). That rule alters Rule 12(b)(6)'s usual evidentiary limits to allow courts to resolve questions regarding the safe harbor at the pleadings stage.

The legislative history confirms this interpretation. It states: "[t]he first prong of the safe harbor requires courts to examine *only* the cautionary statement accompanying the forward-looking statement." H.R. Rep. No. 104-369, at 43-44, 1995 U.S.C.C.A.N. at 742 (emphasis supplied). No statement of Congressional intent could be clearer.

3. Harman's forward-looking statements were accompanied by meaningful cautionary statements.

Finally, Harman's forward looking statements were accompanied by meaningful cautionary statements. In connection with Dr. Harman's statement that "[t]he plan forecasts total unit sales of 618,000 units for the fiscal '07 year, and that plan is proceeding," Dr. Harman expressly stated that Harman had to work "extraordinarily hard" to increase sales and maintain its projected margins. Pet. App. 227a. He observed that "PND inventories in Europe had grown substantially," that "the European PND market ha[d] become extremely competitive," and that "because of higher competition, [the company was] seeing pricing pressure." Pet. App. 227a, 228a, 238a. He also disclosed that the company had a PND inventory of approximately $50 million. Pet. App. 228a.

In its 2006 and 2007 Annual Reports, Harman warned against its potential failure to "satisfy shifting consumer demand or compete successfully with

competitors' products" and that "[d]elays or defects in new product introduction may result in loss of sales or delays in market acceptance." Pet. App. 210a, 255a. It also warned that its markets were "highly competitive, rapidly changing and characterized by intense price competition." Pet. App. 212a, 254a. Harman explained that to increase sales and market share, it had to "improve existing products, while successfully developing new products" and constantly "respond to technological developments and changing consumer preferences." *Id.* at 213a.

As the district court correctly found, Dr. Harman's and the report's warnings were meaningful because they "are not merely statements about general market risks, but are specific to the European PND market of which [APERS] complain[s]." Pet. App. 74a. "A reasonable investor would know that 'extreme' price pressure could substantially affect sales, margins, or both." *Id.*

II. THE D.C. CIRCUIT'S PUFFERY DECISION INDEPENDENTLY MERITS REVIEW.

Separate from its analysis of the meaningful cautionary statements safe harbor, the D.C. Circuit considered the scope of the puffery doctrine and erroneously held Harman's characterization of its sales as "very strong" was material, not puffery. This result conflicts directly with Third and Fifth Circuit decisions, and the D.C. Circuit's analysis departed from the analytical approach of the majority of federal appellate courts with respect to puffery.

A. The D.C. Circuit's Puffery Decision Departs From The Majority Of Appellate Courts In Result And Analytical Approach.

The D.C. Circuit rejected the district court's conclusion that Harman's use of "very strong" was "subjective and provide[d] no standard against which a comparison can be drawn." Pet. App. 84a. In the D.C. Circuit's view, "the 'very strong' statement in the FY2007 Annual Report is plausibly understood as a description of historical fact rather than unbridled corporate optimism, *i.e.*, immaterial puffery." Pet. App. 34a (internal citation and quotation marks omitted).

The D.C. Circuit rejected the argument that no investor would make an investment decision on Harman's vague characterization of its results. In its view, the "statement was specific about product and time period." Pet. App. 34a. It rejected the argument that the statement was too subjective to be measurable, reasoning that a statement is not puffery if it lacks "its own metric." Pet. App. 36a.

In contrast, the Third Circuit has held that vague hyperbole accompanying factual recitations of past earnings—such as statements regarding the issuer's "dramatic . . . growth, strong performance, and unique business model"—are "mere 'puffery,' insufficient to sustain a Rule 10b-5 claim." *Galati v. Commerce Bancorp, Inc.*, 220 F. App'x 97, 102 (3d Cir. 2007) (internal quotation marks omitted). Those are just "general optimistic statements" that investors expect and disregard. *See id.*

Similarly, the Fifth Circuit has held that using "strong" to characterize results is "obviously immaterial puffery." *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 869-70 (5th Cir. 2003). There, the court analyzed whether the following statements were puffery: "Our fundamentals are strong," and "[t]he pipeline of private transactions and announced public tenders that we are pursuing remains strong." *Id.* The court found the statements so "obviously immaterial" as to require no analysis. *Id.* at 869. For support it cited *Raab v. General Physics Corp.*, 4 F.3d 286 (4th Cir. 1993), which held that those kinds of statements are immaterial, because "[a]nalysts and arbitrageurs rely on facts in determining the value of a security, not mere expressions of optimism from a company spokesman." *Id.* at 290. [2]

The D.C. Circuit's holding conflicts directly with those of the Third and Fifth Circuits. According to the latter two courts, the characterization of results as "strong" is not anything upon which a reasonable investor would rely, regardless of the context. Indeed, in *Rosenzweig*, the plaintiffs argued, as they do here,

[2] *See also Ley v. Visteon Corp.*, 543 F.3d 801, 811 (6th Cir. 2008) (issuer's statement in January 2003 that company "had a solid year in 2002" was non-actionable "corporate optimism"), *abrogated on other grounds by Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309 (2011); *In re Cutera*, 610 F.3d at 1111(holding statement that "we believe our employee relations are good," when "many employees were already on their way out the door" immaterial puffery, because "investors do not rely on vague statements of optimism like 'good,' 'well-regarded,' or other feel good monikers "); *Next Century Commc'ns Corp. v. Ellis*, 318 F.3d 1023, 1028 (11th Cir. 2003) (per curiam) (interpreting Georgia's puffery doctrine and holding that, under it, "the characterization of a company's performance as 'strong' constitutes mere puffery.").

"that the optimistic representations were 'specific material assurances of strength, ability and future, the accuracy of which was subject to quantitative verification.'" 332 F.3d at 868-69. The Fifth Circuit held these arguments beside the point, "because analysts 'rely on facts in determining the price of a security,'" not an issuer's calling results "strong." *Id.* at 869. Even where the term "strong" is linked to a specific product or business, the term itself is "certainly not specific enough to perpetrate a fraud on the market." *Id.*

In addition to this direct conflict, the D.C. Circuit's overarching analysis significantly departs from the analytical path marked by the majority of courts. To the D.C. Circuit, the inherently ambiguous and self-congratulatory nature of the term "strong" was insufficient to render it puffery. The fact that there was no "metric" by which to evaluate the word "strong" was of no moment to the court. Because PND sales were allegedly important to the company's automotive division (but not the company's "total portfolio"), the court held that an investor would rely on the statement. Pet. App. 34a.

But as the Sixth Circuit has explained, it is the generality and obvious hyperbole, itself, that renders statements puffery, because a "reasonable investor would not rely" on "vague, soft, puffing statements or obvious hyperbole." *Pub. Sch. Teachers' Pension & Ret. Fund of Chicago v. Ford Motor Co.*, 381 F.3d 563, 570 (6th Cir. 2004) (internal quotation marks omitted).

Thus, in contrast to the D.C. Ciruit, in *In re Level 3 Communications, Inc. Securities Litigation*, which in-

volved alleged misstatements regarding the integration of acquired companies, the Tenth Circuit held that "[t]he importance of integration to Level 3 and its investors does not, however, mean that everything defendants said on the topic was material." 667 F.3d 1331, 1340 (10th Cir. 2012). Regardless of the importance of the subject to investors, statements that were "nothing more than puffery" were not material. *Id.* They are "vague (if not meaningless) management-speak upon which no reasonable investor would base a trading decision." *Id.*

And unlike the D.C. Circuit, the Second and Ninth Circuits have held that whether "statements were knowingly and verifiably false when made" does not preclude application of the puffery doctrine. *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173, 183 (2d Cir. 2014). Falsity "does not cure their generality, which is what prevents them from rising to the level of materiality required to form the basis for assessing a potential investment. *Id.*; *see also Police Ret. Sys. of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051, 1060 (9th Cir. 2014) (holding statement that "the opportunity for system placement at hospitals 'is still very, very large'" was puffery despite the fact that it was "objectively verifiable"). "[P]rofessional investors, and most amateur investors as well, know how to devalue the optimism of corporate executives." *Intuitive Surgical*, 759 F.3d at 1060 (internal quotation marks and citation omitted).

B. The D.C. Circuit's Puffery Decision Was Erroneous.

The D.C. Circuit's decision is also incorrect. Puffery is a "vague statement[] of optimism like 'good,' 'well-regarded,' or other feel good monikers." *Intuitive Surgical*, 759 F.3d at 1060 (internal citation and quotation marks omitted). Puffery's hallmark is the lack of "a standard against which a reasonable investor could expect them to be pegged." *City of Monroe Emps. Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651, 671 (6th Cir. 2005). "[I]t is inherently a label expressive of, and generated by, opinion." *Next Century Commc'ns Corp. v. Ellis*, 318 F.3d 1023, 1028 (11th Cir. 2003) (per curiam).

Harman's statement that "sales of aftermarket products, particularly PNDs, were very strong during fiscal 2007" is classic puffery. Pet. App. 84a. In that portion of its Annual Report, Harman provided the actual net sales figures for its automotive division—none of which are alleged to be false—and made the "very strong" comment. Read in this context, the comment is the kind of opinion-based, self-congratulatory hyperbole that investors regularly disregard. The statement is so vague, an investor would not know whether "very strong" is relative to Harman's historical sales, Harman's expectations, Harman's budget, competitors' sales over the period, competitors' historical sales, or something different entirely. And, as the district court held, if Harman meant to compare its PND sales to previous quarters, its statement was true. Pet. App. 85a.

Thus, the district court correctly concluded that Harman's "use of the chest-beating adjective 'strong'

is subjective and provides no standard against which a comparison can be drawn." Pet. App. 84a. The term was used in such a vague manner, "it is impossible to know" what very strong was meant to connote. Pet. App. 85a.

III. THE PETITION CONCERNS ISSUES OF EXCEPTIONAL IMPORTANCE.

The questions presented are of such exceptional importance that the Court should resolve the conflicts now. As a general matter, any question regarding the meaning of the securities laws is important given the numerous cases those questions impact. Thus the Court has repeatedly granted *certiorari* to resolve conflicts in the courts of appeals regarding the scope of § 10(b)(5) liability.[3]

Indeed, the Court regularly grants interlocutory review in securities class actions, because there is, realistically, no alternative. *See, e.g.*, *Tellabs*, 551 U.S. at 316 (granting certiorari to review reversal of order granting a motion to dismiss); *Stoneridge Inv. Part-*

[3] *See, e.g.*, *Tellabs*, 551 U.S. at 317–18 & n.2 (granting certiorari "to resolve the disagreement among the Circuits on whether, and to what extent, a court must consider competing inferences in determining whether a securities fraud complaint gives rise to a 'strong inference' of scienter," as required by the PSLRA); *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2299 (2011) (granting certiorari to resolve "whether Janus Capital Management LLC (JCM), a mutual fund investment adviser, can be held liable in a private action under Securities and Exchange Commission (SEC) Rule 10b-5 for false statements included in its client mutual funds' prospectuses"); *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 250-51 (2010) (deciding whether § 10(b) "provides a cause of action to foreign plaintiffs suing foreign and American defendants for misconduct in connection with securities traded on foreign exchanges").

ners, LLC v. Scientific-Alaska, Inc., 552 U.S. 148, 155–56 (2008) (same); *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 77 (2006) (same); *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 340 (2005) (same). As the Court has observed, "extensive discovery and the potential for uncertainty and disruption in a lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies." *Stoneridge Investment Partners*, 552 U.S. at 163. Many cases that proceed to discovery, therefore, go no further—defendants elect to settle rather than enduring the expense and disruption of discovery. *See Memorandum from Paul V. Niemeyer, Chair, Advisory Comm. on Civ. Rules, to Hon. Anthony J. Scirica, Chair, Comm. on Rules of Practice and Procedure (May 11, 1999)*, 192 F.R.D. 354, 357 (2000) (reporting that discovery accounts for as much as 90 percent of litigation costs when discovery is actively employed).

The meaningful cautionary statements safe harbor is an important tool for eliminating costly, unnecessary discovery. As explained, the PSLRA contains a special provision that expands the materials that may be considered on a motion to dismiss in order for courts to resolve the safe harbor's applicability at the pleadings stage. *See* 15 U.S.C. § 78u-5(e). This creates a special need to review safe harbor cases arising from a motion to dismiss, as this one does.

Similarly, under the puffery doctrine courts can eliminate specious § 10(b) claims at the pleadings stage by holding statements immaterial as a matter of law. *See In re Level 3 Commc'ns, Inc. Sec. Litig.*, 667 F.3d at 1340 (holding alleged misstatements "as a matter of law, nothing more than puffery"); *Next Century Commc'ns Corp.*, 318 F.3d at 1027-28 (hold-

ing that statement regarding "Company's strong performance" non-actionable puffery as a matter of law). Here, too, this advances the PSLRA's goals by eliminating costly discovery.

Finally, the safe harbor's and the puffery doctrine's scope, meaning and application have nationwide importance given their frequent use in litigation. The meaningful cautionary statements safe harbor has been cited in over 1,000 federal court opinions, over 500 of which are published, and over 100 of which were issued by the courts of appeals.[4] In the last six months alone, its meaning has been the subject of dozens of cases.

The puffery doctrine has been at issue in over 700 federal cases, over 70 of which were issued by the courts of appeals.[5] As of the date of this petition, in 2015, the doctrine was at issue in over 50 cases. The scope of both is therefore of incredible significance to courts and litigants nationwide.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

---

[4] These figures count all cases that cite 15 U.S.C. §78u-5 ("Application of safe harbor for forward-looking statements").

[5] This statistic was derived searching the terms: "10(b)" & securities & puffery.

ROBERT C. MICHELETTO
KELLY A. CARRERO
IAN SAMUEL
JONES DAY
222 East 41st Street
New York, NY 10017

TRACI L. LOVITT
Counsel of Record
JONES DAY
100 High Street
21st Floor
Boston, MA 02110-1781
(617) 449-6900
tlovitt@jonesday.com

Counsel for Petitioners

NOVEMBER 2015

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued February 10, 2015 Decided June 23, 2015

No. 14-7017

IN RE: HARMAN INTERNATIONAL INDUSTRIES, INC.
SECURITIES
LITIGATION,

ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY
SITUATED,
APPELLANT

CHEOLAN KIM AND CITY OF BOCA RATON GENERAL
EMPLOYEES PENSION PLAN, ON BEHALF OF ITSELF AND
ALL
OTHERS SIMILARLY SITUATED - (CA-07-2175),
APPELLEES

V.

HARMAN INTERNATIONAL INDUSTRIES INC., ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:07-cv-01757)

Steven J. Toll argued the cause for appellant. With him on the briefs was *Daniel S. Sommers*.

Traci L. Lovitt argued the cause for appellees. With her on the brief were *Thomas F. Cullen Jr.*, *Robert C. Micheletto*, *Kelly A. Carrero*, and *Ian J. Samuel*.

Before: HENDERSON, ROGERS and PILLARD, *Circuit Judges*.

Opinion for the Court by *Circuit Judge* ROGERS.

ROGERS, *Circuit Judge*: Between April 2007 and February 2008, Harman International Industries, Inc., and three of its officers are alleged to have knowingly and recklessly propped up the Company's stock price by making materially false and misleading statements about the Company's financial condition and by failing to disclose related material adverse facts, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. § 78j(b); Rule 10b-5, 17 C.F.R. § 240.10b-5; and Section 20(a) of the Act, 15 U.S.C. § 78t(a). This is alleged to have occurred during a period when the Company was being considered for acquisition. Only after the acquisition did not go forward, it is alleged, did the Company disclose information that would have been important to a reasonable investor. The district court dismissed the complaint for failure to state a claim.

On appeal, the only question is whether the complaint stated a plausible claim of securities fraud with respect to three alleged statements that focus primarily on the status of the Company's personal navigational device ("PND") products. Consistent with the standard to be applied in considering a motion to dismiss for failure to state a claim, we necessarily offer no view on the merits of the allegations. The district court concluded two of the alleged statements fell within the statutory safe harbor for forward-looking statements accompanied by meaningful cautionary language and the third statement was "puffery" and thus inactionable. Upon *de novo* review, we hold that although the challenge to the forward-looking nature of two statements was forfeited, the complaint plausibly alleges that those statements were not entitled to safe harbor protection because the accompanying cautionary statements were misleading insofar as they failed to account for historical facts about PNDs that would have been important to a reasonable investor. We also hold that the third statement, in the Company's annual report, is plausibly understood, in the alleged circumstances, as a specific statement about its recent financial performance and not mere "puffery." Because loss causation was adequately pleaded and the Section 20(a) claims alleged against the individual defendants are plausible, we reverse the dismissal of the complaint as to these three statements and remand the case to the district court for further proceedings.

I.

Section 10(b) of the Securities Exchange Act of 1934, as amended, provides that it shall be unlawful

"[t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. § 78j(b). SEC Rule 10b-5 closely tracks Section 10(b), providing that, "in connection with the purchase or sale of any security," it is unlawful:

> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person[.]

17 C.F.R. § 240.10b-5. The Act, as amended, provides a safe harbor from liability for forward-looking statements that are "identified as . . . forward-looking" and "accompanied by *meaningful* cautionary statements identifying *important factors* that could cause actual results to differ materially from those in the forward-looking statement." 15 U.S.C. § 78u-5(c)(1)(A)(i) (emphases added); *see* Private Securities Litigation Reform Act of 1995, Pub. L. 104-67, 109 Stat. 737 (1995). Section 20(a) subjects to liability "[e]very person who, directly or indirectly, controls

any person liable under" another provision of the Act or implementing rules. 15 U.S.C. § 78t(a).

In 2008, when the consolidated class action complaint was filed, Harman International Industries, Inc., was "a leading manufacturer of high-quality, high fidelity audio products and electronic systems for the automotive, consumer, and professional markets in the Americas, Europe, and Asia." Compl. ¶ 2. Its products included information and entertainment systems for automobiles. According to the complaint, on April 26, 2007, the Company announced its potential acquisition by an entity formed by Kohlberg Kravis Roberts and an affiliate of Goldman Sachs, two prominent private equity firms. The same day, and on two subsequent occasions at issue, the Company, through its chief executive officers and chief financial officer and in its FY 2007 Annual Report, made statements regarding past and forecasted sales of its products, including PNDs. The price of the Company's stock rose markedly following the April 2007 merger announcement and held steady through September 2007. When the Company announced in September 2007 that the acquisition plans had been abandoned, the Company's share price fell by more than 24 percent. It fell again in January 2008 when the Company lowered projected earnings per share, noting among other things "a major shift" in its PND business. *Id.* ¶ 109. It continued to fall in February 2008, when the Company announced the financial results for the second quarter of FY 2008, noting PND sales had fallen by $29 million compared to the same period in the previous year, in part due to sale of older products at substantial discounts. *Id.* ¶ 113.

The lead plaintiff, Arkansas Public Employees' Retirement System ("Appellant"), a purchaser of common stock between April 26, 2007, and February 5, 2008, sued the Company and three of its officers for securities fraud. Count one of the complaint alleges that the Company violated Section 10(b) of the Act and Rule 10b-5 when its chief executive officers and chief financial officer "knowingly or recklessly propped up [the Company's] stock price by issuing materially false and misleading disclosures regarding the Company's financial condition in fiscal 2007 (ending June 30, 2007) and in fiscal 2008 (beginning July 1, 2007)." *Id.* ¶ 3. They, additionally, "knowingly or recklessly failed to disclose material adverse facts about the [c]ompany's financial condition." *Id.* Count two alleges that three officers were individually liable under Section 20(a) of the Act for the Company's Section 10(b) and Rule 10b-5 violations "[b]y virtue of their positions as controlling persons." *Id.* ¶ 186. The complaint identified a number of allegedly actionable false and misleading statements. Only three statements are at issue on appeal, and they relate primarily to the Company's automotive PND line of business. We quote relevant portions of the alleged statements.

First, on April 26, 2007, CEO Sidney Harman stated during a conference call with analysts:

> I had indicated in earlier conference calls that the PND environment in Europe was not as margin challenged as it is in the United States, but that we could surely anticipate it. There was reasonable foresight in that observation. In the recent quarter, the European PND market has become extremely competitive. We are

> working extraordinarily hard to increase sales and to maintain adequate margins in that environment. In our earnings call three months ago, it was noted that Harman/Becker **PND inventories in Europe had grown substantially**. We said then that the inventory had been developed to support a vigorous sales effort and that **we planned to reduce it to normal levels at year-end**. *The plan forecasts total unit sales of 618,000 units for the fiscal '07 year, and* ***that plan is proceeding****. Where March 31 inventory was $75 million, we expect April 30 inventory to be approximately $50 million, May 31 inventory to be approximately $30 million, and June 30 inventory to be approximately $15 million, that a very normal level.*

Id. ¶ 57 (bold emphases added). Thereafter, in response to a question by an analyst, the Company CFO, Kevin Brown, stated that the Company had sold 84,000 PNDs during the prior quarter and 300,000 units for the preceding nine months. When asked whether, in light of those numbers, he still expected total PND sales to eclipse 600,000 for the fiscal year, CEO Harman stated: "We do, and we said so." *Id.* ¶ 58 (emphasis omitted). Following the April 26 acquisition announcement and conference call, the Company's stock price rose from $102.56 to $122.50, closing the next day at $122.59. At the beginning of the conference call the moderator had stated that "certain statements by the [C]ompany during this call are forward-looking statements" that "include the [C]ompany's beliefs and expectations as to future events and trends affecting the [C]ompany's

business and are subject to risks and uncertainties." Harman Int'l Indus. Earnings Release Conf. Call Tr. at 1 (Apr. 26, 2007). Persons on the call were "advised to review the reports filed by Harman International with the [SEC] regarding these risks and uncertainties." *Id.*

The complaint alleges that the CEO's forecast for PND sales, particularly his statement that "that plan is proceeding," was materially false and misleading because the defendants "knew or recklessly disregarded that the Company's foray into PND sales in Europe would cause material declines in its operating income as a percentage of net sales." Compl. ¶ 64(a). At the time of the April conference call, the complaint alleges, there was "a large inventory of older generation, obsolete PNDs which [the Company] could not sell or was forced to sell at a substantial loss," and the "prospects for future sales of PNDs were being adversely affected by increasing competition and pressures from competitive pricing." *Id.* ¶ 64(b). The Company's former sales engineer advised that the Company had not sold PNDs up to expectations in either FY 2006 or FY 2007, with the result that the Company "had a stockpile of the devices in inventory," *id.* ¶ 64(c), and that in early 2007, the Company modified its PND design, rendering all of the earlier generation units in inventory obsolete. The Company's former accounting manager advised that the Company had released five different versions of the same PND between March 2006 and July 2007 but did not sell a significant number of the devices until July 2007.

Second, on August 29, 2007, the Company filed its FY 2007 year-end Annual Report with the SEC, on

Form 10-K, which was signed by the individual defendants. The Report stated: "**Sales of aftermarket products, particularly PNDs, were very strong during fiscal 2007**." Compl. ¶ 82 (emphasis added). Once the Annual Report was publicly released, the Company's stock rose, from $112.93 to $113.39. Early on the Report stated that it "contains forward-looking statements within the meaning of the [Act]" and that readers should "not place undue reliance on these statements." Harman Int'l Indus. SEC Form 10-K at i (Aug. 29, 2007). The Report listed various factors that "may cause fluctuations in [the Company's] operating results and/or the price of [its] common stock," *id.* at ii, and included a detailed account of the "risk factors," *id.* at 9.

The complaint alleges the statement that the Company's PND sales were "very strong" was "false and misleading when made and/or omitted to disclose material facts necessary to make the statement[] made not misleading." Compl. ¶ 86. Specifically, the Company failed to disclose: (1) the growing inventory of obsolete PNDs, (2) the fact that the Company had missed PND sales targets for the previous fiscal year by more than $85 million, and (3) that the Company had recently sold 100,000 obsolete PND units at a substantial discount.

Third, on September 27, 2007, CFO Brown stated during a conference call with analysts that the Company had forecast first quarter FY 2008 sales to be $950 million, up 15 percent compared to the first quarter of FY 2007. When an analyst observed that "the $950 million of revenue expectation is the highest number [the Company had] ever achieved"

and asked whether "that observation [is] correct" and "to what degree did the spillover of [Mercedes Benz] C Class revenues influence that number," *id.* ¶ 101, CFO Brown responded:

> Yes, Peter, you are correct that that is a **very strong first quarter** on the top line for us, reflecting getting fully up the ramp curve on Mercedes C Class but also reflecting the fact that *we are bringing additional business on stream at Chrysler as we ramp up our Missouri plant and* ***in the PND business, where we continue the growth and expansion of that business primarily in Europe***.

Id. (bold emphases added). The conference call was convened to discuss the Company's almost-completed first quarter FY 2008 financial results and expectations for the remainder of the fiscal year. The conference call's moderator again began the call by stating that "certain statements made by the Company during this call are forward-looking statements" that "include the Company's beliefs and expectations as to future events and trends affecting the Company's business and are subject to risks and uncertainties." Harman Int'l Indus. Guidance Announcement Tr. at 1 (Sept. 27, 2007). Those on the call were "advised to review the reports filed by Harman International with the [SEC] regarding these risks and uncertainties." *Id.*

The complaint alleges that the statement "growth and expansion" would "continue" in the PND business was materially false and misleading, primarily because of the historical evidence of growing inventory, widespread obsolescence, and stagnant sales. Compl. ¶ 102.

Proceeding on a corrective disclosure theory of loss causation, the complaint points to the Company's statements in January and February 2008, allegedly "when [the Company] disclosed [its] deteriorating financial condition and the truth became apparent to the market, [and the Company's] stock fell sharply," eliminating "the prior artificial inflation." *Id.* ¶ 125.

- On January 14, 2008, prior to the opening of the market, a Company press release disclosed revised FY 2008 earnings guidance, "significantly lowering estimates of earnings per share." *Id.* ¶ 109. The release explained that "[t]he change in guidance was prompted primarily by a major shift in the market for Portable Navigation Devices (PNDs). In recent months this sector has experienced significant pricing pressure which is affecting the entire industry." *Id.* The release quoted the statement of the Company's then-CEO, Dinesh Paliwal, that "[w]hile the growth fundamentals of our core business remain sound, the difficult PND environment presents a challenge." *Id.* The share price of the Company's stock dropped by nearly 40 percent on the day the press release issued. *Id.* ¶ 110.

- On February 5, 2008, the Company announced its FY 2008 second quarter results, stating that "its Automotive division's earnings were 'under pressure' due to PNDs and that it had suffered a gross margin decline from lower margins on PND products; product mix change . . .; and higher than expected material costs." *Id.* ¶ 112. Operating income for the second quarter of FY 2008 (ending December 31, 2007) was $61 million, or 5.7 percent of sales, as compared to $116 million and 12.4 percent, respectively, for the same quarter of the previous

year. The Company's "**PND sales had fallen by $29 million compared to the same period in 2006**" and "PND sales and margins decreased due to aggressive price reduction by competitors, the delay of new products, and **the sale of older products at substantial discounts**." *Id.* ¶ 113 (emphases added) (internal quotation marks omitted). The Company's stock price fell more than 15 percent the next day. According to the complaint, the second quarter report, which was filed on SEC Form 10-Q on February 11, 2008, "disclosed more specifically the reasons why operating income and margins had declined in the first six months of fiscal 2008." *Id.* ¶ 115. That is, "the [recent] gross margin decline was the **result of lower margins on PND products**" attributable to "a significant decline in average market prices, delayed introductions and lower volumes of new generation products and the **inventory clearance of prior generation models at a loss**." *Id.* (emphases added).

The district court granted the defendants' motion to dismiss the complaint on the grounds that the statements during the conference calls fell within the safe harbor for forward-looking statements accompanied by meaningful cautionary statements, and the statement in the FY 2007 Annual Report was "mere puffery" and inactionable. *In re Harman Int'l Indus., Inc. Sec. Litig.*, 27 F. Supp. 3d 26, 46, 50, 51 (D.D.C. 2014). The court did not reach the question whether loss causation had been adequately pleaded. On appeal, Appellant contends that the district court erred because the Company's statements during the two conference calls were neither forward looking, nor accompanied by meaningful cautionary language,

and its statement in the FY 2007 Annual Report was not puffery, and further that loss causation and its Section 20(a) claim were adequately pleaded. Our review of the dismissal of the complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, is *de novo*. *See English v. District of Columbia*, 717 F.3d 968, 971 (D.C. Cir. 2013).

II.

The elements of a claim under Rule 10b-5 are "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2301 n.3 (2011) (internal quotation marks omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although the court need not accept the plaintiff's legal conclusions, the court must assume the truth of all well-pleaded factual allegations in the complaint and draw all reasonable inferences from those allegations in the plaintiff's favor. *See, e.g., de Csepel v. Republic of Hungary*, 714 F.3d 591, 597 (D.C. Cir. 2013); *Doe v. Rumsfeld*, 683 F.3d 390, 391 (D.C. Cir. 2012). Fraud must be pled with particularity, *see* FED. R. CIV. P. 9(b), and the Act, as amended in 1995, requires a plaintiff to "specify each statement alleged to have been misleading[and] the reason or reasons why the statement is misleading," 15 U.S.C. § 78u-

4(b)(1)(B), and to "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind," *id.* § 78u-4(b)(2)(A).

A.

The complaint alleges that none of the Company's statements were entitled to safe-harbor protection because many were not "*identified*" as forward looking and that, "[t]o the extent there were any forward-looking statements, there were no meaningful cautionary statements . . . ." Compl. ¶ 171 (emphasis added). The district court concluded that the parties were "not in dispute as to whether any particular statement is 'forward-looking,'" explaining that although Appellant had alleged that many of the statements "were not *identified* as forward-looking when made," Appellant did not move forward with this theory in briefing on the motion to dismiss. *Harman*, 27 F. Supp. 3d at 40 & n.4. In opposing the Company's motion to dismiss the complaint, Appellant discussed the two statements made during the conference calls under the heading: "Defendants' Forward-Looking Statements Are Not Protected by the PSLRA's Safe Harbor." *See* Lead Pl.'s Mem. in Opp. to Defs' Mot. to Dismiss at 13-15. Characterizing some statements as pertaining to current or historical facts, *i.e.*, not forward looking, Appellant did not characterize the two statements at issue as pertaining to current or historical facts.

Appellant has at least forfeited the argument that the two conference call statements were not forward looking. *See United States v. Volvo Powertrain Corp.*, 758 F.3d 330, 338 (D.C. Cir 2014). It is true that the

court has recognized that "'[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.'" *Woodruff v. Peters*, 482 F.3d 521, 525 (D.C. Cir. 2007) (quoting *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992)). Neither this court's precedent nor the Supreme Court in *Yee* sweeps as broadly as Appellant suggests. In *Yee*, 503 U.S. at 534-35, the Supreme Court distinguished between a claim (that a city ordinance effected an unconstitutional taking) that had to be raised in the district court and an argument in support of that claim that did not need to be raised in the district court. Thus, on appeal a party may "refine and clarify its analysis in light of the district court's ruling," *Teva Pharm., USA, Inc. v. Leavitt*, 548 F.3d 103, 105 (D.C. Cir. 2008), including citing "additional support for his side of an issue upon which the district court did rule, much like citing a case for the first time on appeal," *Koch v. Cox*, 489 F.3d 384, 391 (D.C. Cir. 2007). But that is not what Appellant seeks to do.

Although this court has acknowledged it has discretion to consider issues raised for the first time on appeal, *Roosevelt v. E.I. Du Pont de Nemours & Co.*, 958 F.2d 416, 419 n.5 (D.C. Cir. 1992); *see Singleton v. Wulff*, 428 U.S. 106, 121 (1976), it has done so where there are exceptional or otherwise particular circumstances, *see*, *e.g.*, *Lesesne v. Doe*, 712 F.3d 584, 588 (D.C. Cir. 2013); *Meier, Inc. v. Biovail Corp.*, 533 F.3d 857, 867 (D.C. Cir. 2008). Declining to address Appellant's new issue would not involve a miscarriage of justice in view of its counseled decision in the district court declining to move forward with

the argument that the two statements were not forwarding looking. It is true, as Appellant suggests, that the issue is purely legal and has been fully briefed, but the parties' briefs demonstrate that resolution of the issue is not "beyond any doubt," *Singleton*, 428 U.S. at 121; *see also Lesesne*, 712 F.3d at 588, and to treat the issue as "antecedent to the secondary question of whether cautionary language is meaningful," Reply Br. 4, would extend the concept of "antecedent to and ultimately dispositive of the dispute," *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 447 (1993) (internal quotation marks and alteration omitted), in a manner that would recast Appellant's position in the district court. Nor are we persuaded that the passage of time alone, during which Appellant asserts without substantive elaboration that the law interpreting the safe harbor provision has "evolve[d]," Reply Br. 5, is the type of intervening change in the law that warrants exercising our discretion to consider Appellant's new argument rather than adhering to "our ordinary practice of refusing to entertain an argument made for the first time on appeal," *Volvo Powertrain*, 758 F.3d at 338 (internal quotation marks omitted).

B.

To come within the statutory safe harbor, a statement must not only be forward looking (and identified as such), but also "accompanied by meaningful cautionary statements." 15 U.S.C. § 78u-5(c)(1)(A)(i). The safe harbor defines "meaningful cautionary statements" as those that "identify[] important factors that could cause actual results to differ materially from those in the forward-looking

statement." *Id.* We first address the legal standard, then its application.

1. Although the statutory text is somewhat ambiguous, *see Slayton v. Am. Express Co.*, 604 F.3d 758, 770 (2d Cir. 2010); *Asher v. Baxter Int'l Inc.*, 377 F.3d 727, 729 (7th Cir. 2004), as amended (Sept. 3, 2004), given the variety of possible factual circumstances that could arise, the words Congress chose are not without instructive meaning, even if their application may be unclear in specific circumstances.

Dictionary definitions may not, in and of themselves, be dispositive of whether a particular statement falls within the safe harbor, but they indicate the general nature of the information that Congress concluded must be part of a cautionary statement for safe harbor protection. The word "meaningful" means "significant," 9 OXFORD ENGLISH DICTIONARY 522 (2d ed. 1989), or "having a serious, important, or useful quality or purpose," NEW OXFORD AMERICAN DICTIONARY 1052 (2d ed. 2005). The word "important" means "[h]aving much import or significance; carrying with it great or serious consequences; weighty, momentous, grave, significant," 7 OXFORD ENGLISH DICTIONARY 728, or "of great significance or value; likely to have a profound effect on success, survival, or well-being," NEW OXFORD AMERICAN DICTIONARY 849. The words imply information that is tailored to a particular company's status at a particular time, because cautionary statements that are too temporally general, or advise of a company's performance in the distant past, would not be "significant," 9 OXFORD ENGLISH DICTIONARY 522, to an investor, nor would

they have any "useful quality or purpose," NEW OXFORD AMERICAN DICTIONARY 1052. Furthermore, to the extent application of these terms is ambiguous, the legislative history is helpful. Congress's purpose in enacting the safe harbor was to lessen the "muzzling effect" of potential liability for forward-looking statements, which often kept investors in the dark as to what was foreseen for the company by managers "[f]ear[ful] that inaccurate projections w[ould] trigger the filing of securities class action lawsuit[s]." H.R. REP. No. 104-369, at 42-43 (1995) ("CONF. REP.").

Applying the text and hewing to Congress's purpose, our sister circuits have resolved the definitional ambiguity as follows:

"The requirement for 'meaningful' cautions calls for substantive company-specific warnings based on a realistic description of the risks applicable to the particular circumstances." *Southland Sec. Corp. v. INSpire Ins. Solutions, Inc.*, 365 F.3d 353, 372 (5th Cir. 2004) (some internal quotation marks omitted). Thus, "cautionary statements must be substantive and tailored to the specific future projections, estimates or opinions in the [statements] which the plaintiffs challenge." *Institutional Inv'rs Grp. v. Avaya, Inc.*, 564 F.3d 242, 256 (3d Cir. 2009) (internal quotation marks omitted). That cautionary language must be tailored to the forward-looking statement that it accompanies follows from the statutory requirement that cautionary language must warn of what "could cause actual results to differ materially *from those in the forward-looking statement*." 15 U.S.C. § 78u-5(c)(1)(A)(i) (emphasis added).

By contrast, mere boilerplate—"This is a forward-looking statement: caveat emptor," *Asher*, 377 F.3d at 729 (internal quotation marks omitted)—does not meet the statutory standard because by its nature it is general and ubiquitous, not tailored to the specific circumstances of a business operation, and not of "useful quality," NEW OXFORD AMERICAN DICTIONARY 1052. *See Slayton*, 604 F.3d at 772; *Institutional Inv'rs Grp.*, 564 F.3d at 256; *Asher*, 377 F.3d at 732; *Southland*, 365 F.3d at 372. So too, generalized warnings that forward-looking statements are "not guarantees of future performance . . . and involve known and unknown risks and other factors that could cause actual results to be materially different from any future results expressed or implied by them," *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 244 (5th Cir. 2009) (internal quotation marks omitted), because such a statement is not specific regarding the business at issue. The Conference Report, in keeping with Congress's intent to "enhance market efficiency by encouraging companies to disclose forward-looking information," states that "boilerplate warnings will not suffice as meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those projected in the statement." CONF. REP. at 43.

At the same time, cautionary language cannot be "meaningful" if it is "misleading in light of historical fact[s]," *Slayton*, 604 F.3d at 770, "that were established at the time the statement was made," *id.* at 769. Such statements are neither "significant" nor of "useful quality or purpose." 9 OXFORD ENGLISH DICTIONARY 522; NEW OXFORD AMERICAN DICTIONARY

1052. Indeed, the Conference Report states that "[a] cautionary statement that misstates historical facts is not covered by the safe harbor." CONF. REP. at 44. A warning that identifies a potential risk, but "impl[ies] that no such problems were on the horizon even if a precipice was in sight," would not meet the statutory standard for safe harbor protection. *Asher*, 377 F.3d at 733. If a company were to warn of the potential deterioration of one line of its business, when in fact it was established that that line of business had already deteriorated, then, as the Second Circuit explained, its cautionary language would be inadequate to meet the safe harbor standard. *See Slayton*, 604 F.3d at 769-70. By analogy, the safe harbor would not protect from liability a person "'who warns his hiking companion to walk slowly because there might be a ditch ahead when he knows with near certainty that the Grand Canyon lies one foot away.'" *Rombach v. Chang*, 355 F.3d 164, 173 (2d Cir. 2004) (quoting *In re Prudential Secs. Inc. P'ships Litig.*, 930 F. Supp. 68, 72 (S.D.N.Y. 1996)). As this court noted in *Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 640 (D.C. Cir. 2008), there is an important difference between warning that something "*might*" occur and that something "*actually* had" occurred.

Because Congress required that cautionary statements warn of "important factors that could cause actual results to differ," the cautionary language need not necessarily "mention *the* factor that ultimately belies a forward-looking statement." *Harris v. Ivax Corp.*, 182 F.3d 799, 807 (11th Cir. 1999). That is, Congress did not require the cautionary statement warn of "*all*" important factors,

so long as "an investor has been warned of risks of a significance similar to that actually realized," such that the investor "is sufficiently on notice of the danger of the investment to make an intelligent decision about it according to her own preferences for risk and reward." *Id.* (citing CONF. REP. at 44). Perfect clairvoyance may be impossible because of events beyond a company's control of which it was unaware. *See Asher*, 377 F.3d at 730, 732. Congress required that a company must warn of factors that "[h]av[e] much import or significance" and "carry[] with [them] great or serious consequences," 7 OXFORD ENGLISH DICTIONARY 728, and which are "likely to have a profound effect on success," NEW OXFORD AMERICAN DICTIONARY 849.

We join our sister circuits' reasoned analysis of the safe harbor requirement that forward-looking statements be accompanied by "meaningful cautionary statements." The words Congress chose provide instructive guidance and the remaining ambiguity in application is informed by and resolved in view of Congress's purpose to protect companies from "[a]busive litigation," CONF. REP. at 42, while still providing investors the information they require to make reasoned decisions, *id.* at 43-44.

2. The question, then, is whether the Company's statements during the two conference calls were accompanied by warnings specific to the Company and tailored to the specific forward-looking statements, not mere boilerplate, and consistent with the historical facts when the statements were made, thereby carrying out Congress's purpose to ensure that investors have the information they need to

make an informed decision on whether or not to invest, or remain invested, in the Company.

The Company does not dispute that PND obsolescence was an "important factor[] that could cause actual results to differ materially from those in the forward-looking statement," 15 U.S.C. § 78u-5(c)(1)(A)(i), and thus that it was required to alert investors to the risk of obsolescence in order to gain safe harbor protection. *See* Appellees' Br. 32-37. Rather, the Company states that it *did* warn of obsolescence "many times." *Id.* at 35. The moderator began both conference calls by warning generally of risk and referring listeners to the Company's recent Annual Report. The 2006 Annual Report, referred to in the April conference call, stated sales could suffer if the Company failed to "develop, introduce and achieve market acceptance of new and enhanced products," that it had to "maintain and improve existing products, while successfully developing and introducing new products," and could "experience difficulties that delay or prevent the development, introduction or market acceptance of new or enhanced products," as well as that competitors could "introduce superior designs or business strategies, impairing [the Company's] distinctive image and [its] products' desirability." 2006 Annual Report at 9-10. More specifically, the Company stated that PND "inventories . . . had grown substantially," increasing to approximately $50 million. Compl. ¶ 57 (emphasis omitted). Consequently, the Company concludes that when "[c]onsidered against Dr. Harman's particular warnings about the competitive European PND market, the obsolescence risk was adequately identified." Appellees' Br. 36.

Several of the cautionary statements relied on by the Company consist of boilerplate, such as the generalities in the moderators' comments and the Annual Reports. To the extent other statements were tailored to the Company's PND business operations, the purportedly cautionary statements were not meaningful because they were misleading in light of historical fact. References to amassed inventory did not convey that inventory was obsolete, as opposed to stocked with the latest, cutting-edge models. Even if viewed as implicitly raising the specter of obsolescence, the statements were insufficient for at least the reason that they did not warn of actual obsolescence that had already manifested itself. The court, thus, need not reach the parties' arguments regarding the role of actual knowledge under the safe harbor, 15 U.S.C. § 78u-5(c)(1). *See* Appellant's Br. 24 n.12; Appellees' Br. 37.

The allegations in the complaint plausibly show that by failing to disclose that PND obsolescence that had already materialized and to tailor its cautionary statements to its PND business, the purported cautionary statements were inadequate to qualify the April conference call statement for safe harbor protection. According to the complaint, when the April conference call was made, the threat of serious obsolescence was materializing, because, according to a former sales engineer, the Company itself had made a modification in early 2007, "which rendered all of the older-generation units in inventory obsolete." Compl. ¶ 64(d); *see also id.* ¶ 53. In addition, the Company's 2006 PND sales had been lower than anticipated and this resulted in the Company storing PNDs in a warehouse. *Id.* ¶ 64(c). Furthermore, the

Company released five different versions of its PND between March 2006 and July 2007, but at the time of the first conference call had not sold "a significant number." *Id.* ¶ 64(e). By early 2007, the sales engineer had initiated conversations with Company sales representatives regarding the need to lower PND prices in order to remain competitive. *Id.* ¶ 52. Nonetheless, there was no indication during the April conference call that the Company's PND business was compromised by obsolescence, as distinct from inventory, let alone due to the Company's own actions, *see id.* ¶ 64(d).

"[A]s a general matter, investors know of the risk of obsolescence posed by older products forced to compete with more advanced rivals. Technical obsolescence of computer equipment in a field marked by rapid technological advances is information within the public domain." *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 546-47 (8th Cir. 1997) (quoting *In re Convergent Techs. Sec. Litig.*, 948 F.2d 507, 513 (9th Cir. 1991)) (internal quotation marks and alterations omitted). But the general information provided by the Company about its plan to reduce its substantial inventory did not disclose historical facts that could have affected the success of the plan being discussed. The omission left a misleading picture with regard to the impact of "a large inventory of older generation, obsolete PNDs which [the Company] could not sell or was forced to sell at a substantial loss." Compl. ¶ 64(b). For instance, the Company did not warn as to the problem it faced—here, PND obsolescence—that it "has experienced, and may continue to experience," certain "problems," *Parnes*, 122 F.3d at 549, or state

"in detail what kind of misfortunes could befall the company and what the effect could be," *Harris*, 182 F.3d at 807.

CEO Harman's April statement referred to the Company's plan to draw down its PND inventory to "normal levels," commenting "that plan [wa]s proceeding." Compl. ¶ 57. Yet the purportedly cautionary statements did nothing to distinguish any risk faced by PNDs in particular. The 2006 Annual Report that was referenced by the conference call moderator spoke generally of "products," both "existing" and "new." *See* 2006 Annual Report at 9-10. Even viewing CEO Harman's explanation "that the PND market in Europe was 'extremely competitive' and that the [C]ompany had to work 'extraordinarily hard' to increase sales and maintain margins" as "not merely statements about general market risks, but . . . specific to the European PND market of which Plaintiffs complain," *Harman*, 27 F. Supp. 3d at 46, nothing said during the conference call or in the Annual Report warned of PND obsolescence. Likewise, the Company's statement that it had amassed a sizeable PND inventory does not render the cautionary language "meaningful." CEO Harman's statements that "[i]n our earnings call three months ago, it was noted that Harman Becker PND inventories in Europe had grown substantially" and that a plan had been developed to reduce inventory and "[wa]s proceeding," Harman Int'l Indus. Earnings Release Conf. Call Tr. at 7, is not a warning at all, much less of obsolescence.

The Company's cautionary language is not rendered adequate by the Company's statement during the April conference call that, although it had

projected annual sales of 618,000 units, the Company had sold only 300,000 through the first nine months of FY 2007. In isolation, the statement could be viewed as "allowing investors to evaluate for themselves whether [the Company's] projection of 318,000 unit sales in the fourth quarter was realistic." *Harman*, 27 F. Supp. 3d at 47. But not when viewed in context. When asked whether, even having only sold less than half of its projected year-end total through three quarters of the fiscal year, the Company could still hit its target, CEO Harman responded unequivocally that it could. Stating that the Company was capable of nearly doubling its three-quarter sales totals in the last quarter does not warn investors that the Company was facing serious obsolescence in its PND products, *see* Compl. ¶ 64(b).

The circumstances recounted in the complaint are not unlike those in *Lormand*, 565 F.3d 228. The issue there was whether US Unwired had provided meaningful cautionary language with statements about its affiliation with Sprint. *Id.* at 231-33. To simplify, US Unwired was forced over a period of several years to change its working relationship with Sprint in a manner that destroyed US Unwired's business model. *Id.* at 232-38. US Unwired nevertheless made a series of statements touting its relationship with Sprint and the growth and vitality of its business. *Id.* at 240-41. Accompanying its forward-looking statements were warnings, such as "Sprint PCS may make decisions that adversely affect *our business* like setting the prices for its national plans at levels that may not be economically sufficient for *our business*," *id.* at 245 (emphasis added). The Fifth Circuit, drawing inferences in US

Unwired's favor, concluded that references to US Unwired's "business" were "very vague and general." *Id.* at 246. With respect to risks related to a no-deposit program offering service to low-income and risky credit subscribers, *id.* at 237, 242, US Unwired warned: US Unwired's "PCS business may suffer because more subscribers generally disconnect their service in the PCS industry than in the cellular industry . . . . We plan to keep our subscriber churn [*i.e.*, turnover] down by expanding network coverage, improving network reliability, marketing affordable plans and enhancing customer care. We cannot assure that these strategies will be successful. A high rate of PCS subscriber churn could harm our competitive position and the results of operations of our PCS services." *Id.* at 246. The court held this warning was also insufficient to provide safe harbor protection because, in part, US Unwired only warned of "a future risk of limited magnitude that would be averted" while failing to disclose "certain dangers that had already begun to materialize." *Id.* at 247. So too here. The cautionary language included in the Company's April conference call is too general and fails to account for the materialization, rather than abstract possibility, of the important risk posed by PND obsolescence.

The allegations in the complaint also plausibly show that the cautionary language provided during the September conference call was inadequate for safe harbor protection for the same reasons. CFO Brown referred to a favorable projection of revenue, stating "we are bringing additional business on-stream . . . in the PND business, where we continue the growth and expansion of that business primarily

in Europe." Compl. ¶ 101 (emphasis omitted). For an investor, "*[e]qually* important was 'inventory clearance of prior generation models at a loss,' *i.e.*, inventory obsolescence . . . [that the Company allegedly] *did not disclose for more than six months*." Reply Br. 15. In September, no mention was made of the Company's inventoried products that would not be saleable due partly to obsolescence, or to the stalling of the plan to reduce inventory to normal levels, or to anything else that could warn of the serious obsolescence problem. *See id.* ¶¶ 86(c)-(e). Instead, the cautionary statements are essentially the same as those made during the April conference call: a boilerplate statement about risk generally and reference to the Company's FY 2007 Annual Report, which repeated the general warnings in the FY 2006 Annual Report. (The Company acknowledges that the two annual reports are more or less indistinguishable. *See* Appellees' Br. 35-36.)

The warnings accompanying the September statement, like those that accompanied the April statement, were misleading in light of historical facts and were not tailored to the specific forward-looking statement the Company made. According to the complaint, by June 2007, the Company had agreed to sell 100,000 PNDs for $110 less than the ordinary $350 price tag. Compl. ¶¶ 56, 86(e). In all, the Company missed its PND sales projected by more than 200,000 units in FY 2007, *id.* ¶ 55, which meant PND sales fell short of projections by at least $85 million, *id.* ¶¶ 56, 86(d). The information provided by the Company's former accounting manager indicated that "the Company had on hand hundreds of millions of dollars worth of obsolete Generation 2 PNDs which

were being superseded by newer Generation 3 PNDs in August 2007." *Id.* ¶ 86(c). By the end of FY 2007, there was no longer a mere risk and some evidence of obsolescence, but rather an intractable problem of obsolescence was a reality that the Company failed to disclose. "[T]he risk of which [the Company] warned . . . had already transpired," *Slayton*, 604 F.3d at 770; *see also Lormand*, 565 F.3d at 247, by the time of the September conference call, and consequently the Company's cautionary language was not "meaningful." *See id.* at 246-47. Even were it clear that the Company warned of obsolescence, the warnings were misleading because they provided, at most, information about a generalized risk of obsolescence and the general effect that obsolescence could have on sales. The district court did not address whether the cautionary language accompanying the September statement was misleading in light of historical facts. *See Harman*, 27 F. Supp. 3d at 50.

Reinforcing our conclusion that safe harbor protection is unavailable for the September statement is the fact that the Company's cautionary statements remained unchanged despite a significant change in circumstances of material importance to an investor. *See Slayton*, 604 F.3d at 772-73; *see also Asher*, 377 F.3d at 734; *Helwig v. Vencor, Inc.*, 251 F.3d 540, 559 (6th Cir. 2001), *abrogated on other grounds by Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007). Despite what had happened regarding PNDs between April and September, the Company did not update or tailor its cautionary language to make it meaningful, instead relying on the same general prefatory language and

reference to the Company's general statements regarding risk in its most recent annual report. *Compare* 2007 Annual Report at 10-11, *with* 2006 Annual Report at 9-10. "The consistency of the defendants' language over time despite" changing circumstances "belies any contention that the cautionary language was 'tailored to the specific future projection.'" *Slayton*, 604 F.3d at 773 (quoting *Institutional Inv'rs Grp.*, 564 F.3d at 256).

The complaint points, moreover, in support of the theory of corrective disclosure, to the Company's January and February 2008 releases that disclosed, allegedly for the first time, the obsolescence problems facing its PND line of business. *See* Compl. ¶¶ 133, 135. CEO Harman had assured investors in April that there was a plan to reduce inventory to normal levels, from $75 million to $15 million by June 30, 2007, *id.* ¶ 57, and CFO Brown had reassured investors in September that the PND business was growing and expanding, *id.* ¶ 101. Thus, over this period the Company failed to disclose what was an historical fact of importance to a reasonable investor: by April, inventory obsolescence was becoming a problem, *see id.* ¶¶ 64 (b), (d), (e); by September it had fully materialized into a serious problem effecting Company revenues, *see id.* ¶¶ 86(c)-(e). Prior to the January and February statements, according to the complaint, the Company had not "even mentioned that rapid obsolescence might pose a material risk to the Company's PND business, let alone that such obsolescence might be caused by the Company's own product changes." Appellant's Br. 21; *see* Compl. ¶ 64(d). Given the rosy picture that the Company painted during the April-September period,

investors were unaware of the obsolescence problem until January-February 2008, when the Company, in announcing disappointing financial results in February 2008, first disclosed PND obsolescence that had resulted in "the sale of older products at substantial discounts." *Id.* ¶ 113 (internal quotation marks omitted).

The Company responds that it needed only to warn of "*risks*," *Harris*, 182 F.3d at 807 (emphasis added), not "*actual* inventory obsolescence," Appellees' Br. 37 (emphasis in original). Nothing in *Harris* purports to afford safe harbor protection based on a statement that risk could come to fruition where that risk has *already* begun to materialize. To conclude otherwise, that even where a risk has materialized a company need only warn that it is a "risk," would render misleading cautionary language sufficient, a result neither the statutory text, nor legislative history, nor precedent supports.

Finally, the Company maintains that the internal reports on which the complaint relies are irrelevant and unreliable, and therefore inadmissible as a matter of law. This is because, the Company continues, the complaint "fails to identify any information about the internal reports, *i.e.*, who prepared them, who received them, how firm the numbers were within them, how they were distributed, or to whom they were distributed, and does not allege that any of the *individual defendants* received and reviewed the internal reports." Appellees' Br. 49-50. The precedent on which the Company relies for its categorical rule is inapposite. *San Leandro Emergency Medical Group Profit Sharing Plan v. Philip Morris Companies, Inc.*, 75

F.3d 801, 812 (2d Cir. 1996), held that an "unsupported general claim of the existence of confidential Company sales reports that revealed" information that would render a company's statement misleading was "insufficient to survive a motion to dismiss." Here, the allegation that operating reports exist is not *general* and the operating reports are not the only support for the alleged claims. *Arazie v. Mullane*, 2 F.3d 1456, 1467 (7th Cir. 1993), held that the particularity requirement was not met by references to an internal report that did "not indicate who prepared the projected figures, when they were prepared, how firm the numbers were, or which [company] officers reviewed them." Here, the complaint identifies the internal reports as monthly and annual reports of the Company's Automotive Division, which were "authored by executives of Harman Automotive in Germany and distributed to Harman International executives," including CEO Harman and CFO Brown, and after July 1, 2007, then-CEO Paliwal, as well as to several other executives and lower-level accounting or financial personnel. Compl. ¶ 55.

For these reasons, we hold the allegations in the complaint plausibly show that the April and September statements were not accompanied by meaningful cautionary language and, consequently, were not entitled to safe harbor protection.

C.

The third statement appeared in the Company's FY 2007 Annual Report. For a statement to be actionable under Section 10(b) and Rule 10b-5, it must be "material" in the sense that it would have

"been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available," *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2413 (2014) (quoting *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988)). The Supreme Court has recognized that "statements of reasons, opinions, or beliefs" can be actionable, *Va. Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1091 (1991), even when conclusory terms are used, *id.* at 1093. This is because "conclusory terms [like 'high' value and 'fair'] in a commercial context are reasonably understood to rest on a factual basis that justifies them as accurate, the absence of which renders them misleading." *Id.* But, "statements [that] are too general to cause a reasonable investor to rely upon them" are immaterial and inactionable. *ECA & Local 134 IBEW Joint Pension Trust of Chi. v. JP Morgan Chase Co.*, 553 F.3d 187, 206 (2d Cir. 2009). "Puffery" refers to one type of immaterial statement: the sort of "generalized statements of optimism that are not capable of objective verification." *Grossman v. Novell, Inc.*, 120 F.3d 1112, 1119 (10th Cir. 1997). Statements that constitute puffery employ terms that are "too squishy, too untethered to anything measurable, to communicate anything that a reasonable person would deem important to a securities investment decision." *City of Monroe Employees Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651, 671 (6th Cir. 2005).

In the FY 2007 Annual Report, the Company stated that "[s]ales of aftermarket products, particularly PNDs, were very strong during fiscal 2007." Compl. ¶ 82. The district court concluded that statement was immaterial puffery because

"strong" is "subjective and provides no standard against which a comparison can be drawn." *Harman*, 27 F. Supp. 3d at 51. But the critical inquiry is whether the statement could "have misled a reasonable investor," *San Leandro*, 75 F.3d at 811, and given the context in which it was made, according to the allegations in the complaint, we conclude that the "very strong" statement in the FY 2007 Annual Report is plausibly understood as a description of historical fact rather than unbridled corporate optimism, *i.e.*, immaterial puffery.

PNDs, although only a "rather small component of [the Company's] total portfolio," Harman Int'l Indus. Earnings Call Tr. at 6 (Feb. 5, 2008), were part of the Company's automotive division, which "comprised approximately 70% of [the Company's] business and generated the bulk of the Company's revenue and earnings." Compl. ¶ 141. CEO Harman explained during the April conference call that the Company would undertake a "vigorous sales effort" to reduce PND inventory to "normal levels at year-end," and, when asked whether the Company thought FY 2007 sales totals could double in the final quarter, he responded "[w]e do, and we said so." *Id.* ¶¶ 57-58. The "very strong" statement was specific about product and time period, and comparable to the statement in *In re Lucent Technologies, Inc. Sec. Litig.*, 217 F. Supp. 2d 529, 559 (D.N.J. 2002), that one of the defendant's products was generating "strong customer acceptance," *id.* (internal quotation marks omitted). The statement in *Lucent Technologies* was held not to be puffery because, given recent fiscal results, "a reasonable investor likely would consider material any information

relating to customer acceptance of key products for purposes of making investment decisions." *Id.* The context alleged here is similar. PNDs were part of the Company's largest division and had been the focus of recent public statements. The "very strong" statement could have had the same effect on an investor in the Company's stock and is therefore actionable. Unlike the statements in cases on which the Company relies, the statement was tied to a product and a time period and it was not too vague to be material. *In re Copper Mountain Securities Litigation*, 311 F. Supp. 2d 857, 868 (N.D. Cal. 2004), involved a bare statement that "business remained strong," *id.* (internal quotation marks omitted). So too, the statement in *In re Splash Technology Holdings, Inc. Securities Litigation*, 160 F. Supp. 2d 1059, 1076-77 (N.D. Cal. 2001), that demand was "strong." Statements such as "Food Lion is one of the best-managed high growth operators in the food retailing industry," *Longman v. Food Lion, Inc.*, 197 F.3d 675, 684 & n.2 (4th Cir. 1999), a company had achieved "substantial success" in integrating the sales force of two merged entities, *Grossman*, 120 F.3d at 1121, and a company was "optimistic" and "should deliver income growth consistent with its historically superior performance," *San Leandro*, 75 F.3d at 811, are equally lacking in specifics that an investor could use to evaluate the statement's veracity.

The Company maintains that the "very strong" statement is puffery because it "lacked a standard against which a reasonable investor could expect [it] to be pegged," quoting *City of Monroe*, 399 F.3d at 671. Nothing in City of Monroe purports to render

inactionable any statement that does not contain its own metric. There the statements—that Bridgestone sold "the best tires in the world," that its products demonstrated "global consistent quality," and that it had experienced strong sales because of "high regard among automakers for our strengths in product quality," *id.* at 670—appear more in line with generalized boasting, *i.e.*, more "squishy," *id.* at 671, than the Company's report of "very strong" PND sales in the FY 2007 Annual Report. Alternatively, the Company maintains that "disclosure of the actual sales results renders the 'very strong' statement immaterial" because investors could review the relevant information and undertake their own evaluation of the Company's statement. Appellees' Br. 53. The Company points to nothing in the current record showing that it had elsewhere disclosed FY 2007 PND sales results.

D.

A claim under Section 10(b) and Rule 10b-5 requires proof of "the traditional elements of causation and loss." *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 346 (2005); *see* 15 U.S.C. § 78u-4(b)(4). A plaintiff may survive a motion to dismiss the complaint for failure to state a claim "*either* by alleging (a) the existence of cause-in-fact on the ground that the market reacted negatively to a corrective disclosure of the fraud; or (b) that … the loss was foreseeable and caused by the materialization of the risk concealed by the fraudulent statement." *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 750 F.3d 227, 232-33 (2d Cir. 2014) (internal quotation marks omitted). The 2008 consolidated class complaint alleges the former.

See Compl. ¶¶ 109-13, 125-38; *see also* Reply Br. 23. At the pleadings stage, a plaintiff need not "demonstrate . . . that the corrective disclosure was the *only* possible cause for decline in the stock price." *Carpenters*, 750 F.3d at 233. And "a corrective disclosure need not be a 'mirror-image' disclosure—a direct admission that a previous statement is untrue," although it "must relate to the same subject matter as the alleged misrepresentation." *Mass. Ret. Sys. v. CVS Caremark Corp.*, 716 F.3d 229, 240 (1st Cir. 2013). Thus, "[t]he appropriate inquiry is whether" the Company's statements, taken "as a whole, plausibly revealed to the market that" the Company was experiencing significant difficulties in its PND business. *Id.*

The Company maintains, unpersuasively, that the complaint failed adequately to plead that the alleged misrepresentations or other fraudulent conduct proximately caused economic loss to Appellant. According to the complaint, the Company's January 14, 2008, press release on revised earnings guidance and its February 5, 2008, press release announcing results for the second quarter of FY 2008 disclosed that the Company's PND business was not as strong as previously indicated in the three statements now at issue. Both releases were followed by marked declines in the Company's stock price, the first by a 37.65 percent decline and the second by a drop of 15 percent, *see* Compl. ¶¶ 110, 114. The alleged releases were not, as the Company suggests, simply "announcement[s] of a failed projection." Appellees' Br. 56. Rather, they provided specific information about the state of the Company's PND business, disclosing, allegedly for the first time, that it was not

flourishing as the Company had indicated during the April and September conference calls and the FY 2007 Annual Report.

The Company responds that "the Complaint, on its face, identifies so many alternative reasons for [Appellant's] share price drop that [Appellant] cannot prove loss causation as a matter of law." Appellees' Br. 58. But "[p]laintiffs need not demonstrate on a motion to dismiss that the corrective disclosure was the only possible cause for decline in the stock price." *Carpenters*, 750 F.3d at 233. The cases cited by the Company are not to the contrary. In *Dura*, 544 U.S. at 343, the Supreme Court explained that a drop in a security's price "may reflect, not the earlier misrepresentation, but changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price," concerned what "at the end of the day plaintiffs need … establish, *i.e.*, prove," *id.* at 342 (internal quotation marks omitted). In that case, the complaint failed for absence of allegations on the loss suffered, *id.* at 347, a defect that does not plague the complaint here, *see* Compl. ¶¶ 110, 114. Other cases on which the Company relies either relate to the plaintiff's burden to obtain judgment, *see Nuveen Mun. High Income Opportunity Fund v. City of Alameda, Cal.*, 730 F.3d 1111, 1123 (9th Cir. 2013); *In re Williams Sec. Litig.-WCG Subclass*, 558 F.3d 1130, 1132 (10th Cir. 2009), or do not involve the corrective disclosure theory alleged here, *see Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 550 (8th Cir. 2008).

III.

Appellant also sued under Section 20(a) of the Act, which provides that "a plaintiff must show a primary violation by the controlled person and control of the primary violator by the targeted defendant." *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1472 (2d Cir. 1996); *see also Stevens v. InPhonic, Inc.*, 662 F. Supp. 2d 105, 129 (D.D.C. 2009). A claim under Section 20(a) can exist only if there is a viable claim against the corporation. *See First Jersey*, 101 F.3d at 1472. There is a split in the circuits on whether the plaintiff must show that the alleged control person "culpably participated" in the underlying fraud.[1] In those not requiring proof of culpable participation, the plaintiff need only show the defendant is a "controlling person," and the burden shifts to the defendant to show the actions were taken "'in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.'" *Paracor Fin., Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d 1151, 1161 (9th Cir. 1996) (quoting 15 U.S.C. § 78t(a)).

The court need not decide which approach to adopt because the allegations in the complaint suffice to

---

[1] *Compare SEC v. J.W. Barclay & Co.*, 442 F.3d 834, 841 & n.8 (3d Cir. 2006), *and SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1472 (2d Cir. 1996), *with Paracor Fin., Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d 1151, 1161 (9th Cir. 1996); *Brown v. Enstar Group, Inc.*, 84 F.3d 393, 396 (11th Cir. 1996); *Harrison v. Dean Witter Reynolds, Inc.*, 974 F.2d 873, 881 (7th Cir. 1992); *Metge v. Baehler*, 762 F.2d 621, 630—31 (8th Cir. 1985); *G.A. Thompson & Co. v. Partridge*, 636 F.2d 945, 958 (5th Cir. 1981); *and Carpenter v. Harris, Upham & Co., Inc.*, 594 F.2d 388, 394 (4th Cir. 1979).

show culpable participation by the individual defendants. *See* Compl. ¶¶ 142-167. According to the complaint, each personally made actionable statements: CEO Harman during the April conference call, CFO Brown during the September conference call, joined by CEO Paliwal, and each individual defendant also signed in August 2007 the SEC Form 10-K for the FY 2007 Annual Report containing the "very strong" statement. Even if corporate job titles may not alone suffice, *see* Appellees' Br. 62, the complaint plausibly alleges each defendant made false and misleading statements about the Company.

Accordingly, we reverse the dismissal of the complaint for failure to state a claim with respect to the three statements at issue, and we remand the case for further proceedings.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

IN RE HARMAN INTERNATIONAL INDUSTRIES, INC. SECURITIES LITIGATION

Civil Action No.: 07-1757 (RC)

Re Document Nos.: 21, 49

MEMORANDUM OPINION

GRANTING DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION

This securities fraud class action litigation comes before the Court on Defendants' motion to dismiss Plaintiffs' consolidated class action complaint. Plaintiffs are shareholders who purchased shares of Harman International Industries, Inc. common stock between April 26, 2007, and February 5, 2008. They have filed a class action lawsuit against the company and its senior executives, alleging that Plaintiffs bought shares during the Class Period in reliance on Defendants' misrepresentations about the company's financial condition, and that they incurred damages as a result. Plaintiffs claim that Defendants engaged in securities fraud in violation of section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (2012), and its implementing regulation, rule 10b-5, 17 C.F.R. § 240.10b-5 (2012). Plaintiffs also claim

that the company's senior executives qualify as control persons under section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t(a) (2012), and are therefore individually liable for the underlying section 10(b) violation.

Defendants move to dismiss Plaintiffs' claims under Federal Rule of Civil Procedure 12(b)(6), asserting that the complaint does not properly allege a material misrepresentation or omission, scienter under the heightened pleading requirements for private securities fraud lawsuits, loss causation, or control person liability under section 20(a). For the reasons discussed below, the Court will grant Defendants' motion.

II. BACKGROUND

Harman International Industries, Inc. ("Harman") is a manufacturer of high-quality, high-fidelity audio products and electronic systems for the automotive, consumer, and professional markets in the Americas, Europe, and Asia. *See* Consol. Class Action Compl. ¶ 2, ECF No. 20.[1] Shares of Harman's common stock are publicly traded on the New York Stock Exchange. *See id.* Plaintiffs are shareholders who purchased shares of Harman common stock between April 26, 2007, and February 5, 2008 (the "Class Period"). *See id.* ¶ 9. They allege that throughout the Class Period, Harman and several of its officers knowingly or recklessly propped up Harman's stock price by issuing false and misleading disclosures regarding the company's financial state and failing to disclose

---

[1] When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true Plaintiffs' version of events. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

material adverse facts about its true financial condition. *See id.* ¶ 3. Specifically, the alleged misrepresentations fall into three broad categories: statements related to Harman's anticipated acquisition by two private equity firms; statements related to the sales and quality of its mid-level infotainment systems; and statements related to the sales of its aftermarket personal navigation devices in Europe. *See generally Id.* ¶¶ 28-56.

A. Acquisition by KKR and Goldman

On April 26, 2007, the beginning of the Class Period, Harman announced that it would be acquired by Kohlberg Kravis Roberts & Co. L.P. ("KKR") and an affiliate of Goldman Sachs & Co. ("Goldman") (collectively, the "Purchasing Companies") in a merger valued at approximately $8 billion. *See* Consol. Class Action Compl. ¶ 5, ECF No. 20. Pending completion of the transaction, Harman and the Purchasing Companies entered into an agreement (the "Merger Agreement") that would govern the period leading up to the close of the deal. Harman stated in a press release that the acquisition would allow shareholders the opportunity to participate in Harman's future growth. *See id.* ¶ 30. Over seven million shares of Harman stock were traded that day, with the stock closing at $122.50 per share, 19 percent higher than the previous day's close. *See id.*

However, on September 21, 2007, the Purchasing Companies abandoned the acquisition, stating that they believed that Harman had experienced a "material adverse change" in violation of the Merger Agreement. *See id.* ¶ 6. That day, Harman's share price fell to $85.00, a drop of $27.34. *See id.* ¶ 7.

According to Plaintiffs' allegations, Harman had engaged in excessive capital spending and "burn[ed] through cash" in order to ramp up its new plant in Missouri to manufacture its new mid-level infotainment system. *See id.* ¶ 72; *see also infra* Part II.B. Plaintiffs allege that the resulting cost overruns at this and other facilities caused Harman to breach a Merger Agreement covenant (the "CapEx Covenant") that prohibited Harman from making capital expenditures exceeding the capital expenditure budget before the merger. *See* Consol. Class Action Compl. ¶¶ 33, 72. In addition, the Merger Agreement included a clause (the "MAC Clause") that allowed the Purchasing Companies to terminate the acquisition in the event of a material adverse change in Harman's business. *See id.* ¶¶ 34-35. According to Plaintiffs, Harman "binged" on capital spending in June of 2007, spending $60 million in one month, causing Harman's capital expenditures to exceed $90 million in the fourth quarter of FY2007, violating the CapEx Covenant. *See id.* ¶ 72. Plaintiffs also allege that the capital spending was a material adverse change that violated the MAC Clause. *See id.* ¶ 71.

According to Plaintiffs' allegations, Defendants made the following misrepresentations during the Class Period regarding the merger, or failed to disclose material facts necessary to make the following statements about the merger not misleading:

- In an August 14, 2007, press release: "We anticipate completing the transaction during the third or fourth quarter of this calendar year." *Id.* ¶ 70.

- In Harman's August 29, 2007, Form 10-K: "We presently anticipate that the merger will be completed in the fourth quarter of calendar year 2007." *Id.* ¶ 78.
- In a September 21, 2007, press release: "Harman disagrees that a material adverse change has occurred or that it has breached the merger agreement." *Id.* ¶ 87.

According to Plaintiffs' allegations, these statements were materially false or misleading when made because Defendants knew—but failed to disclose—that Harman had breached the CapEx Covenant and MAC Clause, giving the Purchasing Companies an opportunity to terminate the Merger Agreement. *See id.* ¶¶ 71, 79, 96.

B. MyGIG Radio

Plaintiffs also allege that Defendants violated securities laws in issuing statements about Harman's "MyGIG radio" product—an infotainment system made to be installed in personal vehicles. In 2005, prior to the Class Period, Dr. Sidney Harman personally negotiated a contract between Harman and automotive corporation DaimlerChrysler ("Chrysler"), whereby Harman would manufacture MyGIG radios for installation in many Chrysler vehicles. *See* Consol. Class Action Compl. ¶ 36, ECF No. 20. However, Plaintiffs allege that, despite being touted as a state-of-the-art infotainment system, the MyGIG radio was "problematic from a profitability standpoint" and was "plagued with various technical and cosmetic issues," which led to a one-year delay in producing the radios and Harman's inability to fulfill production needs. *See id.* ¶¶ 39, 41. Chrysler

subsequently decreased its order for the radios. *See id.* ¶ 42. This reduced the need for parts required to make the radios, which, in turn, decreased the number of parts that Harman ordered, causing the parts suppliers to raise their prices. *See id.* Further, the contract with Chrysler failed to include costs for integrated circuits—very expensive electronic devices that were essential to operating the MyGIG radio. *See id.* ¶ 47. This omission left the contract underbid and generated losses for the company. *See id.* ¶ 13. The combination of these factors meant that Harman would lose $164 on each of the 200,000 radios that it had committed to sell to Chrysler, for a total annual loss of $32 million from MyGIG production and sales. *See id.* ¶¶ 43-44. Plaintiffs claim that this scenario also caused Harman's relationship with Chrysler to "deteriorate[] beyond repair." *Id.* ¶ 13.

According to Plaintiffs' allegations, Defendants made the following misrepresentations during the Class Period regarding the MyGIG radios, or failed to disclose material facts necessary to make the following statements about the MyGIG radios not misleading:

- In Harman's May 10, 2007, Form 10-K: "We anticipate that DaimlerChrysler, Toyota/Lexus, Audi/VW, and BMW will continue to account for a significant portion of our net sales and accounts receivable for the foreseeable future." *Id.* ¶ 66.
- On Harman's August 14, 2007, earnings release conference call: "Our dominance in the automotive space was solidified through the past year . . . . With earlier awards to us from PSA, Audi and Chrysler, we established our

leadership in the mid-range and entry levels, with last year's major awards from BMW, we erased any remaining questions." *Id.* ¶ 74.

- On Harman's September 27, 2007, earnings release conference call: "We expect Automotive sales to increase approximately 15% during the quarter, primarily due to the ramp-up of an infotainment system program . . . ." *Id.* ¶ 100.
- Also on Harman's September 27, 2007, earnings release conference call: "[W]e are bringing additional business on-stream at Chrysler as we ramp up our Missouri plant . . . ." *Id.* ¶ 101.
- In Harman's November 9, 2007, Form 10-Q: "New introductions of infotainment systems including Chrysler's MyGIG infotainment systems in North America, the roll-out of [other systems] were primary factors contributing to higher sales." *Id.* ¶ 105.

According to Plaintiffs' allegations, these statements were materially false or misleading when made because Defendants knew—but failed to disclose—that Harman's relationship with Chrysler was strained due to the quality and delays in producing its MyGIG radios, and that the Chrysler contract required Harman to sell MyGIG radios at a net loss. *See id.* ¶¶ 64, 69, 76, 86, 102, 106.

C. PNDs

In early 2006, Harman began selling personal navigation devices ("PNDs") in Europe and sold 35,000 units between January and April of that year. *See* Consol. Class Action Compl. ¶ 49, ECF No. 20.

The company then launched a new model, expecting that it would double or triple sales. *See id.* By October 2006, the fourth month of FY2007, Harman had sold an additional 95,000 units. *See id.* ¶ 50. Dr. Harman stated then that the company anticipated selling well over 500,000 total units in Europe during that fiscal year. *See id.* In January 2007, Dr. Harman reported that almost 250,000 units had been sold in the previous six months, from July through December of 2006. *See id.* ¶ 51. He stated that the company's PND sales were accelerating, and that Harman expected PND sales to exceed 650,000 in Europe for FY2007. *See id.*

Plaintiffs contend, however, that Harman was in a "dire situation" regarding its PNDs. *See id.* ¶¶ 51-52. It was not selling PNDs in the numbers that it had anticipated in 2006, and thus many units were being stored in a warehouse. *See id.* ¶ 53. This was partly because Harman released five versions of the same PND between March 2006 and July 2007, which priced the units too high to compete with other PNDs and thereby slowed sales. *See id.* ¶ 54. The company was therefore one year late in releasing a saleable PND. *See id.* Further, in early 2007, Harman dropped the price of its PNDs substantially and made a modification that rendered obsolete the growing inventory in the warehouse. *See id.* ¶ 53. Consequently, the company missed projected PND sales by more than 200,000 units in FY2007. *See id.* ¶ 56. In June 2007, Harman agreed to sell 100,000 PNDs to a customer named Paragon at a significant discount from the prices that it had originally disclosed at the beginning of the Class Period. *See id.*

According to Plaintiffs' allegations, Defendants made the following misrepresentations during the Class Period regarding Harman's PNDs, or failed to disclose material facts necessary to make the following statements about the PNDs not misleading:

- On Harman's April 26, 2007, earnings release conference call: "The plan forecasts total unit sales of 618,000 units for the fiscal '07 year, and that plan is proceeding." *Id.* ¶ 57.
- In Harman's May 10, 2007, Form 10-Q: "[S]ales of our aftermarket products were higher due to the introduction of Becker PNDs in Europe." *Id.* ¶ 67.
- Also in Harman's May 10, 2007, Form 10-Q: Stating that Harman intentionally accumulated "higher inventory levels . . . to support [Harman's] newly developed PND market in Europe." *Id.* ¶ 67.
- In Harman's August 29, 2007, Form 10-K: "Sales of aftermarket products, particularly PNDs, were very strong during fiscal 2007." *Id.* ¶ 82.
- On Harman's September 27, 2007, earnings release conference call: "We expect Automotive sales to increase approximately 15% during the quarter, primarily due to . . . higher PND sales in Europe." *Id.* ¶ 100.
- Also on Harman's September 27, 2007, earnings release conference call: "[W]e are bringing additional business on-stream . . . in the PND business, where we continue the growth and expansion of that business primarily in Europe." *Id.* ¶ 101.

According to Plaintiffs' allegations, these statements were materially false or misleading when made because Defendants knew—but failed to disclose—that Harman had a large inventory of obsolete PNDs, and that Harman had no reasonable basis for its PND sales projections. *See id.* ¶¶ 64, 69, 86, 102, 106, 111.

D. Harman's Overall Financial State

Plaintiffs also point to the following alleged misrepresentations about Harman's overall financial condition:

- On Harman's April 26, 2007, earnings release conference call: "We continue to expect fiscal '08 Automotive OEM revenues at $2.8 billion and EPS of $5.25 . . . ." *See* Consol. Class Action Compl. ¶ 57, ECF No. 20.
- On Harman's August 14, 2007, earnings release conference call: "Total Harman International R&D spending was $94 million, or 10.3% of sales in the quarter. That bulge was primarily generated by the need to process the engineering for the $14 billion backlog, of which a significant $1 billion-plus had been unanticipated." *Id.* ¶ 73.
- Also on Harman's August 14, 2007, earnings release conference call, Dr. Harman's statement that Harman's balance sheet was "strong" at fiscal year-end. *Id.* ¶ 75.
- Harman then-CEO Dinesh Paliwal's statement to a reporter, which was quoted in a September 25, 2007, article in the *Wall Street Journal*: "The fourth quarter of fiscal 2007 and the first quarter of fiscal 2008 were

affected by increased R&D costs, primarily related to recent automotive platform awards . . . .” *Id.* ¶ 97.

- On Harman’s September 27, 2007, earnings release conference call: “The confluence of [ramping up Harman’s new plants and overseeing negotiation and diligence related to the merger] in a six- to eight-month period generated what might be called the perfect storm. Now that storm is over and we are again in full command of our circumstances and our extraordinary future.” *Id.* ¶ 98.
- Also on Harman’s September 27, 2007, earnings release conference call: “For the full year 2008, gross profit is expected to be lower than anticipated in April 2007 . . . . due to higher material prices, and more than expected ramp-up costs for the two new manufacturing plants in China and the U.S.” *Id.* ¶ 99.

According to Plaintiffs, these statements were false or misleading because they failed to disclose the company’s underlying problems related to the merger, MyGIG radios, and PNDs.[2]

---

[2] The complaint also identifies several alleged misrepresentations that Plaintiffs do not even cite in their opposition brief, much less defend. The Court will thus treat the claims arising from these alleged misrepresentations as conceded or abandoned for purposes of this motion. Several statements Defendants discussed in their opening motion, but Plaintiffs failed to address in opposition. *See* Consol. Class Action Compl. ¶ 59 (“[W]e believe that we can rationalize, generate efficiencies such as to permit us to improve that percentage by approximately 100 basis points over the next

several years."); *id.* ¶ 60 ("R&D is trending higher than we had anticipated as we work to develop new technologies and new programs. We expect fiscal 2007 R&D expenses to approximate 10% of full-year sales. In fiscal 2008, we anticipate R&D will begin to decrease as a percentage of sales."); *id.* ¶ 65 (reporting that net sales for the quarter were $882.8 million, an increase of 10 percent over the same period in 2006, and that for the nine months ended March 31, 2007, net sales were $2.640 billion, an increase of 11 percent over the same period in 2006); *id.* ¶ 67 (stating that Harman intentionally accumulated "higher inventory levels . . . to support [Harman's] newly developed PND market in Europe"); *id.* ¶ 80 ("Our infotainment systems are increasingly based on scalable software allowing us to efficiently design systems for luxury, mid-range and entry-level vehicles."); *id.* ¶ 81 ("During fiscal 2007 we went into full production at our new manufacturing facility in Washington, Missouri. . . . We anticipate our Washington, Missouri factory will operate at full capacity during fiscal 2008."); *id.* ¶ 93 (revising Harman's previously reported forecasted earnings to $4.14 per share); *id.* (stating that R&D expenses would begin to decrease as a percentage of net sales); *id.* ¶ 104 ("Sales growth was strong due to the ramp up of an infotainment system for Chrysler and robust sales of personal navigation devices in Europe."); *id.* ¶ 109 (revising down Harman's FY2008 earnings guidance to between $3.00 and $3.10 per share). And several other alleged misrepresentations were addressed by neither party. *See id.* ¶ 86 (statements regarding "total operating income for the Automotive division in fiscal 2007"); *id.* ¶ 97 ("We expect substantial margin improvements over the course of fiscal 2008 as we work through these costs . . . ."); *id.* ¶ 105 ("We expect earnings per share before transaction, legal and restructuring costs to meet or exceed the prior fiscal year."); *id.* ¶ 109 ("The change in guidance was prompted primarily by a major shift in the market for [PNDs]. In recent months this sector has experienced significant pricing pressure which is affecting the entire industry."); *id.* ("Although, we are not happy with the higher than planned R&D engineering and material costs, the additional investment is necessary to deliver the new platforms to our valued customers . . . .").

E. Procedural Background

Multiple putative class action complaints were filed, alleging securities fraud in connection with the events described above. Pursuant to section 21D(a)(3)(B) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4(a)(3)(B) (2012), the Court consolidated the multiple actions and appointed as Lead Plaintiff the Arkansas Public Employees Retirement System, *see* Order, ECF No. 15, which then filed a consolidated class action complaint against Harman, *see* Consol. Class Action Compl., ECF No. 20. Plaintiffs also named as Defendants Dr. Sidney Harman, the founder of Harman who served as Executive Chairman of its Board of Directors from the beginning of the Class Period until December 17, 2007, and as Harman's CEO from January 1, 2007, until June 30, 2007; Dinesh Paliwal, Harman's President, CEO, and Vice Chairman of the Board of Directors from July 1, 2007, through the end of the Class Period; Kevin Brown, Harman's Executive Vice President and CFO throughout the Class Period; and Sandra Robinson, Harman's Chief Accounting Officer for a period not specified in the complaint. *See id.* ¶¶ 23-25, 65.

Defendants move to dismiss the consolidated complaint for failure to state a claim upon which relief can be granted, arguing that Plaintiffs have inadequately pleaded a material misrepresentation or omission, scienter, and loss causation. *See* Defs.' Mot. Dismiss, ECF No. 21. Following extensive briefing, the Court heard oral argument on Defendants' motion and allowed the parties to submit supplemental authorities to the Court. The Court

now turns to the parties' arguments and the applicable legal standards.

III. LEGAL STANDARDS

A. Failure to State a Claim

The Federal Rules of Civil Procedure require that a complaint contain "a short and plain statement of the claim" in order to give the defendant fair notice of the claim and the grounds upon which it rests. Fed. R. Civ. P. 8(a)(2); *accord Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam). A motion to dismiss under Rule 12(b)(6) does not test a plaintiff's ultimate likelihood of success on the merits; rather, it tests whether a plaintiff has properly stated a claim. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). A court considering such a motion presumes that the complaint's factual allegations are true and construes them liberally in the plaintiff's favor. *See, e.g., United States v. Philip Morris, Inc.*, 116 F. Supp. 2d 131, 135 (D.D.C. 2000). It is not necessary for the plaintiff to plead all elements of her prima facie case in the complaint. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511-14 (2002); *Bryant v. Pepco*, 730 F. Supp. 2d 25, 28-29 (D.D.C. 2010).

Nevertheless, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This means that a plaintiff's factual allegations "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*,

550 U.S. 544, 555-56 (2007) (citations omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are therefore insufficient to withstand a motion to dismiss. *Iqbal*, 556 U.S. at 678. A court need not accept a plaintiff's legal conclusions as true, *see id.*, nor must a court presume the veracity of the legal conclusions that are couched as factual allegations. *See Twombly*, 550 U.S. at 555.

B. Fraud and the PSLRA

Because a claim under section 10(b) and rule 10b-5 involves fraud, Federal Rule of Civil Procedure 9(b) requires Plaintiffs to plead with particularity the circumstances constituting fraud. *See In re XM Satellite Radio Holdings Sec. Litig.*, 479 F. Supp. 2d 165, 175 (D.D.C. 2007). The complaint must therefore "state the time, place and content of the false misrepresentations, the fact misrepresented and what was retained or given up as a consequence of the fraud." *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1278 (D.C. Cir. 1994) (quoting *United States ex rel. Joseph v. Cannon*, 642 F.2d 1373, 1385 (D.C. Cir. 1981)).

The heightened pleading requirements of the PSLRA further require that the complaint must specify each misleading statement or omission and explain why it was misleading. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 321 (2007); *In re XM*, 479 F. Supp. 2d at 175. "Thus, while the Federal Rules generally allow a court, in ruling on a motion to dismiss under Rule 12(b)(6), to take into account *any set of facts that could be proved* consistent with the allegations of the complaint, even though such facts have not been alleged in the

complaint, the PSLRA modifies this scheme (1) by requiring a plaintiff *to plead facts* to state a claim and (2) by authorizing the court to assume that the plaintiff has indeed stated *all* of the facts upon which he bases his allegation of a misrepresentation or omission." *Teachers' Ret. Sys. of La. v. Hunter*, 477 F.3d 162, 172 (4th Cir. 2007) (citing 15 U.S.C. § 78u-4(b)(1) (2006)); *accord In re XM*, 479 F. Supp. 2d at 175. And while in most contexts a court reviewing a Rule 12(b)(6) motion is limited to considering only the facts in the complaint, the PSLRA mandates that "the court shall consider any statement cited in the complaint and any cautionary statement accompanying [a] forward-looking statement, which are not subject to material dispute, cited by the defendant." 15 U.S.C. § 78u-5(e) (2012).

The PSLRA also heightened the requirement for pleading the element of scienter, requiring that a plaintiff "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." *Tellabs*, 511 U.S. at 308 (quoting 15 U.S.C. § 78u-4(b)(2) (2006)). The required state of mind for scienter is "an intent to deceive, manipulate, or defaud," *id.*, or alternatively, as the D.C. Circuit has held, recklessness, *see Kowal*, 16 F.3d at 1276. Thus, in this jurisdiction, a plaintiff must plead facts that give rise to a strong inference that the defendants either knowingly or recklessly made a false or misleading statement of material fact. Recklessness in the rule 10b-5 context is defined as an "extreme departure from the standards of ordinary care . . . which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must

have been aware of it." *Rockies Fund, Inc. v. S.E.C.*, 428 F.3d 1088, 1093 (D.C. Cir. 2005) (quoting *S.E.C. v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992)). A securities fraud complaint will survive a motion to dismiss "only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Tellabs*, 551 U.S. at 324.

IV. SECURITIES FRAUD

Plaintiffs bring their principal claim pursuant to section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (2012), and rule 10b-5 promulgated thereunder by the Securities and Exchange Commission, 17 C.F.R. § 240.10b-5 (2012). To prevail on a claim under section 10(b) and rule 10b-5, a plaintiff must prove (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *See Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 157 (2008) (citing *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005)); *accord Matrixx Initiatives, Inc. v. Siracusano*, 131 S.Ct. 1309, 1317 (2011); *In re Baan Co. Sec. Litig.*, 103 F. Supp. 2d 1, 11 (D.D.C. 2000) (citing *In re Newbridge Networks Sec. Litig.*, 767 F. Supp. 275, 281 (D.D.C. 1991)). Here, the parties dispute the sufficiency of Plaintiffs' pleading as to just three of these elements: material misrepresentation or omission, including whether certain alleged misrepresentations are inactionable under the PSLRA's "safe harbor"; scienter; and loss causation.

A. Material Misrepresentation or Omission

As characterized in the parties' briefing, the alleged fraudulent statements each fall into one of three categories. The first set of statements is comprised of "forward-looking" statements, such as financial projections and forecasts. Plaintiffs allege that these statements are actionable because they lacked a reasonable basis when made, and because Defendants failed to provide adequate warning that the projections might not come to fruition. *See* Lead Pl.'s Mem. Opp'n Mot. Dismiss 13-19, ECF No. 26. A second set of statements is made up of expressions of opinion, which Plaintiffs allege are actionable because they lacked a reasonable basis when issued. *See id.* at 20-22. Third, Plaintiffs identify a few statements of historical fact. They assert that these statements are actionable because Defendants omitted certain details that render the affirmative statements misleading. *See id.* at 11-13. Because each type of statement is governed by a different legal standard, the Court will approach the categories one at a time.

1. Forward-Looking Statements

Without a doubt, the parties' primary legal dispute relates to those alleged misrepresentations that are "forward-looking" in nature. In enacting the PSLRA, Congress created a "safe harbor" for certain types of forward-looking statements, shielding securities fraud defendants from liability with respect to such statements to the extent that:

(A) the forward-looking statement is—

(i) identified as a forward-looking statement, and is accompanied by meaningful cautionary

statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or

(ii) immaterial; or

(B) the plaintiff fails to prove that the forward-looking statement—

(i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(ii) if made by a business entity; was—

(I) made by or with the approval of an executive officer of that entity; and

(II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

15 U.S.C. § 78u-5(c)(1) (2012).[3] As defined by the statute, "forward-looking statements" include, among other things, projections of revenues, expenditures, and income; statements of management's plans and objectives for future operations; statements of future economic performance; and the assumptions underlying any of these types of statements. *See generally id.* § 78u-5(i)(1).

---

[3] In certain contexts, or when made by certain issuers, forward-looking statements are not eligible for protection even if the above conditions for the safe harbor are otherwise met. *See* 15 U.S.C. § 78u-5(b). However, no party contends that these exclusions apply in this case.

The parties, however, are not in dispute as to whether any particular statement is "forward-looking" as defined by the PSLRA.[4] Rather, they dispute whether Defendants' forward-looking statements meet the conditions for protection of the subsection (A)(i) safe harbor. To qualify for protection under this safe harbor, a forward-looking statement must be (1) "identified as a forward-looking statement," and (2) "accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement . . . ." *Id.* § 78u-5(c)(1)(A)(i). Plaintiffs argue that Defendants' forward-looking statements do not trigger the safe harbor because Defendants had actual knowledge that the statements were false and misleading when made, and because the accompanying cautionary language was vague and boilerplate. *See* Lead Pl.'s Mem. Opp'n Mot. Dismiss 14-19, ECF No. 26. It is Defendants' position that an issuer's state of mind is irrelevant, and that the cautionary language was sufficiently specific and meaningful. *See* Defs.' Reply Mem. Supp. Mot. Dismiss 3-8, ECF No. 27.

a. State of Mind

The parties first dispute whether the issuer's state of mind is relevant to the application of the subsection (A)(i) safe harbor. The D.C. Circuit has not yet weighed in on this thorny issue. Plaintiffs

---

[4] Plaintiffs do allege that many of the statements were not *identified* as forward-looking when made. *See* Consol. Class Action Compl. ¶ 171, ECF No. 20. However, they did not move forward with this theory in their briefing on the motion to dismiss.

argue that a forward-looking statement accompanied by meaningful cautionary language is not protected by the safe harbor if the issuer had actual knowledge that the statement was false or misleading at the time he made the statement. *See* Lead Pl.'s Mem. Opp'n Mot. Dismiss 14-17. Defendants argue that the issuer's state of mind is wholly irrelevant. *See* Defs.' Reply Mem. Supp. Mot. Dismiss 5-8.

As Plaintiffs acknowledged at oral argument, *see* Mot. Hr'g Tr. 42:10-43:18, Sept. 11, 2012, ECF No. 46, both the statutory text and legislative history are on Defendants' side. While the PSLRA does provide a safe harbor where a plaintiff fails to prove that the issuer of a forward-looking statement had actual knowledge that the statement was false or misleading when made, *see* 15 U.S.C. § 78u 5(c)(1)(B), this provision constitutes a *separate* safe harbor under the statute. The different provisions of the safe harbor are separated by the conjunction "or," signifying a disjunctive test. *See In re XM Satellite Holdings Sec. Litig.*, 479 F. Supp. 2d 165, 186 n.14 (D.D.C. 2007). Thus, a forward-looking statement does not give rise to liability if it is accompanied by meaningful cautionary language, *see* 15 U.S.C. § 78u-5(c)(1)(A)(i), *or* it is immaterial, *see id.* § 78u-5(c)(1)(A)(ii), or the plaintiff fails to prove (or plead) that the issuer had actual knowledge that the statement was false or misleading when made, *see id.* § 78u-5(c)(1)(B). Indeed, every circuit court to directly consider the issue has held that the statutory text establishes a disjunctive test. *See, e.g., Slayton v. Am. Express Co.*, 604 F.3d 758, 766 (2d Cir. 2010) ("The safe harbor is written in the disjunctive; that is, a defendant is not liable if the forward-looking

statement is identified and accompanied by meaningful cautionary language *or* is immaterial *or* the plaintiff fails to prove that it was made with actual knowledge that it was false or misleading."); *Southland Sec. Corp. v. INSpire Ins. Solutions Inc.*, 365 F.3d 353, 371 (5th Cir. 2004) ("The safe harbor has two *independent* prongs: one focusing on the defendant's cautionary statements and the other on the defendant's state of mind." (emphasis added));[5] *Helwig v. Vencor, Inc.*, 251 F.3d 540, 554-55 & n.2 (6th Cir. 2003) (setting forth a "formulation [that] is drawn from the statutory text, which is written in the negative disjunctive"), *abrogated on other grounds by Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007); *In re Cutera Sec. Litig.*, 610 F.3d 1103, 1112 (9th Cir. 2010) ("The difficulty with [a conjunctive reading] is that it ignores the plain language of the statute, which is written in the disjunctive as to each subpart."); *Edward J.*

---

[5] Curiously, the Fifth Circuit has once suggested that the safe harbor is conjunctive. In *Lormand v. US Unwired, Inc.*, 565 F.3d 228 (5th Cir. 2009), the court stated that "[e]ven if the plaintiff had failed to plead actual knowledge, the safe harbor provision still would not apply here, because the alleged misrepresentations are not accompanied by 'meaningful cautionary language.'" *Id.* at 244. This statement appears to be in conflict with *Southland*, which the court cited several times without overturning or criticizing it. *See id.* at 243—45, 250 n.14. In any event, the Fifth Circuit's statement in *Lormand* is not vital to its conclusion, as the plaintiff there adequately pleaded actual knowledge *and* the defendant's cautionary statements were insufficiently meaningful. *See id.* at 244—48. Thus, the safe harbor would have been inapplicable under either a disjunctive or conjunctive reading. The Court will therefore treat the statement in *Lormand* as dicta and the holding in *Southland* as current Fifth Circuit law on this point.

Goodman Life Income Trust v. Jabil Circuit, Inc., 594 F.3d 783, 795 (11th Cir. 2010) ("The statute offers several ways for a defendant to avoid liability, all written in the disjunctive."). As the Ninth Circuit noted, the presence of an "immateriality" safe harbor, *see* 15 U.S.C. § 78u-5(c)(1)(A)(ii), demonstrates that the statute can only be read in the disjunctive— "[i]t would be anomalous indeed if a false but immaterial statement would fall outside of the safe harbor, but that is the result of [a conjunctive] construction." *In re Cutera*, 610 F.3d at 1113. This reading of the statute comports with the legislative history, which describes the provision as "a *bifurcated* safe harbor that permits greater flexibility to those who may avail themselves of safe harbor protection." H.R. Rep. No. 104-369, at 43 (1995) (Conf. Rep.) (emphasis added), *reprinted in* 1995 U.S.C.C.A.N. 730, 742.

Despite their agreement that the safe harbor is disjunctive, however, the circuits are split as to whether there is room to consider the issuer's state of mind in determining whether cautionary language is sufficiently "meaningful" under the subsection (A)(i) safe harbor. The Sixth, Ninth, and Eleventh Circuits have all held that the issuer's state of mind is irrelevant to whether his cautionary language is meaningful. *See Miller v. Champion Enters., Inc.*, 346 F.3d 660, 678 (6th Cir. 2003) ("[S]ince we conclude that the statements . . . were accompanied by meaningful cautionary language, the statements are subject to the safe harbor provisions of the PSLRA and are therefore not actionable. No investigation of defendant's state of mind is required."); *In re Cutera*, 610 F.3d at 1112 ("Under subsection (A)(i), . . . if a forward-looking statement is

identified as such and accompanied by meaningful cautionary statements, then the state of mind of the individual making the statement is irrelevant, and the statement is not actionable regardless of the plaintiff's showing of scienter."); *Harris v. Ivax Corp.*, 182 F.3d 799, 803 (11th Cir. 1999) ("[W]e need not in this case enter the thicket of the PSLRA's new pleading requirements for scienter; if a statement is accompanied by 'meaningful cautionary language,' the defendant's state of mind is irrelevant.").[6] The Seventh Circuit has held that meaningful cautionary language must, at a minimum, disclose "the major risks [the issuer] objectively faced" at the time of its forward-looking statement. *See Asher v. Baxter Int'l Inc.*, 377 F.3d 727, 734 (7th Cir. 2004) ("This raises the possibility . . . that Baxter omitted important

---

[6] As noted above, the Fifth Circuit has also held that the PSLRA safe harbor bifurcates consideration of state of mind from evaluation of meaningful cautionary language, but the court may have since retreated from that holding. *See supra* note 5 (comparing the *Lormand* and *Southland* cases).

Defendants, citing *Slayton v. Am. Express Co.*, 604 F.3d 758 (2d Cir. 2010), assert that the Second Circuit has joined those that have found state of mind irrelevant. *See* Defs.' Notice Suppl. Auth. 2, ECF No. 53. But the court did not go quite so far. Although it did find that the safe harbor is disjunctive, *see Slayton*, 604 F.3d at 766, it expressly refrained from deciding whether cautionary language can be "meaningful" if the speaker knows the forward-looking statement to be false or misleading when made, *see id.* at 772 ("May an issuer be protected by the meaningful cautionary language prong of the safe harbor even where his cautionary statement omitted a major risk that he knew about at the time he made the statement? In this case, however, we need not decide that thorny issue because we conclude that at any rate the cautionary statement the defendants point to here was vague.").

variables from the cautionary language and so made projections more certain than its internal estimates at the time warranted. Thus this complaint could not be dismissed under the safe harbor, though we cannot exclude the possibility that if after discovery Baxter establishes that the cautions did reveal what were, *ex ante*, the major risks, the safe harbor may yet carry the day."). As the Second Circuit has noted, such a rule may "require[] an inquiry into what the defendants knew because in order to determine what risks the defendants faced, [a court] must ask of what risks they were aware." *Slayton*, 604 F.3d at 771. The D.C. Circuit has not yet considered the question, but the Court notes that other judges sitting in this district have reached conflicting conclusions. *Compare Freeland v. Iridium World Commc'ns, Ltd.*, 545 F. Supp. 2d 59, 72 (D.D.C. 2008) (Laughrey, J., visiting) ("In this case, the Court does not believe that the [subsection (A)(i)] safe-harbor provision necessarily protects statements that were knowingly false at the time they were made."), *with In re XM*, 479 F. Supp. 2d at 186 n.14 (Huvelle, J.) ("[C]ourts have held that once the first clause of the provision is satisfied, the defendants' state of mind is not relevant." (internal quotation marks omitted)).

In determining how to apply the relevant subsection, the Court notes as a preliminary matter that the statutory text makes no explicit reference to the consideration of an issuer's state of mind. *See* 15 U.S.C. § 78u-5(c)(1)(A)(i). The legislative history, however, does. When the final bill was reported by a joint committee of Congress, the framers advised that "[t]he use of the words 'meaningful' and 'important factors' are intended to provide a standard for the

types of cautionary statements upon which a court may, where appropriate, decide a motion to dismiss, *without examining the state of mind of the defendant*." H.R. Rep. No. 104-369, at 44, 1995 U.S.C.C.A.N. at 743 (emphasis added). The framers then emphasized: "The first prong of the safe harbor requires courts to examine *only* the cautionary statement accompanying the forward-looking statement. Courts *should not* examine the state of mind of the person making the statement." *Id.* (emphases added).

This reading not only comports with the text and legislative history of the safe harbor, but also adheres to the PSLRA's instructions for resolving motions to dismiss. The statute mandates that, "[o]n any motion to dismiss based upon [the safe harbor], the court shall consider any statement cited in the complaint and any cautionary statement accompanying the forward-looking statement, which are not subject to material dispute, cited by the defendant." 15 U.S.C. § 78u-5(e). In order to block a defendant from invoking the subsection (B) safe harbor, a plaintiff must *always* plead—and later prove—that a defendant's forward-looking statements were made with actual knowledge that they were false or misleading. *See id.* § 78u-5(c)(1)(B). Thus, as the Eleventh Circuit has observed, if a defendant's actual knowledge renders cautionary language meaningless as a matter of law, a defendant would never be able to avail himself of the subsection (A)(i) safe harbor at the pleadings stage, and courts would never have occasion to apply the section 78u-5(e) mandate that courts consider cautionary language in ruling upon a motion to dismiss. *See Edward J. Goodman Life Income*, 594 F.3d at 796 ("[N]ot only must a plaintiff

prove actual knowledge of falsity when contesting forward-looking statements, but under the shareholders' rationale, by so pleading the plaintiff precludes the defendant from utilizing the safe harbor at the pleadings stage entirely. In light of Congress's specific provision for courts to evaluate disputes over forward-looking statements at the pleadings stage, we cannot reach the conclusion that a properly formed complaint prohibits us from doing so." (citation omitted)). "Absent a statutory text or structure that requires [a court] to depart from normal rules of construction, [a court] should not construe the statute in a manner that . . . would render a statutory term superfluous." *Dole Food Co. v. Patrickson*, 538 U.S. 468, 476-77 (2003) (citing *United States v. Nordic Village, Inc.*, 503 U.S. 30, 36 (1992), and *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 258 (1993)). The text, legislative history, and canons of statutory interpretation therefore lead the Court to the same conclusion put forward by Defendants and a majority of the circuit courts that have ruled on the issue: The issuer's state of mind is irrelevant as to the subsection (A)(i) safe harbor.

The Court notes that this interpretation is consistent with the manner in which cautionary language was considered even before the PSLRA came into effect. "[U]nder the 'bespeaks caution' doctrine—the judicially-created counterpart of the PSLRA's safe harbor provisions—'when forecasts, opinions, or projections in a disclosure statement are accompanied by meaningful warnings and cautionary language, the forward-looking statements may not be misleading. The substantial disclosure of specific risks may render alleged misrepresentations

concerning soft information *immaterial* and thus nonactionable as securities fraud.'" *In re XM*, 479 F. Supp. 2d at 177-78 (emphasis added) (quoting *Harden v. Raffensperger, Hughes & Co.*, 65 F.3d 1392, 1404 (7th Cir. 1995)); *see also* H.R. Rep. No. 104-369, at 43, 1995 U.S.C.C.A.N. at 742 ("The [PSLRA] safe harbor . . . is based on aspects of SEC Rule 175 and the judicial [sic] created 'bespeaks caution' doctrine."). As with cautionary language under the bespeaks caution doctrine, the subsection (A)(i) safe harbor has been linked not to scienter, but to materiality—a separate element of the securities fraud cause of action, and one governed by the *objective* standard of a reasonable investor. *See TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976) ("The question of materiality, it is universally agreed, is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor."); *Edward J. Goodman Life Income*, 594 F.3d at 796 (noting that the bespeaks caution doctrine is the "equivalent" of the subsection (A)(i) safe harbor and that, under that doctrine, "a forward-looking statement is rendered immaterial as a matter of law when accompanied by meaningful cautionary language"). Because the subsection (A)(i) safe harbor is linked to the materiality of a forward-looking statement, consideration of the issuer's state of mind would blur the materiality and scienter elements. But "[t]he anti-fraud provisions of the securities laws are plainly disinterested with immaterial statements, no matter the state of mind of the speaker." *Edward J. Goodman Life Income*, 594 F.3d at 796 (citing *Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988)). And although some courts have considered the state

of mind of the speaker in evaluating whether cautionary language is sufficient to shield a defendant under the judicially created bespeaks caution doctrine, *see In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 930 F. Supp. 68, 72 (S.D.N.Y. 1996) ("The doctrine of bespeaks caution provides no protection to someone who warns his hiking companion to walk slowly because there might be a ditch ahead when he knows with near certainty that the Grand Canyon lies one foot away."), the Court concludes for the reasons noted above that the text, legislative history, and logical structure of the PSLRA safe harbor do not afford courts that same flexibility. Because the safe harbor is linked to materiality, the Court will evaluate Defendants' cautionary language based on its sufficiency and materiality to a reasonable investor without considering Defendants' state of mind.

b. Application of the Subsection (A)(i) Safe Harbor

The Court next considers whether the statements at issue were identified as forward-looking and accompanied by meaningful cautionary language. *See* 15 U.S.C. § 78u-5(c)(1)(A)(i). To determine whether a statement is adequately identified as forward-looking, courts look to the facts and circumstances of the language used. *See Slayton*, 604 F.3d at 769. Courts also adhere to "the common-sense proposition that words such as 'expect' identify forward-looking statements." *Id.* (citing *Harris*, 182 F.3d at 804-06).

If a statement is identified as forward-looking, it must also be accompanied by meaningful cautionary language in order to fall within the subsection (A)(i) safe harbor. "To suffice, the cautionary statements

must be substantive and tailored to the specific future projections, estimates or opinions in the [publications] which the plaintiffs challenge." *In re Donald J. Trump Casino Sec. Litig.*, 7 F.3d 357, 371-72 (3d Cir. 1993); *accord In re XM*, 479 F. Supp. 2d at 185 (applying the standard set forth in the *Trump* case to the PSLRA safe harbor). "[A] vague or blanket (boilerplate) disclaimer which merely warns the reader that the investment has risks will ordinarily be inadequate to prevent misinformation." *In re Trump*, 7 F.3d at 371. The safe harbor "does not require a listing of *all* factors" that may present a risk, nor "must the cautionary language explicitly mention *the* factor that ultimately belies a forward-looking statement . . . ." *Harris*, 182 F.3d at 807. Rather, "when an investor has been warned of risks *of a significance similar to that actually realized*, she is sufficiently on notice of the danger of the investment to make an intelligent decision about it according to her own preferences for risk and reward." *Id.* (emphasis added).

The forward-looking statements at issue are contained in five different publications. In order to consider the statements in their full context, with their accompanying cautionary language, the Court will proceed to analyze the statements one publication at a time.

i. April 26, 2007, Conference Call

Plaintiffs allege that there were two false or misleading forward-looking statements in Dr. Harman's prepared remarks during the company's April 26, 2007, conference call. First, Plaintiffs point to Dr. Harman's statement that Harman "continue[s] to expect fiscal '08 automotive

OEM revenues at $2.8 billion and EPS of $5.25, subject to the probability that [Harman] will not be able to absorb the $46 million engineering bulge . . . ." Will Decl. Ex. 8 at 3, ECF No. 21-11. Second, they point to his assertion that the company's PND plan "forecasts total unit sales of 618,000 units for the fiscal '07 year, and that plan is proceeding." *Id.* at 7. Dr. Harman's use of the words "expect" and "forecast" sufficiently identify the statements as forward-looking, as these words inherently imply a reference to the future.

According to Plaintiffs' allegations, the statement about Harman's Automotive revenues and projected earnings per share was false or misleading because Harman's Automotive sales and margins "were being adversely affected in fiscal 2007 by much more than bulging R&D expenses," and because the projection had "no reasonable basis" at the time. Consol. Class Action Compl. ¶ 62, ECF No. 20.[7] They allege that the projected PND sales were false or misleading because Harman released five modified versions of the same PND over a 16-month period, one of its modifications rendered the older-generation PNDs obsolete, and the company had a large inventory of obsolete PNDs that it had to sell at a material loss. *See id.* ¶ 64. To determine whether the safe harbor

[7] The latter allegation relates not to the alleged falsity of Dr. Harman's statement or any undisclosed risk, but rather to the state of mind with which Defendants operated when making the projections at issue. Because state of mind is irrelevant for purposes of the subsection (A)(i) safe harbor, *see supra* Part IV.A.3.a, the Court will not weigh any cautionary language against Plaintiffs' allegation that Defendants had "no reasonable basis" for the projections.

applies, the Court must assess whether the cautionary language "warned of risks of a significance similar to" those alleged in the complaint to have actually materialized. *Harris*, 182 F.3d at 807.

At the beginning of the call, the moderator warned listeners that the call would include forward-looking statements that are subject to assumptions and risks, directing participants "to review the reports filed by Harman International with the Securities and Exchange Commission regarding these risks and uncertainties." Will Decl. Ex. 8 at 1. In its then-most recent annual report, Harman included several pages of disclaimers detailing risks upon which its forward-looking statements are based. *See* Will Decl. Ex. 26 at 8-12, ECF No. 21-30. In relevant part, Harman's Form 10-K warned that "DaimlerChrysler and BMW are not obligated to any long-term purchases of [Harman] products"; "[i]f [Harman] fail[s] to introduce new products, misinterpret consumer preferences or fail[s] to respond to changes in the marketplace, consumer demand for [its] products could decrease and [its] brand image could suffer"; "the audio and video product markets that [Harman] serve[s] are fragmented, highly competitive, rapidly changing and characterized by intense price competition"; Harman "may be unable to detect and correct defects in some of [its] products before [it] ship[s] them"; and "[d]elays or defects in new product introduction may result in loss of sales or delays in marketplace acceptance." *Id.* at 9-10. There is a special paragraph dedicated to long-term supply agreements for infotainment systems, which notes in part that "cost overruns or difficulties

experienced during development could cause losses on these contracts." *Id.* at 19. During the conference call itself, Dr. Harman also disclosed that "PND inventories in Europe had grown substantially[,]" that "the European PND market ha[d] become extremely competitive[,]" and that the company had to "work[] extraordinarily hard to increase sales and to maintain adequate margins in that environment." Will Decl. Ex. 8 at 7; *see also id.* at 14 (acknowledging "pricing pressure" in the European PND market).

The Court finds that Defendants' cautionary language is sufficient to neutralize the challenged forward-looking statements. Plaintiffs allege that Harman's projections for its fiscal year 2008 Automotive revenues and earnings per share, subject to its ability to absorb an R&D bulge, were false or misleading because Harman's Automotive sales and margins "were being adversely affected in fiscal 2007 by much more than bulging R&D expenses" including "growing material losses and declining operating margins." Consol. Class Action Compl. ¶ 62. But Harman did warn that its projections were subject to certain risks, including "changing consumer demands[,]" the "fragmented, highly competitive, rapidly changing" market in which Harman operates, and its ability to timely identify and correct product defects. Will Decl. Ex. 26 at 9-10. To the extent that Plaintiffs' allegation relates to alleged losses on the MyGIG Radio, Harman's 10-K expressly warns that cost overruns and material losses could occur under its long-term supply agreements for infotainment systems. *See id.* at 19.

Defendants also provided sufficient cautionary language to balance Dr. Harman's statement that the

company projected total PND unit sales of 618,000 for the fiscal 2007 year. Dr. Harman noted in his prepared remarks that the PND market in Europe was "extremely competitive" and that the company had to work "extraordinarily hard" to increase sales and maintain margins. Will Decl. Ex. 8 at 7. These are not merely statements about general market risks, but are specific to the European PND market of which Plaintiffs complain.[8] A reasonable investor would know that "extreme" price pressure could substantially affect sales, margins, or both. And to the extent that Harman's projected PND sales of 618,000 units by fiscal year-end might have seemed overly optimistic in light of the fact that it had only sold 300,000 units in the first nine months of that fiscal year, the prior sales figures were disclosed during the call, allowing investors to evaluate for themselves whether Harman's projection of 318,000 unit sales in the fourth quarter was realistic. *See id.* at 17. Indeed, one participant on the earnings call even openly expressed skepticism that the projected sales figure would materialize. *See id.* ("So 300,000 [in the first three quarters], and you still think you can do over 600,000 for the fiscal year?"). Thus, both alleged misrepresentations from the April 26, 2007, conference call fall within the safe harbor.

---

[8] Dr. Harman also disclosed that the company had amassed a PND inventory of approximately $50 million, which it expected to decrease to a "very normal level" of approximately $15 million within three months. Will Decl. Ex. 8 at 7. But the Court further notes that, because the accused misrepresentation deals only with unit sales, it is unclear that failure to disclose the company's large inventory of PNDs would have rendered the statement false or misleading.

ii. May 10, 2007, Form 10-Q

In its May 10, 2007, Form 10-Q, Harman reported that it "anticipate[d] that DaimlerChrysler, Toyota/Lexus, Audi/VW and BMW will continue to account for a significant portion of [its] net sales and accounts receivable for the foreseeable future." Will Decl. Ex. 22 at 17, ECF No. 21-26. Harman's use of the word "anticipate" and explicit references to sales for the "foreseeable future" clearly identify the statement as forward-looking, and the parties do not appear to dispute this fact.

Plaintiffs allege that the statement is false or misleading because, in reality, the MyGIG radios Harman was selling to Chrysler had technical and aesthetic problems, Harman was unable to produce the radios in a timely fashion, this confluence of problems was causing Harman's relationship with Chrysler to deteriorate beyond repair, and Harman was selling the MyGIG radios at a net loss. *See* Consol. Class Action Compl. ¶ 69. The front of the document includes a long disclaimer stating that the report contains forward-looking statements, which are subject to various risks. *See* Will Decl. Ex. 22 at 3-4; *see also id.* at 18-19 (identifying risks specific to the proposed merger). The identified risks include Harman's "ability to satisfy contract performance criteria, including technical specifications and due dates;" and Harman's "ability to design and manufacture [its] products profitably under [its] long-term contractual commitments . . . ." *Id.* at 3-4. In the text immediately following the alleged misrepresentation, Harman disclosed: "These automotive customers are not obligated to any long-term purchase of our products. The loss of sales

to DaimlerChrysler, Toyota/Lexus, Audi/VW or BMW would have a material adverse effect on our total consolidated net sales, earnings and financial position." *Id.* at 17.

With respect to the alleged delays and technical problems with the MyGIG radio, Harman provided sufficient cautionary language. The report specifically warns that projections are subject to Harman's "ability to satisfy contract performance criteria, including technical specifications and due dates . . . ." *Id.* at 3. Similarly, the risk that the relationship with Chrysler may not continue was disclosed in the sentence immediately following the alleged misrepresentation. *See id.* at 17 ("These automotive customers are not obligated to any long-term purchase of our products. The loss of sales to DaimlerChrysler, Toyota/Lexus, Audi/VW or BMW would have a material adverse effect on our total consolidated net sales, earnings and financial position."). Although this language could be widely applicable in any financial quarter, it nonetheless "convey[s] substantive information about factors that realistically could cause results to differ materially from those projected in the forward-looking statement." *In re XM*, 479 F. Supp. 2d at 185; *see also id.* at 185-86 (finding that "[o]ur costs may exceed or our revenues may fall short of our estimates, our estimates may change, and future developments may affect our estimates" was among the cautionary language sufficient to satisfy the subsection (A)(i) safe harbor). Indeed, it speaks directly to some of the specific risks of which Plaintiffs complain.

The report also provided cautionary language putting investors on notice of the risk that products sold under long-term contracts might generate a net loss. Harman identifies its "ability to design and manufacture [its] products profitably under [its] long-term contractual commitments" as a factor that may cause its stock price to fluctuate. Will Decl. Ex. 22 at 4. Moreover, even if this language were not present, it is not clear that undisclosed risk would actually render the targeted statement false or misleading. The alleged misrepresentation speaks only of "net sales" and "accounts receivable," which are figures that account only for money paid or owed by customers and do not include offsetting production costs. Thus, the Court is not convinced that a net loss on the Chrysler contract would be relevant in evaluating the truth of a statement about Harman's net sales and accounts receivable to a number of automotive companies in any event. This alleged misrepresentation, therefore, does not satisfy the "material misrepresentation" element of the securities fraud claim.

iii. August 14, 2007, Press Release

On August 14, 2007, Harman issued a press release announcing its fourth quarter and full fiscal year results. *See generally* Will Decl. Ex. 10, ECF No. 21-13. The release also briefly discussed the merger, including the alleged misrepresentation that Harman "anticipate[d] completing the transaction during the third or fourth quarter of th[e] calendar year." *Id.* at 2. The statement is identified as forward-looking through its use of the inherently forward-looking word "anticipate."

The next page of the release contains a disclaimer warning that the forward-looking statements contained in the document are subject to risks, including Harman's "failure to complete the transaction with affiliates of [KKR] and [Goldman], . . . and other risks detailed in filings made by Harman International with the Securities and Exchange Commission." *Id.* at 3. Harman's warning that it may "fail[] to complete the transaction" is insufficient, as it essentially warns that "if we fail to close the deal, the deal will not close." *Cf. Slayton*, 604 F.3d at 772 (rejecting as boilerplate a similarly circular warning that essentially said, "if our portfolio deteriorates, then there will be losses in our portfolio"). But the case law allows issuers to incorporate by reference cautionary language made in other public statements. *See, e.g., Inst. Investors Grp. v. Avaya, Inc.*, 564 F.3d 242, 257-58 (3d Cir. 2009) (noting that the defendant's conference calls and press releases directed listeners and readers to the company's SEC filings).[9] Harman's Registration Statement (SEC

---

[9] Indeed, the Seventh Circuit has found that, in a fraud-on-the-market case such as this one, all prior cautionary language "must be treated as if attached to every one of [the defendant's] oral and written statements" even if it is not expressly incorporated by reference. *Asher*, 377 F.3d at 732. This is so, because the fraud-on-the-market theory assumes that all public information is reflected in the stock price in order to establish causation, and only an inefficient market would incorporate an allegedly false statement but not the cautionary disclosures. *See id.* But because the press release explicitly references Harman's SEC filings, which contain sufficient cautionary language, the Court need not go so far as to adopt the Seventh Circuit's position.

Form S-4) for the proposed merger, which had been filed just two months earlier, included several pages of disclosures describing risks related to the merger. *See* Will Decl. Ex. 4 at 28-38, ECF No. 21-7. Among those were several warnings disclosing specific risks that the deal may not close, including the failure to obtain stockholder approval, inability to obtain the necessary regulatory approvals, and failure to satisfy the conditions of the Merger Agreement. *See id.* at 28-30. The same risks were also disclosed in Harman's May 10, 2007, Form 10-Q. *See* Will Decl. Ex. 22 at 18. These warnings disclose "risks of a significance similar to" that allegedly realized, *Harris*, 182 F.3d at 807—namely, Harman's alleged failure to satisfy the CapEx and MAC conditions of the Merger Agreement. Because the Merger Agreement was made publicly available, investors could see for themselves the specific closing conditions that may not be satisfied. *See* Consol. Class Action Compl. ¶ 32. The accused statement in Harman's August 14, 2007, press release is therefore inactionable.

iv. August 29, 2007, Form 10-K

In Harman's August 29, 2007, Form 10-K, Harman stated that it "presently anticipate[d] that the merger will be completed in the fourth quarter of calendar year 2007." Will Decl. Ex. 1 at 3, ECF No. 21-4. Plaintiffs allege that this, too, constitutes a material misrepresentation. *See* Consol. Class Action Compl. ¶ 79. As with the similarly worded statement in Harman's August 14, 2007, press release, the statement uses the inherently forward-looking word "anticipate." *See supra* Part IV.A.3.b.iii. The disclosure also contains cautionary language about the merger that repeats the same relevant risks

noted in the merger Registration Statement regarding stockholder approval, regulatory approvals, and the obligation to meet closing conditions. *Compare* Will Decl. Ex. 1 at ii, 14, *with supra* Part IV.A.3.b.iii. Because the disclosures are the same, this alleged misrepresentation is similarly inactionable.

v. September 27, 2007, Conference Call

During Harman's September 27, 2007, investor conference call, Harman CFO Kevin Brown made two forward-looking statements that Plaintiffs identify as misrepresentations. During his prepared remarks, Mr. Brown stated that Harman "expect[s] Automotive sales to increase approximately 15% during the quarter, primarily due to the ramp-up of an infotainment system program and higher PND sales in Europe." Will Decl. Ex. 18 at 4, ECF No. 21-22. During the question-and-answer portion of the call, Mr. Brown made a similar remark, stating that Harman was "bringing additional business on-stream as [it] ramp[s] up [its] Missouri plant and in the PND business, where [it] continue[s] the growth and expansion of that business primarily in Europe." *Id.* at 6. Mr. Brown's first statement is identified as forward-looking through its use of the inherently forward-looking word "expects." And although the second statement does not contain any similar language, the parties do not dispute that the statement is forward-looking and identified as such.

Again, at the beginning of the call, the operator warned listeners that the call would contain forward-looking statements that "include the Company's beliefs and expectations as to future events and trends affecting the Company's business

and are subject to risks and uncertainties." *Id.* at 1. The operator then advised listeners "to review the reports filed by Harman International with the Securities and Exchange Commission regarding those risks and uncertainties." *Id.* In its then-most recent annual report, Harman included detailed warnings regarding its forward-looking statements. In relevant part, the company noted that "DaimlerChrysler [and Harman's] other automotive customers are not obligated to any long-term purchases of [Harman's] products"; Harman's business is based on its "ability to introduce distinctive new products that anticipate changing consumer demands"; Harman sells its products in a "fragmented, highly competitive, rapidly changing" market "characterized by intense price competition"; and, "despite extensive testing, [Harman] may be unable to detect and correct defects in some of [its] products before [it] ship[s] them." Will Decl. Ex. 1 at 10-11. And with specific regard to its infotainment systems, Harman warned: "We incur pre-production and development costs related to infotainment systems that we develop for automobile manufacturers pursuant to long-term supply agreements. . . . Unforeseen cost overruns or difficulties experienced during development could cause losses on these contracts." *Id.* at 24.

The accused statements relate to sales of both the MyGIG Radios and PNDs. With respect to the MyGIG radios, the cautionary language is quite specific. It warns that Chrysler was not obligated to a long-term relationship; Harman products may contain defects that could cause delays or diminish market acceptance; and production of infotainment

systems requires significant development costs and long-term supply contracts, which may result in net losses. These risks are of similar significance to those Plaintiffs complain of—indeed, they appear to disclose those very risks. The cautionary language also warns of the rapidly changing PND market and intense price competition, neutralizing Mr. Brown's projections about the PND sales.[10] Moreover, Dr. Harman's prior statements on the extraordinary competition for PNDs in Europe were also readily available to investors at the time. *See supra* Part IV.A.3.b.i.

Plaintiffs thus fail to allege any actionable forward-looking statement, because all of the statements at issue are protected by the subsection (A)(i) safe harbor.

2. Puffery

The second set of alleged misrepresentations is comprised of several expressions of opinion. The Supreme Court has held that statements of reasons, opinions, or beliefs may be actionable under securities laws. *See Va. Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1095 (1991) ("[A] plaintiff is permitted to prove a specific statement of reason knowingly false or misleadingly incomplete, even when stated in conclusory terms."). This is so, because "[s]uch statements are factual in two senses: as statements

---

[10] To the extent that Plaintiffs argue that Defendants' projections about PND *sales* are misleading because it amassed a large *inventory* of PNDs, Plaintiffs have not pleaded with specificity how a large inventory would negatively impact sales of a product. *See also supra* note 8.

that the directors do act for the reasons given or hold the belief stated and as statements about the subject matter of the reason or belief expressed." *Id.* at 1092. Even a statement of opinion couched in indefinite, unverifiable, or conclusory terms may be actionable, because "in a commercial context [conclusory terms] are reasonably understood to rest on a factual basis that justifies them as accurate, the absence of which renders them misleading." *Id.* at 1093.

But to be actionable, statements of opinion must still be material. *Cf. id.* at 1091. Where statements of opinion "are too general to cause a reasonable investor to rely upon them[,]" they amount to immaterial "puffery" and do not give rise to a securities fraud claim. *ECA & Local 134 IBEW Joint Pension Trust of Chi. v. JP Morgan Chase Co.*, 553 F.3d 187, 206 (2d Cir. 2009); *see also In re XM Satellite Holdings Sec. Litig.*, 479 F. Supp. 2d 165, 176 (D.D.C. 2007) ("[I]t is well-established under the 'puffery' doctrine that 'generalized statements of optimism that are not capable of objective verification' are not actionable 'because reasonable investors do not rely on them in making investment decisions.'" (quoting *Grossman v. Novell, Inc.*, 120 F.3d 1112, 1119 (10th Cir. 1997))). Moreover, to be material, a statement must "alter[] the 'total mix' of information" available to the market. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). Defendants argue that several of the alleged misrepresentations are not actionable because they are just this sort of "puffery," upon which a reasonable investor would not rely. *See* Defs.' Mem. P. & A. Supp. Mot. Dismiss 22 n.3, ECF No. 21-1. Plaintiffs argue that the representations "were all highly important factors

that investors considered when evaluating Harman's stock." *See* Lead Pl.'s Mem. Opp'n Mot. Dismiss 20, ECF No. 26.

Five alleged misrepresentations fall within the scope of this dispute: (1) Dr. Harman's statement about the company's "dominance" in the automotive space having been solidified; (2) his statement that Harman's balance sheet was "strong" at the 2007 fiscal year-end; (3) Harman's statement in its FY2007 Form 10-K that "[s]ales of aftermarket products, particularly PNDs, were very strong during fiscal 2007"; (4) the press release statement in which Harman "disagree[d] that a material adverse change ha[d] occurred or that it ha[d] breached the merger agreement"; and (5) Dr. Harman's statement that the confluence of the merger negotiations and diligence process with the ramping up of the new plants in Missouri and China had created a "perfect storm" that was now "over." Consol. Class Action Compl. ¶¶ 74-75, 82, 87, 98, ECF No. 20.

Importantly, courts have found that statements are immaterial puffery where they "lacked a standard against which a reasonable investor could expect them to be pegged . . . ." *City of Monroe Emps. Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651, 671 (6th Cir. 2005). Defendants' statements about Harman's "strong" balance sheet and "very strong" sales of PNDs fall clearly within the scope of this rule, as the use of the chest-beating adjective "strong" is subjective and provides no standard against which a comparison can be drawn. *See, e.g., In re Splash Tech. Holdings, Inc. Sec. Litig.*, 160 F. Supp. 2d 1059, 1077 (N.D. Cal. 2001) (noting that such statements "constituted vague assessments of past results, on

which no reasonable investor would rely"). Indeed, the description of Harman's PND sales as "strong" could have signified a truthful comparison to sales of the products in earlier quarters, and not a comparison to competitors. Because Dr. Harman used the term in such a vague manner, it is impossible to know. Similarly, Dr. Harman's statement that the "perfect storm" the company had experienced was "over" and Harman was "again in full command of [its] circumstances and [its] extraordinary future" is so vague that it is incapable of objective verification.[11] "[E]xpressions of puffery and corporate optimism do not give rise to securities violations. Up to a point, companies must be permitted to operate with a hopeful outlook . . . ." *Rombach v. Chang*, 355 F.3d 164, 174 (2d Cir. 2004).

District courts around the country have split over the materiality of statements regarding a defendant's purported "dominance" in a market. Some courts have found that the word "dominant" inherently implies a comparison to competitors. *See, e.g.*, *Scritchfield v. Paolo*, 274 F. Supp. 2d 163, 175 (D.R.I. 2003). But in *Davis v. SSPS, Inc.*, 385 F. Supp. 2d 697 (N.D. Ill. 2005), the court found that a

---

[11] To the extent that Dr. Harman's statement about the "perfect storm" being "over" can be interpreted to refer to something specific, it is still inactionable. Dr. Harman's statement followed a discussion of the merger negotiations and diligence, and the construction and staffing of Harman's plants in China and Missouri, all of which consumed a significant portion of management's resources over the previous six- to eight-month period. Plaintiffs' allegations do not suggest that these two significant projects were not in fact "over" at the time Dr. Harman made the statement.

defendant's statement that a new partnership would put the company in "[a]n even more dominant position" was merely "a vague positive spin" on the new contract. *Id.* at 711-12 (alteration in original). The Court finds that context is key in determining whether the actual statement at issue suggests an objective standard against which a reasonable investor would evaluate it. Here, Dr. Harman made the following statement about the company's expansion into infotainment systems for mid- and entry-level vehicles:

> Our dominance in the automotive space was solidified through the past year, where we had earlier confronted doubt about our ability to move effectively beyond the luxury car market for our infotainment systems. That doubt has been erased. With earlier awards to us from PSA, Audi and Chrysler, we established our leadership in the mid-range and entry levels, with last year's major awards from BMW, we erased any remaining questions. We are moving from an era in which each new infotainment system represented a virtually original effort with all new R&D to a new era in which the major automotive makers are committing to a common electronics platform, applicable across the full range of car lines.

Consol. Class Action Compl. ¶ 74. Taken in context, Dr. Harman's statement was a "vague positive spin" on Harman's expansion into the mid- and entry-level vehicle market via a more standardized electronics platform and an opportunity to boast of its awards. The statement makes no comparison to Harman's competitors in terms of revenues, sales, or

profitability, and this lack of an objective standard for comparison places the statement squarely on the "puffery" end of the spectrum.

Defendants' denial of breach with respect to the Merger Agreement is similarly immaterial. Our securities laws "do not create a duty to confess contested charges." *Anderson v. Abbott Labs.*, 140 F. Supp. 2d 894, 906 (N.D. Ill. 2001). Markets expect parties accused of violating laws and breaching contracts to deny liability, especially where, as here, the company releases a statement on the same day that allegations are first raised. "Investors can evaluate this sort of posturing for what it's worth." *Id.* at 907.

In sum, Defendants are correct that these five statements amount to inactionable puffery.

3. Material Omissions

The final category of misrepresentations is comprised of statements of historical fact, which Plaintiffs contend are misleading in light of material information Defendants failed to disclose. As a general matter, there is no duty to reveal information absent a duty to disclose. *See Basic Inc. v. Levinson*, 485 U.S. 224, 239 n.17 (1988). "[A] corporation is not required to disclose a fact merely because a reasonable investor would very much like to know that fact." *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 267 (2d Cir. 1993). But a duty arises to disclose information "if, *inter alia*, a corporation has previously made a statement of material fact that is either false, inaccurate, incomplete, or misleading in light of the undisclosed information." *Gross v. Summa Four, Inc.*, 93 F.3d 987, 992 (1st Cir. 1996)

(citing *Roeder v. Alpha Indus., Inc.*, 814 F.2d 22, 27 (1st Cir. 1987)), *superseded by statute on other grounds*, 15 U.S.C. § 78u-4(b)(2)(A) (2012). Thus, the PSLRA requires a plaintiff to identify the "statement alleged to have been misleading, the reason or reasons why the statement is misleading, and . . . with particularity all facts on which that belief is formed." 15 U.S.C. § 78u-4(b)(1) (2012).

Plaintiffs assert that four statements are rendered false or misleading due to the issuer's failure to disclose certain material information: (1) Dr. Harman's statement that total R&D spending was $94 million, which was "primarily generated by the need to process the engineering for the $14 billion backlog, of which a significant $1 billion-plus had been unanticipated"; (2) Mr. Paliwal's statement, reprinted in the *Wall Street Journal*, that "[t]he fourth quarter of fiscal 2007 and the first quarter of fiscal 2008 were affected by increased R&D costs, primarily related to recent automotive platform awards"; (3) Mr. Paliwal's statement that "[f]or the full year 2008, gross profit is expected to be lower than anticipated in April 2007 . . . due to higher material prices, and more than expected ramp-up costs for the two new manufacturing plants in China and the U.S.";[12] and (4) Harman's statement in its Form 10-Q that "[n]ew introductions of infotainment

---

[12] Although Mr. Paliwal's use of the words "is expected" suggests that the statement is forward-looking in nature, the parties characterize the statement, in context, as a representation of historical fact. *See* Defs.' Mem. P. & A. Supp. Mot. Dismiss 16, ECF No. 21-1; Lead Pl.'s Mem. Opp'n Mot. Dismiss 11, ECF No. 26.

systems including Chrysler's MyGIG infotainment systems in North America, the roll-out of [other systems] were primary factors contributing to higher sales." *See* Consol. Class Action Compl. ¶¶ 73, 97, 99, 105, ECF No. 20; Lead Pl.'s Mem. Opp'n Mot. Dismiss 12, ECF No. 26. They allege that these statements are false or misleading because, in each instance, the issuer failed to disclose that Harman's contract with Chrysler required it to produce and sell MyGIG radios at a loss; the radios were plagued with technical problems; the company had a large inventory of obsolete PNDs, which it had to sell at a loss; and the PNDs had not sold to Harman's expectations in 2006 and were being stored in a warehouse. *See* Consol. Class Action Compl. ¶¶ 62-64; Lead Pl.'s Mem. Opp'n Mot. Dismiss 12.

Plaintiffs do not adequately allege any actionable material omission. Although they point to representations made by Defendants and identify omitted information that they, or perhaps any reasonable investor, would *like* to have known, neither the complaint nor Plaintiffs' opposition brief "specif[ies] the reason or reasons why [each] statement is misleading . . . ." 15 U.S.C. § 78u-4(b)(1). Both the complaint and Plaintiffs' briefing state that Defendants' affirmative statements were misleading *because* they failed to disclose certain information about the MyGIG radios and PNDs. But they do not explain *how* the omission of that information renders Defendants' affirmative statements themselves "either false, inaccurate, incomplete, or misleading in light of the undisclosed information" such that there was a duty to disclose it. *Gross*, 93 F.3d at 992; *see also Winer Family Trust v. Queen*, 503 F.3d 319, 330

(3d Cir. 2007) ("Liability may exist under Rule 10b-5 for misleading or untrue statements, but not for statements that are simply incomplete. Winer fails to specify *why* the assertion that the equity investment made by Smithfield Foods helped facilitate Pennexx's registration of its common stock was misleading or untrue." (emphasis added) (citations omitted)). The Court is left to speculate what misleading conclusions a reasonable investor would draw from Defendants' statements in the absence of these undisclosed facts, and thus what Plaintiffs' theory of liability is in relation to these statements. But the PSLRA places the burden upon Plaintiffs to specifically plead those facts, and not leave them up to the guesswork of the Court.

Moreover, the alleged misrepresentations disclosing specific sales and financial data are independently inactionable. "It is clear that a violation of federal securities law cannot be premised upon a company's disclosure of accurate historical data. The disclosure of accurate historical data does not become misleading even if less favorable results might be predictable by the company in the future." *In re Somafor Danek Group, Inc.*, 123 F.3d 394, 401 n.3 (6th Cir. 1997) (citation omitted). Because Plaintiffs do not allege that the figures contained in Defendants' statements are false statements of historical fact, the disclosures cannot constitute actionable securities fraud on an omission theory. *See In re Ford Motor Co. Sec. Litig.*, 381 F.3d 563, 570 (6th Cir. 2004) ("Because plaintiffs have not alleged the historical inaccuracy of Ford's financial and earnings' [sic] statements, such statements are not misrepresentations."). Plaintiffs' complaint, in its

current form, thus fails to allege an actionable material omission.

B. Scienter

Although Plaintiffs have not alleged any material misrepresentation or omission, the Court next considers whether the complaint contains adequate allegations of scienter. As the D.C. Circuit has held, "[t]o state a claim for securities fraud under Rule 10b-5, a plaintiff must allege that the defendant *knowingly or recklessly* made a false or misleading statement of material fact . . . ." *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994) (emphasis added). For forward-looking statements, however, the PSLRA heightened the substantive measure, requiring a plaintiff to plead that the statement "was made with *actual knowledge* by [the issuer] that the statement was false or misleading . . . ." 15 U.S.C. § 78u-5(c)(1)(B)(i) (2012) (emphasis added). The PSLRA also heightened the pleading standard by which all scienter allegations are evaluated, requiring that "the complaint shall, with respect to *each* act or omission . . . , state *with particularity* facts giving rise to a *strong inference* that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2)(A) (2012) (emphases added). Under this rigid standard, a securities fraud complaint will survive a motion to dismiss "only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 324 (2007). Importantly, the Supreme Court has made clear that "the court's job is not to scrutinize each allegation in isolation but to assess

all the allegations holistically." *Id.* at 325. The Court takes that "holistic" approach here.

Although each of the alleged misrepresentations fails to satisfy the "material misrepresentation or omission" element, the Court will nonetheless address the Plaintiffs' deficient scienter allegations. As set forth below, Plaintiffs have not pleaded enough facts to support a strong inference that Defendants were aware that their statements about the merger and MyGIG Radios were false or misleading. Thus, Plaintiffs' securities fraud claim as to alleged misrepresentations about the merger and MyGIG Radios fails for the additional, independent reason that it fails to comply with the heightened scienter pleading requirements under the PSLRA.[13]

---

[13] Because all of Plaintiffs' claims were dismissed for failure to allege a material misrepresentation or omission, the Court need not decide whether Plaintiffs adequately pleaded scienter for Defendants' representations about Harman's PND products—or any of Defendants' representations, for that matter. Nonetheless, the Court does note without deciding that there appears to be a strong argument in favor of Plaintiffs as to the PND products. In January of 2007, while Harman had sold only 250,000 PNDs during the previous six-month period, it predicted selling 400,000 units in the subsequent six-month period—an increase of 60%. *See* Consol. Class Action Compl. ¶ 51, ECF No. 20. Projecting such a sales spike, especially given that Harman had missed prior sales expectations, appears to have been optimistic and misleading. *See Frank v. Dana Corp.*, 646 F.3d 954, 961—62 (6th Cir. 2011) (determining that the defendant corporation making "gangbuster" projections when the industry was not doing well and sales had been falling short of the predicted range was unrealistic and contributed to a strong inference of scienter); *In re KeySpan Corp.*, No. 01 CV 585(ARR), 2003 WL 21981806, at *12—13 (E.D.N.Y.

July 30, 2003) (holding that the plaintiffs had sufficiently pleaded scienter when alleging that the defendants were aware of the company's financial and operational difficulties, and yet continued to issue "rosy" public statements indicating that "all was well . . . and getting better"). Similarly, in April of 2007, Defendants stated during a conference call with analysts that Harman was "still on track" to sell over 600,000 PNDs for FY2007. *See* Consol. Class Action Compl. ¶ 58. The company said that it had sold 300,000 units in the first three quarters of the fiscal year, in the previous nine months, and forecasted that it could sell another 300,000 in the next three months, or in only a third of that time. *See id.* What seemed more farfetched about that prediction, though, was that of the 300,000 units that had been sold in the prior 9 months, only 50,000 had been sold in the previous 3 months. *See id.* ¶ 51. Thus, Harman projected a 500 percent increase in its PND sales from the previous quarter. It is difficult to fathom how there could have been a reasonable basis to expect that sales would skyrocket so dramatically, even if they had been increasing. In July of 2007, Defendants were informed that Harman had missed projected PND sales for fiscal 2007 by more than 200,000 units, or by $85 million. *See id.* ¶¶ 55, 83. Further, between March of 2006 and July of 2007, the company had produced five versions of the PND, each time rendering older versions obsolete and relegating them to being stockpiled in a warehouse. *See id.* ¶ 53. Given these conditions, the company was one year late in releasing a saleable PND. *See id.* ¶ 54. In addition, sales were slow because the new units were priced too high to compete with other PNDs. *See id.* Yet despite just having missed PND sales projections by 200,000 units, the rising numbers of obsolete PNDs in storage, and severe pricing competition, Harman projected on August 15, 2007, that it would have a "surge of production in the new year." *Id.* ¶ 73. It predicted an "increase in the PND market" and resulting growth, anticipating sales in the Automotive division to grow by more than seven percent. *See id.* ¶ 83. Considering Defendants' repeated projections of exponentially rising PND sales, based on the allegations in the consolidated complaint, it appears that Harman "painted too rosy a picture of [its] current performance and future prospects," *Novak v. Kasaks*, 216 F.3d 300, 311—12 (2d Cir. 2000), despite

1. Acquisition by KKR and Goldman

Plaintiffs claim that Defendants made several misleading statements about the proposed merger with KKR and Goldman Sachs. *See* Consol. Class Action Compl. ¶ 70, ECF No. 20. Specifically, Plaintiffs contend that Defendants confidently predicted that the merger would close within a few months, despite having made excessive capital expenditures that violated the Merger Agreement and threatened the merger's completion. *See id.* Because these statements comprise predictions, they are only actionable if Plaintiffs have pleaded enough facts to support a strong inference that they were made with *actual knowledge* that they were false or misleading. *See* 15 U.S.C. § 78u-5. In the securities fraud context, "[t]he strength of an inference cannot be decided in a vacuum," and thus, "a court must consider plausible, nonculpable explanations for the defendant's conduct, as well as inferences favoring the plaintiff." *Tellabs*, 551 U.S. at 324. A complaint alleging securities fraud will only survive a motion to dismiss if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged. *See id.*

According to Plaintiffs, Defendants had "binged on capital spending" in June of 2007, spending $60 million in one month, such that capital expenditures exceeded $90 million in fiscal fourth quarter 2007 and nearly $175 million overall by the end of fiscal

---

having "knowledge of facts or access to information contradict[ing] [such] public statements," *id.* at 308.

2007. *See* Consol. Class Action Compl. ¶ 72. Plaintiffs further assert that Dr. Harman later admitted that the company had engaged in such "exuberant spending" during fiscal 2007. *See* Lead Pl.'s Mem. Opp'n Mot. Dismiss 25-26, ECF No. 26. By August of 2007, Plaintiffs contend, Defendants were "burning through cash" to ramp up the Missouri plant to manufacture the MyGIG radio. *See* Consol. Class Action Compl. ¶ 72. Plaintiffs assert that Defendants' August 14, 2007, statements that they anticipated completing the merger during the third or fourth quarter of the calendar year were thus misleading. *See id.* ¶ 71. Plaintiffs claim Harman's spending violated the CapEx Covenant and MAC Clause, breaching the Merger Agreement and allowing the Purchasing Companies the opportunity to abandon the merger. *See id.* ¶¶ 71-72; *see also* Mot. Hr'g Tr. 45:1-46:6, Sept. 11, 2012, ECF No. 46 (clarifying that Plaintiffs do not contend that Defendants knew the deal would not happen, but rather that the Purchasing Companies "*could* walk away from the deal" (emphasis added)). In September of 2007, the Purchasing Companies stated that Harman's excessive capital expenditures and resulting violation of the Merger Agreement caused them to abandon the acquisition. *See id.* ¶ 71.

Plaintiffs do not allege sufficient facts to give rise to a strong inference that Defendants knowingly or recklessly made misleading statements about the merger. The CapEx Covenant prohibited expenditures that exceeded the capital expenditure budget for the fiscal year. *See id.* ¶ 10. In May of 2007, Harman forecasted that its capital expenditures for the year would be $150 million. *See*

Defs.' Reply Mem. Supp. Mot. Dismiss 17, ECF No. 27. On August 29, 2007, Harman disclosed that its capital expenditures for fiscal 2007 were actually $175 million, $25 million more than the initial projection. *See id.* Defendants contend that this $175 million that Harman spent fell within the fiscal 2007 capital expenditure budget. *See id.* Further, Defendants assert, this spending was carried out by one division of the company, and Dr. Harman and Mr. Paliwal learned of it only after it had occurred. *See id.*

Though Plaintiffs characterize the spending as "exuberant," they do not provide any facts suggesting that it actually exceeded the budget. They also do not make any allegations indicating that Defendants actually believed that their spending surpassed the budget or that it was a violation of Merger Agreement, and that they knew such things when publicly predicting the merger's imminent closure. *See Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1020 (5th Cir. 1996) (determining that the plaintiffs made a conclusory, "bare allegation" in asserting that because of industry custom, the defendants must have known that suppliers' prior sales had failed to meet goals, as the plaintiffs' allegation failed to provide facts indicating that the defendants would have been aware). Indeed, Plaintiffs' allegation that the company lacked controls to prevent the spending binge, *see* Consol. Class Action Compl. ¶ 72, weakens the inference of scienter—without strict controls, it is less likely that the company's senior executives knew of the overspending in advance.

By contrast, Defendants ask the Court to draw an opposing inference that they were not aware when

making the August 14 statements predicting the merger's imminent closure within a few months that their expenditures would be deemed as exceeding the budget and violating the Merger Agreement, and that this would threaten the merger. *See* Defs.' Reply Mem. Supp. Mot. Dismiss 23. Harman contends that even as it forecasted in May of 2007 that the fiscal year capital expenditures would be $150 million, its August 29, 2007, disclosure that its actual fiscal 2007 capital expenditure was $175 million did not elicit any reaction from the market. *Id.* This disclosure was made 22 days before the Purchasing Companies abandoned the merger on September 21, 2007, citing as their reason the $25 million that Harman spent over its $150 million projection. *See* Defs.' Mem. P. & A. Supp. Mot. Dismiss 26, ECF No. 21-1; Defs.' Reply Mem. Supp. Mot. Dismiss 22, ECF No. 27. The announcement of the failed merger sent the stock price plummeting. *See* Defs.' Reply Mem. Supp. Mot. Dismiss 22. The market's failure to react when Harman initially disclosed that its capital expenditures were $25 million more than initially projected contributes to the inference that Defendants were unaware that this spending violated the CapEx covenant or would threaten the merger as the market itself did not seem to treat the $25 million overrun as noteworthy.

Plaintiffs have not alleged sufficient facts to support the inference that Defendants were actually aware that the merger would likely not go through at the time the alleged misrepresentations were issued. Because Plaintiffs' inference of scienter is not as compelling as Defendants' opposing inference, Plaintiffs have failed to allege facts that give rise to

an inference of scienter as to Defendants' statements about the merger. *See Stevens v. InPhonic, Inc.*, 662 F. Supp. 2d 105, 118, 123-24 (D.D.C. 2009) (dismissing a claim when the plaintiff failed to allege anything indicating that the defendants were aware of the flaws in their revenue calculations or internal controls, because the allegations did not support an inference of scienter as compelling as the defendants' opposing inferences); *In re Dell, Inc. Sec. Litig.*, 591 F. Supp. 2d 877, 893-94 (W.D. Tex. 2008) (determining that the plaintiffs had failed to allege facts giving rise to a strong inference of scienter that the defendants must have known about accounting violations when publishing statements artificially inflating the stock price, because the plaintiffs did not provide facts suggesting that the defendants had indeed known, and because the inference of deception that the plaintiffs offered was not as compelling as the defendants' opposing inference).

2. MyGIG Radio

Plaintiffs further allege that Defendants knowingly or recklessly signed a contract to sell MyGIG radios to Chrysler that ultimately yielded net losses, and that they made misleading statements about such sales. *See* Consol. Class Action Compl. ¶¶ 37, 43-44. Plaintiffs also contend that Defendants omitted disclosing that they would take losses on the contract, thereby rendering other statements about MyGIG sales misleading. *See id.* A "defendant corporation is deemed to have the requisite scienter for fraud only if the individual corporate officer making the statement has the requisite level of scienter, i.e., knows that the statement is false, or is at least deliberately reckless as to its falsity, at the time he or she makes the

statement." *In re Apple Computer, Inc. Sec. Litig.*, 243 F. Supp. 2d 1012, 1023 (N.D. Cal. 2002) (citing *Nordstrom, Inc. v. Chubb & Son, Inc.*, 54 F.3d 1424, 1435 (9th Cir. 1995)).

Because Plaintiffs do not allege any facts indicating that Dr. Harman learned of the alleged losses at any specific point in time after the execution of the contract, Plaintiffs must fall back on their allegation that Dr. Harman was aware or must have been aware of the risk at the time that he signed the contract. *See* Consol. Class Action Compl. ¶ 146. Though it is undisputed that Harman did ultimately take losses on the MyGIG contract with Chrysler, Plaintiffs do not allege sufficient facts indicating that Dr. Harman or any of the other defendants were aware of the risk of such losses at the time the contract was negotiated and entered into. It is unclear from Plaintiffs' allegations when exactly Dr. Harman entered into the contract, but they do state that it was initiated prior to September 6, 2006, when it was revealed in Harman's 2006 Annual Report. *See* Consol. Class Action Compl. ¶¶ 36, 38. Yet Plaintiffs also state that it was only after production of the MyGIG radio began that its technical and aesthetic problems were discovered, including its tendency to lock up on the listener or fail to play sounds. *See id.* ¶¶ 39-40. In addition, the "significant[] delay[]" of the MyGIG radio rollout "due to supply issues and Harman's inability to fulfill production needs" did not occur until 2007. *See id.* ¶ 38. The chain reaction that followed, where Chrysler decreased its order for radios and Harman's parts suppliers raised their prices, was not triggered until after this delay. See *id.* ¶ 42. Further,

although Plaintiffs allege that the contract failed to include costs for integrated circuits, *See id.* ¶ 47, Plaintiffs have not provided any allegations indicating how or why they were left out, or whether Dr. Harman was aware when finalizing the contract that they had been excluded. Indeed, at oral argument, Plaintiffs conceded that they "can't say . . . now that [they] know Dr. Harman knew it was going to be a loss . . . ." Mot. Hr'g Tr. 38:16-17, Sept. 11, 2012.[14]

Thus, the combination of factors that forced Harman to ultimately sell the MyGIG radio at a substantial loss occurred well after the contract was initiated. *See id.* ¶¶ 43-44. Plaintiffs therefore do not sufficiently allege that when signing the contract, Harman "knew or recklessly disregarded that its earnings would soften in fiscal 2007 and 2008," *see id.* ¶ 37, as it seems that this softening only became apparent after the contract was initiated. *Cf. Lormand v. US Unwired, Inc.*, 565 F.3d 228, 252 (5th Cir. 2009) (scienter was sufficiently pleaded where the plaintiffs alleged that the defendants endorsed changing the company's program despite being aware

[14] Plaintiffs allege that Dr. Harman attempted to renegotiate the contract with Chrysler—a fact that, if proven, may constitute circumstantial evidence that he learned of the alleged material losses at some point between the contract's execution and Defendants' alleged misrepresentations about the MyGIG Radio. *See* Consol. Class Action Compl. ¶ 45. However, Plaintiffs do not provide any supporting allegations showing that the renegotiation attempt was caused by Defendants' realization that the contract was generating losses. While one might infer that such was the case, that inference is not "at least as compelling as" an inference that the renegotiation was attempted for any other purpose. *Tellabs*, 551 U.S. at 324.

of the harmful effect, because the plaintiffs described various ways in which the defendants knew of the harm at the time they made the statements, including their private admissions). Because Plaintiffs have failed to allege that Defendants were aware beforehand of the problems that the MyGIG radio would involve, they have not adequately pleaded that Defendants knowingly or recklessly entered into a contract that yielded net losses. *See In re Suprema Specialties, Inc. Sec. Litig.*, 438 F.3d 256, 279 (3d Cir. 2006) (finding no scienter because, given the information available to the defendant at the time that it conducted an audit, it could not be said that it did not have an honest belief that its audits were accurate, and the plaintiff did not plead any facts otherwise); *Lovelace*, 78 F.3d at 1020 (finding no scienter because the plaintiffs did not allege anything suggesting that the defendants knew when making deals with suppliers that earnings would suffer, such as facts about who had knowledge about this harm, when they had it, or any other such details).

In addition, Plaintiffs do not plead enough facts to allege that Defendants knowingly or recklessly omitted information that made some of their statements misleading. The PSLRA requires a plaintiff to state with particularity both the facts constituting the alleged violation and the facts evidencing scienter. *See Tellabs*, 551 U.S. at 313. As noted above, Plaintiffs do not allege facts showing that Defendants were aware that they would take losses on the MyGIG contract when it was signed. Yet Plaintiffs do not provide enough facts to indicate when Defendants did in fact learn that MyGIG sales to Chrysler would incur losses. Though Plaintiffs

allege that the "MyGIG radio rollout" that was supposed to take place in 2006 was "significantly delayed" until 2007, *see* Consol. Class Action Compl. ¶ 38, and that Harman was forced to reduce its parts order in fiscal 2007 because Chrysler decreased its MyGIG order, *see id.* ¶ 42, they do not offer any facts suggesting when specifically such things occurred during this timeframe.

Plaintiffs also assert that the MyGIG radios had technical and cosmetic issues, noting that Harman employees joked during the summer of 2007 that the MyGIG radios did not produce sound. *See id.* ¶ 41. Plaintiffs do not allege, however that Defendants were aware of this, or when they learned that these problems would contribute to the net losses on sales. Similarly, while Plaintiffs state that Harman was trying to reduce costs associated with the MyGIG deal in 2006 and 2007, this allegation does not indicate that Defendants necessarily did so because they were aware at the time that the contract would result in losses. *See id.*

Plaintiffs further contend that Dr. Harman explicitly told all of the company's vice presidents in a meeting in Plymouth, Michigan that "although [Harman] was not going to make money on the MyGIG radio deal, it was strategically important to the company." *Id.* ¶ 48. Plaintiffs conspicuously leave out any facts suggesting when this statement was made, however—or even the year in which it was made. Thus, they do not sufficiently allege that Defendants knew that they would take losses on the MyGIG contract when projecting in April of 2007 that Automotive revenues would be $2.8 billion, *see id.* ¶ 57, or when making any other positive statements

in 2007 regarding earnings. *See Lovelace*, 78 F.3d at 1019 (finding inadequate a complaint that contained no facts making it reasonable to believe that the defendants knew that their statements were materially false or misleading *when made*). Plaintiffs therefore do not plead facts with particularity to give rise to a strong inference that when making such statements, Defendants knowingly or recklessly omitted disclosing that the MyGIG contract would yield net losses. *See In re PEC Solutions, Inc. Sec. Litig.*, 418 F.3d 379, 388-89 (4th Cir. 2005) (finding no scienter in allegations that the defendants omitted disclosing that they had lost a profitable subcontract from a company when making positive projections, as the plaintiffs did not plead with particularity that the defendants knew of the loss, and instead only alleged that the defendants knew that some of the company's subcontractors were being audited, and that one subcontractor's expenses were considered abusive).

Instead, Plaintiffs' facts put forward an opposing inference that, even as Defendants were experiencing difficulties with producing the MyGIG radio, they believed that they could still overcome these setbacks and have successful MyGIG sales. *See Tellabs*, 551 U.S. at 324 (holding that a plaintiff states a claim "if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged"). For instance, Plaintiffs allege that Harman was building and "ramp[ing] up" a new plant in Missouri to manufacture the MyGIG radio in hopes of mending its relationship with Chrysler. *See* Consol. Class Action Compl. ¶ 72. Defendants also gave Harman employees a "pep talk" about the MyGIG

radio, *see id.* ¶ 46, attempted to renegotiate MyGIG sales with Chrysler, and searched for areas for cost reduction, s*ee id.* ¶ 41.

Thus, whereas Plaintiffs do not allege enough facts to give rise to an inference of scienter, the facts suggest an opposing inference that Defendants were not aware that the MyGIG contract would yield losses at the time the company made positive projections, and instead believed that they could resolve the MyGIG radio's preliminary issues. *See W. Pa. Elec. Empl. Pension Trust v. Plexus Corp.*, No. 07C0582, 2009 WL 604276, at *4-5 (E.D. Wis. Mar. 6, 2009) (finding that the plaintiffs failed to sufficiently allege that the defendants' revenue projections were misleading and omitted disclosing that the contract was not an extended one, as the court found more compelling the opposing inference that they had expected to receive additional orders to extend the contract and that their expectations were not realized); *Johnson v. Pozen, Inc.*, No. 1:07CV599, 2009 WL 426235, at *14-15 (M.D.N.C. Feb. 19, 2009) (determining that it was a more compelling inference that the defendant pharmaceutical company believed that an FDA letter was only a minor setback to its drug being approved when it projected earnings and did not mention the letter, than the plaintiffs' proposed inference that the letter indicated to the defendants that the drug would not be approved).

Finally, although Plaintiffs allege that some of Defendants' statements about MyGIG sales are actionable in themselves, scienter is not supported because it appears that they had a reasonable basis when made. *See Kowal*, 16 F.3d at 1277 (holding that statements of optimism give rise to a strong

inference of scienter if they lacked a reasonable basis when made). Plaintiffs claim that Defendants made misleading statements about increasing sales and leadership in the infotainment market, such as their May 10, 2007, statement in Harman's Form 10-Q that the company "anticpate[d] that DaimlerChrysler, Toyata/Lexus, Audi/VW and BMW [would] continue to account for a significant portion of [Harman's] net sales and accounts receivable for the foreseeable future." Consol. Class Action Compl. ¶ 66; *see also id.* ¶ 57 (Harman expected "a further expansion of Infotainment through midrange and entry-level automobiles"); *id.* ¶ 74 ("With earlier awards . . . from PSA, Audi and Chrysler, [Harman had] established its leadership in the mid-range and entry levels," which was solidified with the previous "year's major awards from BMW."); *id.* ¶ 100 (noting that Harman "expect[ed] Automotive sales to increase approximately 15%").

There is nothing indicating that these statements lacked a reasonable basis when made, as they discussed *sales* of the MyGIG radio to an entire automotive *sector* (and not Chrysler in particular). Assuming Harman was taking a monetary loss on MyGIG sales to Chrysler, it would still ultimately make sales of the product. Its total net sales would therefore increase, even if its earnings from such sales would not. Further, Defendants' projections cite sales to several automobile dealers, only one of which is Chrysler. Plaintiffs do not allege anything indicating that sales from these other contracts would not have allowed Harman to expand into the infotainment market, even with the Chrysler losses.

Because Plaintiffs have not alleged facts indicating that Defendants were aware that the MyGIG contract would be detrimental when entering into it, that they learned of that fact at any other specific point in time before issuing positive statements, or that their statements regarding MyGIG sales lacked a reasonable basis when made, Plaintiffs have not alleged a strong inference of scienter as to their claim about the MyGIG radio.[15]

V. CONTROL PERSON LIABILITY

Plaintiffs also claim that Defendants are subject to control person liability under section 20(a) of the Securities Exchange Act of 1934. Section 20(a) imposes joint and several liability upon individuals who exercise control over a violator of section 10(b), such as a corporation. *See Stevens v. InPhonic, Inc.*, 662 F. Supp. 2d 105, 129 (D.D.C. 2009) (citing 15 U.S.C. § 78t(a) (2006)). A properly pleaded section

---

[15] Defendants contend that Plaintiffs' allegations regarding the MyGIG contract are based on a confidential source who learned information from another person that was present at the negotiations. *See* Defs.' Reply Mem. Supp. Mot. Dismiss 16, ECF No. 27. Defendants thus argue that the statements put forward by Plaintiffs constitute triple hearsay and should not be considered, even at the motion to dismiss stage. In *Tellabs*, the Supreme Court explicitly rejected any standard that would "transpose to the pleadings stage the test that is used at the summary judgment and judgment-as-a-matter-of-law stages." *Tellabs*, 551 U.S. at 324 n.5. Indeed, a "confidential witness report[ing] hearsay does not automatically disqualify his statement from consideration in the scienter calculus." *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 998 n.4 (9th Cir. 2009). In any event, Defendants' argument is moot, as Plaintiffs' claims regarding the MyGIG contract are dismissed on other grounds.

20(a) claim must allege that a defendant controlled another person, and that the "controlled person" committed the primary violation of section 10(b). *See id.* (citing *In re Alpharma Inc. Sec. Litig.*, 372 F.3d 137, 153 (3d Cir. 2004)). Here, because Plaintiffs have not adequately pleaded a violation of section 10(b) and rule 10b-5 by the defendant corporation, they have not sufficiently alleged that the individual defendants are liable as control persons over Harman. *See In re Alpharma Inc. Sec. Litig.*, 372 F.3d 137, 153 (3d Cir. 2004) ("[B]ecause plaintiffs failed to state a Rule 10b-5 claim against the company, its Section 20(a) claim against the Individual Defendants fails as well."), *abrogated on other grounds by Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007). Accordingly, Plaintiffs' section 20(a) claims against the individual defendants are dismissed.

VI. CONCLUSION

In sum, Plaintiffs' claims against Harman under section 10(b) and rule 10b-5 fail to state a single actionable material misrepresentation or omission. With respect to Defendants' statements about the proposed merger and the MyGIG radio, Plaintiffs additionally failed to plead enough facts to support a strong inference of scienter. Because of these failures, the Court need not reach the question of whether Plaintiffs adequately pleaded loss causation. Moreover, because Plaintiffs have not pleaded a primary securities fraud violation, their claim against the individual defendants under section 20(a) fails as well. For the foregoing reasons, the Court will dismiss the complaint. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: January 17, 2014 *<u>/s/ Rudolph Contreras</u>*
RUDOLPH CONTRERAS
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14-7017 **September Term, 2014**

1:07-cv-01757-RC

Filed On: August 26, 2015

In re: Harman International Industries, Inc. Securities Litigation,

----

Arkansas Public Employees Retirement
System, Individually and on Behalf of All
Others Simiarly Situated,

Appellant

Cheolan Kim and City of Boca Raton General Employees Pension Plan, on Behalf of Itself and All Other Similarly Situated -

(CA-07-2175),

Appellees

v.

Harman International Industries Inc., et al.,

Appellees

BEFORE: Garland, Chief Judge; Henderson, Rogers, Tatel, Brown, Griffith, Kavanaugh, Srinivasan, Millett, Pillard, and Wilkins, Circuit Judges

O R D E R

Upon consideration of the petition of appellees Harman International Industries, Inc., et al., for rehearing en banc, the response thereto, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken R. Meadows
Deputy Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14-7017 **September Term, 2014**

1:07-cv-01757-RC

Filed On: August 26, 2015

In re: Harman International Industries, Inc. Securities Litigation,

----

Arkansas Public Employees Retirement
System, Individually and on Behalf of All Others Simiarly Situated,

Appellant

Cheolan Kim and City of Boca Raton General Employees Pension Plan, on Behalf of Itself and All Other Similarly Situated -

(CA-07-2175),

Appellees

v.

Harman International Industries Inc., et al.,

Appellees

BEFORE: Henderson, Rogers, and Pillard, Circuit Judges

O R D E R

Upon consideration of the petition of appellees Harman International Industries, Inc., et al., for panel rehearing filed on July 23, 2015, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT*:*
Mark J. Langer, Clerk

BY: /s/
Ken R. Meadows
Deputy Clerk

APPENDIX E

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

IN RE HARMAN INTERNATIONAL INDUSTRIES, INC. SECURITIES LITIGATION	Case No. 1:07-cv-01757 (RWR) CONSOLIDATED CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

Lead Plaintiff Arkansas Public Employees' Retirement System ("Lead Plaintiff") alleges the following based upon the investigation by Lead Plaintiff's counsel, which included, among other things, interviews with former employees, a review of Defendants' public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Harman International Industries, Inc. ("Harman" or the "Company"), securities analysts' reports and advisories about the Company, and information readily available on the Internet. Lead Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. NATURE OF THE ACTION AND OVERVIEW

1. This is a federal class action on behalf of purchasers of the common stock of Harman between April 26, 2007 and February 5, 2008, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Harman claims to be a leading manufacturer of high-quality, high fidelity audio products and electronic systems for the automotive, consumer, and professional markets in the Americas, Europe, and Asia. The Company's products include integrated information and entertainment systems for automobiles that sell under brand names such as Harman Kardon, Infinity, and Becker. Harman's common stock is traded on the New York Stock Exchange under the symbol "HAR."

3. Throughout the Class Period, Defendants knowingly or recklessly propped up Harman's stock price by issuing materially false and misleading disclosures regarding the Company's financial condition in fiscal 2007 (ending June 30, 2007) and in fiscal 2008 (beginning July 1, 2007). During the Class Period, Defendants knowingly or recklessly failed to disclose material adverse facts about the Company's financial condition. At the center of the Company's deteriorating financial condition were two new products produced and sold by the Automotive division, the MyGIG radio and the Personal Navigation Device ("PND"). In fiscal 2007, Harman began manufacturing and selling an important new mid-level infotainment system for Chrysler known as the MyGIG radio. The Company's contract to manufacture the MyGIG radio for Chrysler was

generating a material loss for the Company. Similarly, Harman's Automotive division's earnings were under pressure from the introduction of PNDs and related decreased sales and margins due to aggressive price reduction by competitors, the delay of new products, mounting inventory and the sale of obsolete PND products at a substantial discount.

4. In addition, Defendants knowingly or recklessly failed to disclose that Harman's capital expenditures were spiraling out of control; that its sales of MyGIG radios and PNDs were causing and would continue to cause operating margins to decline; and that because of delays in production and mechanical and quality control problems with the MyGIG radio, the Company's relationship with Chrysler had deteriorated.

5. In fact, these material but undisclosed facts placed Harman in breach of the Merger Agreement relating to its previously highly-touted merger (the "Acquisition") with a company formed by Kohlberg Kravis Roberts & Co. L.P. ("KKR") and an affiliate of Goldman Sachs & Co. ("Goldman") (collectively, the "Purchasing Companies"), valued at approximately $8 billion. At the time they announced the Acquisition and stated that it was in the best interest of shareholders, Defendants' forecasts for the Company's operating income and earnings generated by the Automotive segment—Harman's key division—demonstrated that the Company's business conditions had deteriorated and would continue to deteriorate during fiscal 2007 and fiscal 2008.

6. On September 21, 2007, the Company announced that the Acquisition had been abandoned by the Purchasing Companies. According to the

Company, the Purchasing Companies "informed Harman that they believe that a material adverse change in Harman's business has occurred, that Harman has breached the Merger Agreement and that they are not obligated to complete the merger."

7. On this news, shares of the Company's stock fell from the previous day's closing price of $112.34 to a September 21, 2007 close of $85.00, a drop of $27.34. Moreover, the Company's share price continued to fall and closed on September 24, 2007, the next trading day, at $80.31 per share on adverse and unexpected news about excessive research and development ("R&D") expenses, and the possibility that there would be no earnings growth in the 2008 fiscal year (July 1, 2007 to June 30, 2008). Therefore, within two trading days, the Company's share price fell approximately $32 per share, or almost 30 percent, on extremely heavy trading volume.

8. As fiscal 2008 began, it became increasingly difficult for Defendants to maintain the charade of their knowing and reckless false projections of operating income and earnings per share. Defendants had knowingly or recklessly presented to shareholders, analysts and the market materially false and misleading information regarding the Company's Automotive division's sales, operating income, operating margins and earnings per share during the Class Period. On January 14, 2008, prior to the market's open, Harman announced that it had significantly reduced its previously-announced guidance and lowered projected earnings per share for fiscal 2008 to between $3.00 and $3.10 per share, which was over 40% lower than the $5.25 per share earnings originally forecasted by Defendants for

fiscal 2008. The Company's change in guidance was attributed to pricing pressures from a "major shift" in the market for PNDs. Harman's stock dropped precipitously from the prior trading day's close of $68.97 to close at $43.00 per share, a 37.65% drop and a four-year low.

9. But the full truth was still not disclosed. Finally, on February 5, 2008, Harman announced its financial results for the fiscal Second Quarter 2008, and disclosed that its Automotive division's earnings were "under pressure" due to decreases in PND sales and margins caused by "aggressive price reduction by competitors, the delay of new products, and the sale of older products at substantial discounts." In response, shares of the Company's stock fell from a closing price of $45.73 on February 5, 2008 to $38.70 on February 6, 2008, which was more than a 15 percent drop in the stock price per share.

10. Until its September 21, 2007 announcement that the Acquisition would not take place, the Company had widely promoted its merger with the Purchasing Companies and had represented that the merger would occur in the calendar Third or Fourth Quarter of 2007 and was subject only to "the approval of Harman stockholders, customary closing conditions and regulatory approvals." The seemingly committed $120 per share Acquisition price had driven up the price of Harman stock to higher than $112 per share only days before the Company's announcement that the Acquisition was terminated. What Defendants knew or recklessly disregarded, but failed to disclose, was that there were significant risks that the Acquisition would never occur.

11. In particular, the Merger Agreement between Harman and the Purchasing Companies included a) a provision which prohibited the Company from exceeding certain levels of capital expenditures (the "CapEx covenant"), and b) a provision which allowed the Purchasing Companies to walk away from the Acquisition if a "material adverse effect" occurred, defined to include "[any event which] has or would be reasonably expected to have a material adverse effect on or with respect to the business, results of operations or financial condition of the Company" (the "MAC clause").

12. What Defendants knew or recklessly disregarded, but failed to disclose to investors, was that the Company's capital expenditures were spiraling out of control, in breach of the CapEx covenant in the Merger Agreement. Indeed, Defendants later admitted that the Company's Automotive division, headquartered in Germany, had "binged on capital spending" and spent "$60 million in one month," and that there were no controls in place to prevent this exuberant spending.

13. Additionally, Defendants failed to disclose that one of the Company's largest contracts, a contract to supply Chrysler with MyGIG radios for installation in mid-level vehicles, was underbid and was causing the Company to lose money, and, consequently, was negatively impacting profit margins. The MyGIG radio deal was also plagued with other problems from the beginning, including delays in production and mechanical issues which prevented the radios from working properly. As Chrysler decreased its orders for the MyGIG radios, a large inventory of unsold radios accumulated. Ultimately, Harman's

relationship with Chrysler—on which the Company had depended for 26% of its net sales—deteriorated beyond repair.

14. Finally, Harman belatedly disclosed that it was also experiencing disappointing sales of its PND products in Europe and high levels of PND inventory due to delays in production, competitive pricing, and newer competing models. Indeed, the Company had begun selling obsolete PNDs at deep discounts. Thus, the situation with respect to the PNDs was precisely the same as with the MyGIG radio: Harman had invested substantial sums of money in developing, manufacturing, and marketing a product which it either could not sell or was selling at a substantial loss. Despite Defendants' knowledge or reckless disregard during the Class Period of material adverse facts concerning the Company's PNDs—notably, a large sale and return of PNDs in early fiscal 2008, and the fact that costs associated with the PNDs had caused the Company to miss its First Quarter 2008 earnings forecast—Defendants did not fully disclose these facts to investors until February 5, 2008, the end of the Class Period.

15. Counsel for Lead Plaintiff investigated the deliberate or reckless acts giving rise to the claims in this action. Counsel's investigation included interviews with numerous former employees of Harman who worked for the Company during the Class Period and had direct responsibility for or were familiar with the products, operating costs and sales contributing to the declining operating income and operating margins described herein.

16. As a result of Defendants' wrongful and reckless acts and omissions, and the precipitous

decline in the market value of the Company's common stock, Lead Plaintiff and other Class Members have suffered significant losses and damages.

II. JURISDICTION AND VENUE

17. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

18. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

19. Venue is proper in this judicial district pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this judicial district. Additionally, Harman's principal place of business was at all relevant times located within this judicial district.

20. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to the United States mails, interstate telephone communications, and the facilities of the national securities exchanges.

III. PARTIES

21. Lead Plaintiff, as set forth in the certification filed in conjunction with its motion for appointment as lead plaintiff, incorporated by reference herein,

purchased Harman's common stock at artificially-inflated prices during the Class Period and has been damaged thereby. During the Class Period, Lead Plaintiff purchased 29,800 shares of Harman common stock and lost more than $1.68 million as a direct result of such purchases.

22. Defendant Harman is a Delaware corporation that, at all relevant times, had its executive offices located at 1101 Pennsylvania Avenue, N.W., Suite 1010, Washington, D.C. 20004.

23. Defendant Dr. Sidney Harman ("Dr. Harman") was, at all relevant times, the Company's founder and Executive Chairman of the Board of Directors. Dr. Harman also served as the Company's Chief Executive Officer ("CEO") from January 1, 2007 to June 30, 2007, when he relinquished the CEO title. Subsequently, in October 2007, Dr. Harman announced that he would forgo the title "Executive Chairman" effective on December 17, 2007. He continued as the Chairman of the Board of Directors.

24. Defendant Dinesh Paliwal ("Paliwal") joined the Company as President, CEO and Vice Chairman of the Board of Directors on July 1, 2007, and he maintained these positions thereafter through the end of the Class Period. Paliwal is only being sued for the time period from July 1, 2007 through the end of the Class Period.

25. Defendant Kevin Brown ("Brown") was, at all relevant times, the Company's Executive Vice President and Chief Financial Officer ("CFO").

26. Defendants Dr. Harman, Paliwal and Brown are collectively referred to hereinafter as the "Individual Defendants."

27. The Individual Defendants, because of their positions with the Company, possessed the power and authority to control and did control the contents of Harman's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers, and institutional investors, i.e., the market. Each of the Individual Defendants was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each "group published" information, the result of the collective actions of the Individual Defendants.

IV. BACKGROUND

A. The Merger Announcement

28. On April 26, 2007, Defendants announced that Harman had agreed to be acquired by KKR and Goldman. Defendants issued a press release to announce that the Purchasing Companies would acquire Harman for $120 per share, as follows:

Harman Stockholders Can Elect to Receive $120 Per Share In Cash or Shares in Post-Transaction Company

Transaction Valued at Approximately $8 Billion

Harman International Industries, Inc. (NYSE: HAR) today announced that it has entered into an agreement to be acquired by affiliates of Kohlberg Kravis Roberts & Co. L.P. ("KKR") and GS Capital Partners ("GSCP") in a transaction valued at approximately $8 billion. The transaction was unanimously approved by the Harman Board of Directors, following the recommendation of a Special Committee of independent directors. KKR initiated discussions with Harman and structured the transaction so that current Harman stockholders have the opportunity to participate in the future upside potential of the enterprise. The company will continue to be named Harman International Industries and Dr. Sidney Harman, Founder and Executive Chairman, will remain Executive Chairman.

* * *

Under the terms of the agreement, Harman stockholders will be entitled to receive $120 in cash for each share of Harman common stock they hold. As an alternative to receiving the cash consideration, Harman's stockholders will be offered the opportunity to elect, on a purely voluntary basis, to exchange some or all of their shares of Harman stock for shares in the new corporation incorporated by KKR and Goldman in order to acquire Harman.

29. In the press release issued on April 26, 2007, Defendants expressly stated that the Acquisition was expected to close in the calendar Third Quarter of 2007 (July-September 2007), as follows:

> Completion of the transaction, which is expected to occur in the third quarter of 2007, is subject to the approval of Harman stockholders, customary closing conditions and regulatory approvals.

30. In commenting on the agreement for Harman to be acquired by the Purchasing Companies in the same press release, Dr. Harman stated:

> We are pleased to reach an agreement with KKR and Goldman that is in the best interest of our stockholders, presenting them with excellent value for their shares and the opportunity to participate in Harman's future growth. KKR and GSCP are two of the world's leading private equity investors and our Board of Directors strongly believes that this transaction will create attractive long-term opportunities for our employees, customers and business partners. Together, we will continue to execute our strategic plan, capitalize on new opportunities, and build on our history of product innovation and service excellence.

31. The $120 per share price disclosed as the Acquisition exchange price by the Company's April 26, 2007 press release was a 17% premium over the prior day's close of $102.56 per share. On April 26, 2007, over 7 million shares of Harman's common stock were traded, which was extremely heavy trading, and the

stock closed at $122.50 per share—19% higher than on April 25, 2007.

B. The Merger Agreement

32. To effectuate the Acquisition, the Company entered into an agreement (the "Merger Agreement") with KKR and Goldman. The Merger Agreement was attached to a press release issued on April 27, 2007 by Defendants and filed with the SEC on Form 8-K, and stated in pertinent part:

> The Company has made customary representations and warranties in the Merger Agreement and *agreed to customary covenants, including covenants regarding operation of the business of the Company and its subsidiaries prior to the closing*. (emphasis added).

C. The CapEx Covenant

33. Among the provisions of the Merger Agreement was a restriction on the Company's capital expenditures while the proposed Acquisition was pending. The CapEx covenant restricted capital spending and expressly provided: "the Company shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of Parent (not to be unreasonably withheld or delayed):

> (vi) make any capital expenditures (or authorization or commitment with respect thereto) in a manner reasonably expected to cause expenditures (x) to exceed the capital expenditure budget for the 2007 fiscal year previously provided to Parent or (y) for the 2008 fiscal year to exceed the 2008 capital expenditure budget taking into account reasonably anticipated expenditures for the

balance of the year as well as expenditures already committed or made (assuming for this purpose that fiscal 2008 capital expenditure budget will not exceed 111% of the fiscal 2007 capital expenditure budget).

D. The MAC Clause

34. In addition, the Merger Agreement included a "MAC" clause that allowed the Purchasing Companies to terminate the Acquisition in the event of a material adverse change in Harman's business. Specifically, in the Merger Agreement Defendants warranted that:

(a) Since December 31, 2006, through the date of this Agreement, except for the transactions contemplated hereby, the business of the Company and its Subsidiaries has been conducted, in all material respects, in the ordinary course of business consistent with past practice.

(b) (i) Since December 31, 2006, through the date of this Agreement, there has not been any facts, circumstances, events, changes, effects or occurrences that, individually or in the aggregate, would be reasonably expected to have, a Company Material Adverse Effect; and (ii) since the date of this Agreement there shall not have occurred any event, change, effect or occurrence that, individually or in the aggregate, would be reasonably expected to have a Company Material Adverse Effect.

35. The Merger Agreement expressly defined the MAC clause in terms of a Material Adverse Effect:

> "Company Material Adverse Effect" means any fact, circumstance, event, change, effect or occurrence that, individually or in the aggregate with all other facts, circumstances, events, changes, effects, or occurrences, (1) has or would be reasonably expected to have a material adverse effect on or with respect to the business, results of operation or financial condition of the Company and its Subsidiaries taken as a whole, or (2) that prevents or materially delays or materially impairs the ability of the Company to consummate the Merger . . .

E. The MyGIG Radio

36. Prior to the Class Period, Defendants entered into a contract for Harman to manufacture MyGIG radios for Chrysler. According to a former MyGIG radio purchasing manager (the "MyGIG Purchasing Manager") for Harman Becker's Automotive Division at Harman's Farmington Hills, Michigan facility who worked at Harman from early 2005 through early 2007, the MyGIG radio was produced as a "mid-level" infotainment system to be installed in many Chrysler vehicles, including minivans, Dodge Nitros and 300 sedans.

37. According to the Accounting Manager, the Company entered into the mid-level market for infotainment systems to fill a revenue hole that was expected from the loss of certain revenue generated by sales to Mercedes of first generation navigation system units. This Mercedes contract had generated $400 million annually for the Company, and according to the Company's fiscal 2006 Business Plan, which the Accounting Manager received and reviewed while he was employed at the Company,

Defendants knew that Harman's revenue in fiscal 2007 and 2008 would be adversely impacted by the related loss of revenue. Accordingly, to fill the "revenue hole," Harman entered into a contract with Chrysler that would fill the loss of revenue stream from the Mercedes navigation system units, but the Chrysler sales contributed significantly less to operating income and operating margins than the Mercedes contract had been contributing prior to fiscal 2007. Therefore, Defendants knew or recklessly disregarded that the Company's earnings would soften in fiscal 2007 and fiscal 2008.

38. In Harman's 2006 Annual Report, issued on September 6, 2006, the Chrysler MyGIG radio was highlighted as a state-of-the art infotainment system and very important because it was the "first true Infotainment System to be offered by one of the traditional Big 3 American automakers." The MyGIG radio rollout was supposed to take place in 2006, but it was significantly delayed until 2007 due to supply issues and Harman's inability to fulfill production needs, according to a former director of continuous improvement in Harman's Automotive Division in Farmington Hills, Michigan (the "Improvement Director") who worked at the Company in the Automotive division from 2004 through July 2007.

39. The MyGIG Purchasing Manager stated that the MyGIG radios were built in Harman's new Washington, Missouri plant, and pilot versions of the radios were developed in Harman's Automotive corporate headquarters in Martinsville, Indiana and in Farmington Hills, Michigan. The MyGIG radios were problematic from a profitability standpoint and also were "plagued" with various technical and

cosmetic issues, according to the MyGIG Purchasing Manager.

40. The Quality Assurance Manager said that Harman Becker could not get sounds out of all of the MyGIG radios. Customers had reported that the MyGIG "locked up" on the listener. In Summer 2007, the Quality Assurance Manager attended the "MyGIG Concert," which featured Faith Hill and Tim McGraw, and after the concert, Harman employees joked at the Company's office that the entertainers "could not have been using a MyGIG radio at the concert because there was actually music coming out of the speakers." The Quality Assurance Manager also stated that Chrysler was already disappointed with the MyGIG deal because Harman Becker was one year behind in the launch date, and Harman "couldn't get the radio out" and "Chrysler had trucks parked outside the Chrysler plant waiting for the radios."

41. The MyGIG Purchasing Manager stated that he regularly participated in Monday meetings with Chrysler's purchasing group in which Chrysler employees vented angrily about Harman's repeated delays in producing the radios and failure to explain the cause of the delays. The MyGIG Purchasing Manager stated that with respect to the MyGIG radio, a "lot of stall tactics were being used" by Harman. The Improvement Director stated that his responsibilities at the Company included searching for areas for cost reduction, and that in 2006 and 2007, Harman was trying to reduce costs associated with the MyGIG deal, and its inability to do so was a "big deal."

42. Compounding the problem throughout fiscal 2007, Chrysler reduced its number of orders for the MyGIG radio. Harman plant workers in Washington, Missouri complained to the MyGIG Purchasing Manager about "significant" decreases in volume orders and consequently production for the MyGIG radios. This decrease in orders and production resulted in reduced needs for parts for the MyGIG radio to be ordered by Harman, which caused suppliers to raise prices for the parts. The MyGIG Purchasing Manager stated that during fiscal 2007, the price of capacitors and a number of other commodities increased dramatically. The decrease in volume was a "huge problem for Harman" according to the MyGIG Purchasing Manager.

43. Another former Harman employee, who was a senior quality assurance engineer at Harman's Farmington Hills, Michigan plant (the "Quality Assurance Engineer") from 2003 through September 2007, had responsibility throughout 2007 for trying to resolve quality assurance problems associated with the Chrysler MyGIG radio. The Quality Assurance Engineer stated that the contract Harman signed with Chrysler in 2005 to provide Chrysler with MyGIG radios created a loss for Harman because Harman sold each radio to Chrysler for $800, but the Company spent $964 to build each radio. Therefore, Harman was losing $164 on each radio and had committed to produce up to 200,000 annually for Chrysler.

44. During the Class Period, Defendants reported that Harman's Automotive division's total operating income for fiscal 2007 was approximately $340 million. The Accounting Manager stated that the

Company's forecasted loss resulting from the MyGIG production and sales was highly material to Harman's Automotive division. According to the Accounting Manager, annual sales for the Automotive division were $450 million in North America, and the Company was "looking" at annual sales of the MyGIG radio to Chrysler of $250 million. Therefore, Harman's highly-touted MyGIG radio was slated to generate more than 50% of Automotive sales in North America at a substantial loss of approximately $32 million annually—almost 10% of Harman Automotive's total operating income, based on the commitment to provide 200,000 units to Chrysler.

45. The Quality Assurance Engineer further stated that Defendants were unsuccessful in renegotiating the contract with Chrysler after several attempts to renegotiate it in 2006 and 2007. The MyGIG Purchasing Manager stated that he attended meetings in Winter 2005 with the Director of Purchasing for Harman (the "Purchasing Director") regarding the MyGIG radio. According to the MyGIG Purchasing Manager, a purchasing meeting was held at the Company's facility in Farmington Hills, Michigan, and the MyGIG Purchasing Manager was one of six employees present at the meeting in Winter 2005. The MyGIG Purchasing Manager stated that at this meeting, the Purchasing Director discussed Dr. Harman's personal role in negotiating the MyGIG contract. In addition, upon information and belief, Dr. Harman told all employees at the Farmington Hills facilities during a Business Award meeting at the end of 2005 that he had personally negotiated the MyGIG radio deal.

46. One year later, Dr. Harman visited the Farmington Hills office to "give a pep talk to employees regarding the MyGIG radio." According to the MyGIG Purchasing Manager, Dr. Harman had "just come from a meeting at Chrysler" at which Dr. Harman apparently had requested a "price up" on the MyGIG radio, which the MyGIG Purchasing Manager understood was denied.

47. The MyGIG Purchasing Manager stated that the Purchasing Director had informed him that the Purchasing Director was frustrated with the MyGIG contract negotiation because initially there was omission of certain items that caused prices on the Company's end to increase. Specifically, the Purchasing Director told the MyGIG Purchasing Manager that Dr. Harman had negotiated a contract which failed to include costs associated with integrated circuits ("ICs"), which are very expensive electronic devices that created power for the MyGIG radios. According to the MyGIG Purchasing Manager, "ICs are the brains of the MyGIG." The MyGIG Purchasing Manager said that the Purchasing Director told him that Dr. Harman had initially negotiated a contract for the MyGIG radios that had omitted pricing for the ICs.

48. Upon information and belief, Dr. Harman told all Vice Presidents for the Company in a meeting in Plymouth, Michigan that he knew that the MyGIG had aggressive price targets and that although the Company was not going to make money on the MyGIG radio deal, it was strategically important to the Company.

F. The PND Sales and Margins

49. Harman brought its PND product to market in Europe as part of the "Aftermarket" division of its Automotive sector, which sold PNDs and other electronic equipment to aftermarket retailers. In early 2006, Harman began selling PNDs and initially sold 35,000 PND units in the Third Quarter of fiscal 2006 (January-April 2006). Shortly thereafter, Harman launched a new model, which the Company expected to double or triple its PND sales.

50. In October 2006, Defendants reported that the Company had enjoyed PND success in Europe and reported that Aftermarket sales were "robust" and that it had sold 95,000 PND units in fiscal First Quarter 2007 (July-August 2006). Based on fiscal First Quarter 2007 sales of PNDs, Dr. Harman stated that the Company expected to sell "well over 500,000 units" in Europe in fiscal 2007.

51. In January 2007, Dr. Harman reported that the Company had sold almost 250,000 PNDs for the first half of fiscal 2007 and claimed that Harman's PND sales were accelerating. Therefore, Defendants raised projections for sales and stated that for the year, Defendants "now expect sales to exceed 650,000 units." Defendants claimed that in certain areas of Europe Harman sold the second leading PND brand and its position was strengthening "even as margin holds relatively firm." On April 26, 2007, Defendant Brown stated that the selling price in Europe on Harman's PND was approximately $350 per unit and that the Company had sold approximately 130,000 units in fiscal Second Quarter 2007.

52. A former employee of Harman who worked in sales engineering at Harman's Martinsville, Indiana office from mid-2005 through July 2007 and for approximately seven years prior to that as an accountant at Harman (the "Sales Engineer"), stated that internal reports regarding the highly-touted PNDs presented a much more dire situation than the upbeat outlook for PNDs as publicly described by Defendants. The Sales Engineer was responsible for managing the Automotive division's business relations with certain large customers and had spoken to sales representatives at Harman in early 2007 about Harman's need to drop the price of its PNDs to remain competitive.

53. According to the Sales Engineer, Harman's PNDs had not been selling in the numbers that Harman had anticipated in 2006 and, consequently, many of the PNDs were being stored in a warehouse. Also according to the Sales Engineer, Harman's PNDs "did not sell to projection in 2007" and the Company had a stockpile of PNDs in inventory. The Sales Engineer further explained that Harman had dropped the price approximately $100 and made a modification to the PNDs early in 2007 that "made the PNDs in the warehouse in Germany obsolete."

54. According to a former employee who was responsible for accounting activities at one of Harman's manufacturing facilities and worked at Harman from 2001 through late 2007 (the "Accounting Manager"), and who was familiar with Harman's PND sales during his tenure with the Company, Harman released approximately five versions of the same PND between March 2006 and July 2007, but it was not until July 2007 that the

Company sold a significant number of the devices. He further stated that Harman was about "one year late in releasing a saleable PND" and that "sales were slow because the PNDs were priced too high to compete with other PNDs."

55. The Company had missed projected PND sales by more than 200,000 units in fiscal 2007. According to the Accounting Manager, Harman's Automotive division distributed monthly and fiscal year-end operating reports (the "Operating Reports") that were authored by executives of Harman Automotive in Germany and distributed to Harman International Executives, including Defendants Dr. Harman and Brown, and after July 1, 2007 to Defendant Paliwal, as well as to several other executives and numerous lower-level accounting or financial personnel, including the Accounting Manager. According to these Operating Reports reviewed by the Accounting Manager when he worked at Harman, the Company missed projected sales of PND units in fiscal 2007 by more than 200,000 units, notwithstanding that Defendants had engaged in aggressive price reductions to move obsolete PND inventory in June 2007.

56. In June 2007 (immediately prior to Harman's fiscal year end), Defendants entered into an agreement to sell 100,000 PND devices to a customer called Paragon for $240 each, which was $110 lower than what Brown had publicly disclosed on April 26, 2007 as the selling price in the amount of $350 each for PNDs. According to the Accounting Manager, the Operating Reports stated that the sale of 100,000 PND units in Fourth Quarter fiscal 2007 had failed to materialize and the sale to Paragon was not

completed before fiscal year end. Although the Company sold all of the 100,000 PND units to Paragon at $240 each in July 2007, the Operating Reports reflected that Defendants had missed their projected PND sales by at least $85 million in fiscal 2007.

V. MATERIALLY FALSE AND MISLEADING STATEMENTS AND MATERIAL OMISSIONS DURING THE CLASS PERIOD

A. Third Quarter Fiscal 2007 Results

57. On April 26, 2007, the same day the Acquisition was announced, the Company held a conference call to discuss its fiscal Third Quarter 2007 (January 1, 2007 through March 31, 2007) results. Dr. Harman presented a very favorable report on the Company's operations and financial performance for fiscal 2007 (July 1, 2006 to June 30, 2007) and guidance for fiscal 2008. Specifically, Dr. Harman stated the following:

> We begin the fourth quarter of the year [fiscal fourth quarter April 1, 2007 through June 30, 2007] and we look to fiscal '08 with a backlog of $14 billion. *We continue to expect fiscal '08 Automotive OEM revenues at $2.8 billion and EPS of $5.25*, subject to the probability that we will not be able to absorb the $46 million engineering bulge I identified in our previous earnings call. Let me remind that the bulge is driven by work on $1.1 billion of new business unanticipated when we first planned fiscal '08, and by continuing new work on Driver Assist. If we are unable to absorb the $46 million R&D

bulge, the projected fiscal ‘08 EPS would become $4.79.

* * *

There are challenges as there are opportunities throughout the markets and throughout the technologies with which we work. Those opportunities include geographic expansion in Asia, and especially in China. They include a further expansion of Infotainment through midrange and entry-level automobiles.

* * *

As I look forward to our future in OEM, I see an interesting assembly of opportunity and challenge. I have already spoken about market opportunity. Here, I recognize and emphasize that recognition, that our growth has been accompanied by variances in efficiency. We are determined to rationalize our engineering and to reduce significantly the percentage of sales that R&D represents. I have spoken about this before. I mention it now not because I have some major new insight, but precisely to emphasize the fact that it is before us, that we have our work cut out, but we intend to get it done.

* * *

I had indicated in earlier conference calls that the PND environment in Europe was not as margin challenged as it is in the United States, but that we could surely anticipate it. There was reasonable foresight in that observation. In the recent quarter, the European PND market has become extremely competitive. We are working extraordinarily hard to increase sales and to

> maintain adequate margins in that environment. In our earnings call three months ago, it was noted that Harman/Becker PND inventories in Europe had grown substantially. We said then that the inventory had been developed to support a vigorous sales effort and that we planned to reduce it to normal levels at year-end. *The plan forecasts total unit sales of 618,000 units for the fiscal '07 year, and that plan is proceeding. Where March 31 inventory was $75 million, we expect April 30 inventory to be approximately $50 million, May 31 inventory to be approximately $30 million, and June 30 inventory to be approximately $15 million, that a very normal level.* Overall, the European market for our high fidelity and multimedia products is a very bright spot in our consumer business.
>
> * * *
>
> Inventories were $480 million at March 31, an increase of $142 million compared to the prior year. *As of the second quarter, inventory increases are primarily in Automotive to support the growing PND business.* (emphasis added).

58. Following the prepared comments on the conference call on April 26, 2007, Dr. Harman and Defendant Brown responded to analysts' questions regarding Dr. Harman's reference to sales of PNDs and increased competition for PNDs in Europe as follows:

> JAIRAM NATHAN: Okay, just one more question. On the European PNDs, you said that the competition has kind of increased. Is it because of higher competition that you're seeing

pricing pressure or is it because the growth is slowing and there are more people vying for the same growth?

SIDNEY HARMAN: No, I think it is the former.
JAIRAM NATHAN: It is just more competition?

SIDNEY HARMAN: Oh, yes.

* * *

PETER FRIEDLAND: Okay. And then as far as Becker PND units, you said you're still on track for 618,000 units for fiscal '07.

Where are we year-to-date? And then the second question on the Harman Kardon PND, what are the units there?

SIDNEY HARMAN: While Kevin is checking his records, let me just tell you that the Harman Kardon PNDs are just too early to even begin to read retail sales. They are moving into retail channels. Ask us in the next quarter.

Peter, do you have information on the—?

KEVIN BROWN: Yes, the Harman Kardon PND unit sales for the quarter were about 84,000 units. For the nine months are over 300,000 units. The Becker—I'm sorry—did I say Harman Kardon?

SIDNEY HARMAN: Correct it, please.

KEVIN BROWN: The Becker—the European PND unit sales.

PETER FRIEDLAND: Okay. So 300,000, and you still think you can do over 600,000 for the fiscal year?

SIDNEY HARMAN: We do, and we said so. (emphasis added).

59. In addition, in answering a question from an analyst, Dr. Harman made the following remarks regarding the Company's R&D expenses:

JEFF KESSLER: I guess the question that we have is around continuing to match R&D to the revenue structure, as you see it, given that you have programs in place that are obviously important and obviously have a lot of potential. But getting your hands around the expense levels relative to new programs, are there some—you've mentioned one or two that are in line to produce over the next several years. Is there anything that we should be aware of which is maybe going to change that R&D-to-revenue percentage, let's say, 18 months out or so?

SIDNEY HARMAN: Are you asking whether the percentage of revenue represented by R&D will increase or decrease?

JEFF KESSLER: I'm asking, again, how are you going to get that decrease? In other words, where is the return on that R&D going to come from?

SIDNEY HARMAN: I've got it. In two ways, really. Understand first that the increase is, from our point of view, a very constructive thing. The so-called bulge was generated by the receipt of awards that we did not contemplate when we were generating the plan and generating our guidance. The engineering represented in that bulge is essentially for the new BMW award and

> the development of Driver Assist, which we believe has very positive implications down the road. I have not yet answered your question, but I thought it useful to set that base.
>
> Now we believe—and I have made this clear numbers of times -we believe that in the growth of the Company and in the urgency of getting the job done in what was a substantially new world of technology, the primary objective was just that—get it done and, in effect, damn the cost. We are still in that surge mood. I should be careful about the use of that word, I suppose. But I am convinced, Kevin is convinced, our Board is convinced that over time—and reasonable time—we can rationalize that engineering so that as a percentage of sales—and remind you, sales will be going up, so that if the engineering expense stayed fixed, the percentage would decline, so it moves us constructively in that direction—but we believe that we can rationalize, generate efficiencies such as to permit us to improve that percentage by approximately 100 basis points a year over the next several years.

60. During the same conference call, Defendant Brown stated, in part, the following:

> Total Harman International R&D expenses in the third quarter were $90 million, or 10.2% of sales, compared to $74 million, or 9.2% of sales, in the same quarter of the prior year. As Sidney discussed, R&D is trending higher than we had anticipated as we work to develop new technologies and new programs. We expect fiscal 2007 R&D expenses to approximate 10% of full-

year sales. In fiscal 2008, we anticipate R&D will begin to decrease as a percentage of sales.

61. The market again reacted favorably to Defendants' reports on Harman's financial condition and business prospects. On April 27, 2007, the stock pushed slightly higher in very heavy trading to close at $122.59.

62. Defendants' statements in paragraphs 57, 59, and 60 regarding sales, increasing "Automotive OEM revenues," and forecasted "EPS of $5.25" in fiscal 2008, subject to a bulge of R&D expenses, were materially false and misleading when made and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants knowingly or recklessly failed to disclose the following material adverse facts about the Company's business and financial prospects:

(a) Harman's increasing sales and operating margins in the Automotive segment were being adversely affected in fiscal 2007 by much more than bulging R&D expenses, which the Company presented as a positive indicator of Harman's financial condition and prospects.

(b) Defendants knowingly or recklessly projected earnings of $5.25 for fiscal 2007 when, at the time, they had no reasonable basis for their guidance and they were knowingly or recklessly deceiving the investing public by failing to disclose that in addition to increased R&D expenses, the Company was experiencing growing material losses and declining operating margins.

(c) Defendants had presented projected operating and earnings results to the Purchasing Companies which they knew had no reasonable basis and failed to present the Company's true financial condition and future earnings and prospects. Upon information and belief, Defendants had presented estimates of Harman's Automotive division's operating income for fiscal 2008 in the amount of $400 million to the Purchasing Companies. In March and April 2007, Helmut Schinagel and Mike Mauser, the Automotive Division's CEO and CFO, respectively, created internal projections and the business plan for fiscal 2008 (July 1, 2007 through June 30, 2008). This business plan clearly demonstrated that the Automotive division would generate a maximum of $240 million in operating income in fiscal 2008, but Dr. Harman and Defendant Brown directed Schinagel and Mauser to change the estimate to $400 million because that was the number that they had provided to the Purchasing Companies, notwithstanding that Harman's Automotive division was selling mid-level MyGIG infotainment systems to Chrysler and PNDs which each generated significantly lower operating income and operating margins than the Company had generated in fiscal 2007.

63. Defendants' statements in paragraph 57 regarding opportunities through "expansion of Infotainment" systems through "midrange" automobiles were materially false and misleading when made and/or omitted to disclose material facts necessary to make the statements made not

misleading because during fiscal 2007 and throughout the Class Period, Defendants knew or recklessly disregarded that the Company's expansion into infotainment systems for mid-level vehicles for Chrysler would increase losses for the Company and cause material declines in the Company's operating income as a percentage of net sales during the Class Period, for at least the following reasons:

(a) Harman's contract to manufacture MyGIG radios for mid-level Chrysler vehicles required that Harman produce and sell each MyGIG radio to Chrysler at a loss. Harman was losing at least $164 on each radio, and had committed to produce up to 200,000 annually for Chrysler. Therefore, the Company was incurring and would continue to incur a $32 million annual loss on the MyGIG radio.

(b) According to the MyGIG Purchasing Manager, Dr. Harman had been unable to renegotiate the MyGIG contract with Chrysler. Therefore, he was aware during the Class Period that the Company was taking a material loss on sales of the MyGIG radios to Chrysler.

(c) According to the MyGIG Purchasing Manager, the MyGIG radios were "plagued" with technical problems. The gear motor that drove the faceplate of the radio and enabled the faceplate to lift upward so that a CD could be inserted, for example, "never really worked properly." In addition, the radio had software issues which, at times, prevented the radio system from even turning on.

(d) Chrysler's relationship with Harman was rapidly deteriorating. As the MyGIG Purchasing Manager explained, the MyGIG radio rollout was supposed to take place in 2006, but was significantly delayed until 2007 due to supply issues and Harman's inability to fulfill production needs. Harman had repeatedly delayed production of the radios and gave no explanation for the delays to Chrysler.

(e) In early 2007, Chrysler had reduced its number of orders for the MyGIG radio. Harman plant workers in the Washington, Missouri plant complained to the MyGIG Purchasing Manager about "significant" decreases in volume orders and consequently production for the MyGIG radios. The decrease in orders and production resulted in reduced needs for parts for the MyGIG radio to be ordered by Harman, which caused suppliers to raise prices for the parts.

(f) The Company was changing components on the MyGIG radio without disclosing the changes to Chrysler, and ultimately caused Chrysler to have to shut down installation of the radios in certain vehicles because of quality control problems. These and other quality control problems caused a decline in the relationship between Harman and Chrysler. Upon information and belief, during the Class Period, the Company, at Schinagel's and others' direction, began to make "black" changes to Chrysler's products, which meant that Harman was making changes without telling Chrysler or getting the appropriate approvals from Chrysler.

The Company also had undertaken a program to find ways and means to try to save money to reduce operating costs and artificially boost operating income to meet the unreasonable target operating income that Defendants had presented to the Purchasing Companies for fiscal 2008 (July 1, 2007 through June 30, 2008). Upon information and belief, certain employees complained to Harman's executives and ultimately to the Audit Committee of Harman's Board of Directors about the proposed undisclosed "black" changes to Chrysler's infotainment systems.

64. Defendants' statements in paragraph 57 and 58 regarding "growing" PND sales and related "inventory increases" and forecasted PND sales of "618,000 units" in fiscal 2007 were materially false and misleading when made in April 2007 and/or omitted to disclose material facts necessary to make the statements made not misleading for at least the following reasons:

(a) During fiscal 2007 and throughout the Class Period, Defendants knew or recklessly disregarded that the Company's foray into PND sales in Europe would cause material declines in its operating income as a percentage of net sales during the Class Period.

(b) Harman had a large inventory of older generation, obsolete PNDs which it could not sell or was forced to sell at a substantial loss, and prospects for future sales of PNDs were being adversely affected by increasing competition and pressures from competitive pricing.

(c) According to the Sales Engineer, PNDs had not sold to the Company's expectations in 2006, and many of the devices, consequently, were being stored in a warehouse. Likewise, in 2007, the Sales Engineer stated that Harman's PNDs "did not sell to projection," and the Company had a stockpile of the devices in inventory.

(d) The Sales Engineer added that, in early 2007, Harman made a modification to its PND which rendered all of the older-generation units in inventory obsolete.

(e) According to the Accounting Manager, Harman released five versions of the same PND between March 2006 and July 2007, but it was not until July 2007 that the Company even sold a significant number of the devices.

65. Defendants repeated their positive report on the Company's fiscal Third Quarter 2007 financial performance in the Form 10-Q filed with the SEC on May 10, 2007, which was signed by Defendant Brown and Sandra Robinson, the Company's Chief Accounting Officer. The Company reported that net sales for the fiscal Third Quarter ended March 31, 2007 were $882.8 million, an increase of 10 percent over the same period in 2006, and that for the nine months ended March 31, 2007, net sales were $2.640 billion, an increase of 11 percent over the same period in 2006. The Company's operating income was reported as $92.1 million for the Automotive division for the quarter ended March 31, 2007, and $274.7 million for the nine months ended March 31, 2007.

66. In the May 10, 2007 Form 10-Q, Harman disclosed that net sales to Chrysler were 26% of the

Company's total net sales during that period. The Form 10-Q stated, "We anticipate that DaimlerChrysler, Toyota/Lexus, Audi/VW and BMW will continue to account for a significant portion of our net sales and accounts receivable for the foreseeable future." Notably, the Company recognized that "[t]he loss of sales to DaimlerChrysler, Toyota/Lexus, Audi/VW or BMW would have a material adverse effect on our total consolidated net sales, earnings and financial position." (emphasis added).

67. Defendants also reported in the fiscal Third Quarter 2007 Form 10-Q that "sales of our aftermarket products were higher due to the introduction of Becker PNDs in Europe." The Form 10-Q further stated that cash flows from operations for the nine months ended March 31, 2007 were $47.1 million compared to $241.3 million for the same period the prior year, and attributed the decrease in part to higher working capital requirements, and more specifically to a $280.4 million increase in working capital "primarily due to higher inventory levels to support increased sales to [Harman's] automotive customers and to support [Harman's] newly developed PND market in Europe."

68. In response to the positive news released in the fiscal Third Quarter 2007 10-Q, Harman's stock price ticked up slightly to $119.62 on May 11, 2007, from the prior day's close of $119.50. The Company's stock continued to be driven by the anticipated Acquisition and the seemingly committed $120 per share Acquisition price.

69. The statements in paragraphs 65-67 above, including that the Company's net sales in the Third

Quarter of fiscal 2007 had exceeded sales in corresponding prior-year periods by some 11%; that Daimler-Chrysler would "continue to account for a significant portion of [Harman's] net sales and accounts receivable for the foreseeable future"; that the Company's sales were higher because of the introduction of PNDs in Europe; and that the Company had intentionally accumulated a high inventory of PNDs to support "increased sales" and the "newly developed PND market in Europe," were false and misleading when made and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants knowingly or recklessly failed to disclose material adverse facts about the Company's business and financial prospects, as described in paragraphs 62-64 above.

B. Fourth Quarter and Fiscal Year-End 2007 Results

70. On August 14, 2007, the Company filed with the SEC a Current Report on Form 8-K and released financial results for the fiscal Fourth Quarter and full-year ended June 30, 2007, stating that the Company's "Automotive net sales for the fiscal year were $2.493 billion compared to $2.238 billion a year ago, an increase of 11 percent compared to last year" and that for the Fourth Quarter compared to the prior year, "Automotive sales were $635 million, an increase of 6 percent." In the press release, Dr. Harman was quoted as follows:

> On April 26, 2007, Harman announced that it had entered into a merger agreement with affiliates of Kohlberg Kravis Roberts & Co. L.P. and GS Capital Partners in a transaction valued

at approximately $8 billion. *We anticipate completing the transaction during the third or fourth quarter of this calendar year."* (emphasis added).

71. The statement in paragraph 70 that Harman anticipated completing the Acquisition during the calendar Third or Fourth Quarter of 2007 lacked a reasonable basis in fact and was false and misleading and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants knew or recklessly disregarded that the Company's increased costs and decreasing profit margins had caused or likely would cause the Company to trigger the terms of the MAC clause in the Merger Agreement and threaten its proposed Acquisition. The same undisclosed increased costs and decreasing operating margins that had caused the material decline in the Company's operating income had caused or likely would cause Harman to breach the terms of its proposed Acquisition and would continue to result in significantly lower earnings for First, Second and Third Quarter fiscal 2008 for the reasons described in paragraphs 62-64 above.

72. In addition, the statement identified in paragraph 70 lacked a reasonable basis in fact and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants also failed to control excessive capital spending as part of the Company's effort to ramp up the new Missouri plant, which was built to manufacture the MyGIG radios for Chrysler. Delays at the Missouri plant and quality control issues with the MyGIG radio had severely strained Harman's

relationship with Chrysler, and the Company was burning through cash to build the plant and ramp it up to manufacture the MyGIG radio. Defendants failed to disclose that cost overruns at the Missouri plant and other facilities had caused the Company to breach the CapEx covenant in the Merger Agreement, as follows:

(a) Dr. Harman ***admitted*** that in the Fourth Quarter of fiscal 2007, the Company had engaged in exuberant spending. After KKR and Goldman terminated the Merger Agreement, Dr. Harman stated that the Company's Harman Becker division, the Automotive division headquartered in Germany, had "binged on capital spending" in June 2007, "spending $60 million in one month." According to a Fortune article dated January 24, 2008, there were no controls in place to prevent this "überschwang," or exuberance. The article quoted Defendant Paliwal as stating that "Harman lacks certain widely accepted management 'processes' and that he [Paliwal] is now busy installing them."

(b) Dr. Harman reported to Fortune that this reckless spending binge caused Harman's capital expenditures to exceed $90 million in fiscal Fourth Quarter 2007 (April 1, 2007 through June 30, 2007) alone and over $174.4 million for fiscal 2007, which was more than $24 million over the $150 million forecast by Defendants three months earlier. Capital expenditures were $12.4 million, $27 million, and $45 million in the First, Second, and Third Quarters of fiscal 2007, respectively. Defendants' unbridled capital spending of $60 million in

June 2007 and an additional $30 million prior to that between April and May 2007 violated known specific and quantified restrictions on capital expenditures in the Merger Agreement. As stated in the Fortune article dated January 24, 2008, reporting on the terminated Acquisition and breach of the CapEx covenant, the "$25 million overrun became evidence that KKR cited as a justification to kill the deal."

73. On August 14, 2007, Defendant Dr. Harman and others, including the Company's newly-appointed CEO and President, Defendant Paliwal, held a conference call to discuss the Fourth Quarter and fiscal year-end 2007 financial results. On the call, Dr. Harman stated that earnings per share before restructuring, merging, and unusual tax items were $4.14. He also stated that quarterly operating income was $81.4 million. Defendant Brown outlined factors that adversely impacted gross profit, including "the manufacturing ramp up required to ready our automotive operations for the surge of production in the new year," which he explained as having a "one-time effect on gross profit in the quarter." He added that "[c]ompared to a year ago, fourth quarter factory costs were up over 9%" and that "operating expenses were up $23 million or 1.3 points, quarter to quarter." Brown attributed 50% of the increase in operating expenses to the Company's euphemistically-styled "R&D bulge" that had been disclosed in previous quarters' conference calls, as follows:

> Total Harman International R&D spending was $94 million, or 10.3% of sales in the quarter. That bulge was primarily generated by the need to process the engineering for the $14 billion

backlog, of which a significant $1 billion-plus had been unanticipated.

74. During the conference call, Dr. Harman stated, in part, the following:

> Our dominance in the automotive space was solidified through the past year, where we had earlier confronted doubt about our ability to move effectively beyond the luxury car market for our infotainment systems. That doubt has been erased. *With earlier awards to us from PSA, Audi and Chrysler, we established our leadership in the mid-range and entry levels, with last year's major awards from BMW, we erased any remaining questions.* We are moving from an era in which each new infotainment system represented a virtually original effort with all new R&D to a new era in which the major automotive makers are committing to a common electronics platform, applicable across the full range of car lines. (emphasis added).

75. Further with respect to the increase in operating expenses, Defendant Brown stated that "fourth quarter operating expenses reflect the costs associated with our determination to pursue vigorously a significant market share in the PND business in Europe. We spent the money in the fourth quarter which was necessary to cultivate that field for our engagement in the new year." He also stated that Harman's balance sheet was "strong" at fiscal year-end and reported that inventory was $453 million.

76. The statements in paragraphs 73-75 above, including that the Chrysler MyGIG deal had enabled

the Company to establish itself as a leading provider of infotainment systems for the mid-range market; that the increase in operating expenses during the Fourth Quarter of fiscal 2007 was necessary to secure European PND business in fiscal 2008; and that the Company's balance sheet at fiscal year-end was "strong," were materially false and misleading when made and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants knowingly or recklessly failed to disclose material adverse facts about the Company's business and financial prospects, as described in paragraphs 62-64 and 72 above.

77. In fiscal 2007, according to Operating Reports reviewed by the Accounting Manager, Harman fell well short of the 650,000 PND units that Defendants projected to sell in fiscal 2007, because upon information and belief Defendants had no reasonable basis to project these sales, and knowingly or recklessly provided unrealistic projections for sales, operating income and earnings to analysts and shareholders. Defendants knowingly or recklessly stated in a conference call on April 26, 2007 that the Company would sell in the fiscal Fourth Quarter of 2007 alone (April 1, 2007 through June 30, 2007) more than double the 300,000 PND units that it had sold in the first three quarters of fiscal 2007 (July 1, 2006 through March 31, 2007). As set forth in paragraph 64 above, Dr. Harman's and Brown's projections for PND sales lacked a reasonable basis in fact and were false and misleading and/or omitted to disclose material facts necessary to make the statements made not misleading because the

Company was facing increasing pricing pressures, increasing competition and was overstocked with obsolete Generation 2 PND units that were soon going to be superseded by Generation 3 PND units released in August 2007.

78. On August 29, 2007, the Company filed its year-end Annual Report on Form 10K with the SEC. The Form 10-K was signed by each of the Individual Defendants and presented a long explanation regarding the proposed Acquisition. Defendants' statements regarding the Acquisition in the Form 10-K were intended to and did give the impression that the Acquisition would close, subject only to shareholder approval and regulatory and antitrust clearances, during the Fourth Quarter of calendar year 2007, as follows:

> Completion of the merger is subject to the approval of our stockholders and other customary closing conditions, including regulatory approvals and antitrust clearances. *We presently anticipate that the merger will be completed in the fourth quarter of calendar year 2007.* (emphasis added).

79. The statement in paragraph 78 that "[w]e presently anticipate that the merger will be completed in the fourth quarter of calendar year 2007" lacked a reasonable basis in fact and was false and misleading and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants knew or recklessly disregarded, at the time they made the statement, that Harman's financial condition and operating income and operating margins had materially declined for the reasons described in paragraphs 62-

64 and 72 above, and Defendants further knew that the Company had or likely had breached the CapEx covenant of the Merger Agreement and that the Company had or likely had triggered the MAC clause of the Merger Agreement by failing to meet the operating results that Defendants had presented in writing to the Purchasing Companies for fiscal 2007 or fiscal 2008. As set forth above in paragraph 62, Defendants had no reasonable basis in April 2007 to project operating income of $400 million in fiscal 2008.

80. The Form 10-K for fiscal 2007 repeated much of the information that Defendants had previously reported regarding a so-called "R&D bulge," which Defendants again focused on as a positive indicator of the Automotive division's strong financial condition and prospects, as follows:

> Automotive—Automotive R&D costs were $286.5 million in fiscal 2007, representing 11.5 percent of net sales. Fiscal 2006 R&D costs were $232.2 million, or 10.4 percent of net sales. These costs were incurred to develop audio, electronic and infotainment systems for an expanding list of automotive platforms. *Our infotainment systems are increasingly based on scalable software allowing us to efficiently design systems for luxury, mid-range and entry-level vehicles*. (emphasis added).

81. In the Form 10-K, Defendants further issued a very favorable report on the Missouri plant, that:

> During fiscal 2007 we went into full production at our new manufacturing facility in Washington, Missouri. This factory will

> primarily produce infotainment systems for Chrysler. Since our new Chrysler program began late in fiscal 2007, the factory's overhead costs were not fully leveraged during the year. We anticipate our Washington, Missouri factory will operate at full capacity during fiscal 2008.

82. In the Form 10-K, Defendants also stated, "Sales of aftermarket products, particularly PNDs, were very strong during fiscal 2007."

83. Analysts reporting on Harman's stock and financial results reacted favorably to Defendants' reported expectation for R&D to decline as a percentage of sales in fiscal 2008, despite a "$46 million bulge" in R&D spending. A report issued by Bear Stearns on August 15, 2007, stated that the resumption of 16% operating margins in Harman's Automotive "OEM" business was "not out of the question beyond fiscal 2008, especially as installation volumes accelerate with the Chrysler programs and others. . ." On an earnings conference call in August 2006, one year prior, Defendants had reported to analysts that Automotive sales were expected to grow over 7%, with margins near 16% and with increased sales and growth stimulated in part by "increased PND aftermarket sales" and increased "infotainment sales" from the MyGIG launch late in 2007 at Chrysler.

84. RBC Capital Markets ("RBC") issued a similar report, noting that higher R&D and manufacturing costs had adversely impacted the Company's results. RBC analysts projected a 12-month stock price target of $120 for Harman's common stock based on the buyout price of $120 per share and noted that the "premium to [Harman's] growth rate is warranted

given the company's highly unusual revenue and earnings visibility, competitive positioning, expanding margins, and large free cash flow generation."

85. In response to the positive news regarding Harman's financial condition and prospects released by Defendants and driven by the anticipated Acquisition, Harman's stock price closed on August 29, 2007, at $113.39 per share, slightly up from the prior day's close of $112.93.

86. The statements in paragraphs 80-82 regarding total operating income for the Automotive division in fiscal 2007; the Company's purported efficient design for mid-range infotainment systems for Chrysler; the Company's full production at its Washington, Missouri plant in fiscal 2007 and full-capacity operation in fiscal 2008; and "very strong" sales of PNDs during fiscal 2007, were false and misleading when made and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants knowingly or recklessly failed to disclose material adverse facts about the Company's business and financial prospects, as described in paragraphs 62-64 and 72 above. Defendants also failed to disclose the following additional material adverse facts about the Company's MyGIG radios and PNDs:

(a) The Company was burning through cash and experiencing debilitating delays in trying to ramp up its new Missouri plant to manufacture MyGIG radios—which Defendants knew would be sold at a material loss. The Accounting Manager confirmed that the Company went

"substantially over budget" for its new plant in Washington, Missouri.

(b) Harman was not considered for the MyGIG radio contract for 2010 production of Chrysler's Jeep Grand Cherokee and Durango vehicles because of "concerns surrounding the [MyGIG radios]," as reflected in the June 2007 month-end and fiscal year-end Operating Reports received by the Accounting Manager in July 2007.

(c) According to Operating Reports reviewed by the Accounting Manager, the Company had on hand hundreds of millions of dollars worth of obsolete Generation 2 PNDs which were being superseded by newer Generation 3 PNDs in August 2007.

(d) According to Harman's monthly Operating Report for July 2007, as reviewed by the Accounting Manager, the Company had missed "aggressive" sales targets of PNDs for the fiscal year ended June 2007 by more than $85 million, which was approximately one-third of Defendants' unreasonably forecasted net sales.

(e) According to the Accounting Manager, Harman had tried to sell 100,000 of its obsolete PND units at a substantial discount immediately prior to fiscal year-end 2007. The sale was not pushed through until July 2007 (fiscal First Quarter 2008), and although it generated $24 million in revenues which were recognized in July 2007, the Accounting Manager stated that all 100,000 PND units sold in July 2007 were returned to Harman four

months later, and the Company took a $24 million loss for return of the sale of obsolete inventory.

C. Aspects of The Truth Begin to Emerge

87. On September 21, 2007, the Company issued a press release entitled "Harman Comments On Previously Announced Merger." The press release stated, in part, the following:

> Harman International Industries, Incorporated (NYSE: HAR) announced that it was informed this afternoon that Kohlberg Kravis Roberts & Co. L.P. (KKR) and GS Capital Partners VI Fund, L.P. (GSCP) no longer intend to complete the previously announced acquisition of Harman by a company formed by investment funds affiliated with or sponsored by KKR and GSCP. KKR and GSCP have informed Harman that they believe that a material adverse change in Harman's business has occurred, that Harman has breached the merger agreement and that they are not obligated to complete the merger. Harman disagrees that a material adverse change has occurred or that it has breached the merger agreement.

88. On this news, shares of the Company's stock fell from a closing price of $112.34 on the prior day to close at $85.00 on September 21, 2007. Thus, the Company's share price fell more than 24 percent that day.

89. On the same day, an article published by Reuters stated, in part, the following regarding the failed merger between Harman and the Purchasing Companies:

> Kohlberg Kravis Roberts & Co LP and Goldman Sachs Group Inc.'s (GS.N: Quote, Profile, Research) private equity arm are worried about *certain financial conditions inside Harman International Industries Inc.* (HAR.N: Quote, Profile, Research), concerns that could threaten the $8 billion deal, a source said on Friday.
>
> The concerns stemmed less from broad credit market worries and more from *internal conditions within the company*, said the source, who is familiar with the matter but did not want to be identified. (emphasis added).

90. On the same day, Reuters issued another press release stating, in part, that:

> Trade in shares of audio equipment maker *Harman International Inc* (HAR.N: Quote, Profile, Research) was suspended on Friday, pending news from the company.
>
> The company is the target of an $8 billion takeover, but a source familiar with the matter said the *buyers are worried about the company's financial conditions.* (emphasis added)

91. Later on the same day, Reuters issued yet another article regarding the merger and, this time, gave additional details regarding the pullout. The article states, in part, the following:

> NEW YORK (Reuters) - Harman International Industries Inc (NYSE:HAR - News) said its private equity buyers are pulling out of their $8 billion buyout deal, a severe blow to the company whose shares fell more than 25 percent on Friday.

* * *

But the Harman bail-out looks *centered on the financial conditions of the company itself*, not the lending agreement, and marks the first time in a two-year private equity acquisition frenzy that buyers walked out of a major deal.

Merger arbitrage traders and an analyst said among the hurdles Harman faced was *rising inventories and declining cash flows and sales in the last few quarters. Traders also said questions surfaced recently about Harman's relationship with Daimler-Chrysler, a customer for its audio products.*

* * *

The merger proxy does have language in it on pertaining the deal being threatened in the event of certain "material adverse" effects on Harman.

"The company either has to slow production, reduce prices, or have inventories remain at elevated levels, and that deteriorates your cash flow model," Galperin said, adding that personal navigation devices for cars were among the items sitting in the inventory.

Traders said on Friday that *a great deal of attention was being paid to a filing showing that sales to DaimlerChrysler accounted for 25 percent of Harman's total consolidated net sales for the fiscal year ended June 30, 2007. Cerberus Capital recently bought Chrysler from Daimler.*

While Harman says in the filing that loss of sales to the customer would have a "material adverse effect" on sales, there is no public

indication that the relationship is in jeopardy. (emphasis added).

92. Similarly, on the same day, a Forbes article stated, in part, the following regarding the failed merger:

KKR and Goldman Dump Harman

Harman, it's not us, it's you. This is what the audio-manufacturing firm claims it just heard from would-be buyers KKR and Goldman Sachs when they backed out a deal Friday to buy the firm. Harman then told the world the news, just slightly ahead of the closing bell at the New York Stock Exchange.

* * *

Although the exact reason for the drawback is not known yet, Harman's fourth quarter and full year results did fall short of Wall Street's expectations. In the fourth quarter Wall Street expected earnings of $1.24 and Harman yielded 98 cents. Full year of fiscal 2007 Wall Street requested $4.38 and Harman yielded $4.14.

According to the Associated Press, *one anonymous insider said the private equity firms sought to squash the deal over questions about Harman's financial health, not because of any financing difficulties in a tight credit market*. The person said the effort to back out is sincere, and not a negotiating tactic.

Prior to the release, the NYSE had contacted Harman regarding its price drop, and requested it release information pertaining to the drop.

> After the company declined the NYSE then released its own report that Harman had denied its request. Shortly after its denial, Harman changed course and told the NYSE it would make a press release. In accordance with regulation, the exchange halted the stock from trading. (emphasis added)

93. On September 24, 2007, after the Acquisition was terminated, Defendants issued a press release and significantly lowered Harman's forecasted earnings per share for fiscal 2008 from between the previously reported $4.79 and $5.25 per share to the revised $4.14 per share. Defendants also disclosed that for the First Quarter of fiscal 2008 (ending September 30, 2007), earnings were expected to be $0.50 per share with operating profits of $40 million, which was less than one-half of operating profits for the same period in fiscal 2007 and roughly one-half of expected earnings of $1.02 per share that Defendants had knowingly and recklessly projected, notwithstanding information which they received on a monthly basis in Operating Reports which clearly showed that operating income and operating margins were significantly declining and would continue to decline throughout fiscal 2008. The press release stated, in part, the following:

> **Harman Provides Guidance For Fiscal 2008**
>
> The Company expects fiscal 2008 performance to be impacted by a number of factors including increased R&D to support the development of several new infotainment platforms and associated launch costs. We now expect fiscal 2008 sales to reach $4.1 billion ($3.55 billion in 2007). The Company expects operating income

and diluted EPS before merger related costs to equal or exceed last year's record performance. In 2007, operating income was $397 million and diluted EPS were $4.14 adjusted for non-recurring restructuring charges, merger costs and tax items.

For the quarter ending September 30, 2007 we estimate net sales of $950 million, operating profit of $40 million and diluted EPS of $0.50 before merger-related costs. *As previously disclosed, the fourth quarter of fiscal 2007 and the first quarter of fiscal 2008 were affected by increased R&D costs, primarily related to recent automotive platform awards*. We expect substantial margin improvements over the course of fiscal 2008 as we work through these costs and begin the launching of new infotainment platforms.

"In light of *increases in material costs and faster ramp-up of R&D* resources to work on new business awards, equaling the record operating performance of fiscal 2007 is an achievement. *The benefits of common platform synergy and scalability will be realized in fiscal 2009 and beyond. Those benefits will strengthen our operating profits,"* said Paliwal. (emphasis added)

94. On this news, shares of the Company's stock fell to $80.31 on extremely high volume of over 14.5 million shares.

95. Therefore, within two trading days, the Company's share price fell approximately $32 per

share, or almost 30 percent, on extremely heavy trading volume.

96. The statements in paragraphs 87 and 93 regarding Defendants' denial that they had breached the Merger Agreement; that EPS for fiscal 2008 would be $4.14 per share; and that R&D expenses would begin to decrease as a percentage of net sales, were materially false and misleading when made and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants failed to disclose material adverse facts described above in paragraphs 62-64, 72 and 86.

97. On September 25, 2007, *The Wall Street Journal* published an article entitled "Harman Blames Increased Expenses For Expected 1st-Quarter Earnings Miss." The article states, in part, the following:

> Harman International Industries Inc., whose planned $8 billion buyout collapsed Friday, said its fiscal first-quarter earnings will fall below Wall Street's expectations amid increased research and development spending.
>
> The Washington company, which builds audio components for home stereos and automobiles, forecast earnings of 50 cents a share, before merger-related costs, for the quarter ending Sept. 30 and sales of $950 million. The average estimate of analysts surveyed by Thomson Financial were for earnings, excluding items, of $1.02 a share on revenue of $934.4 million.
>
> Late Friday, Kohlberg Kravis Roberts & Co. and Goldman Sachs Group Inc.'s equity arm walked away from their planned $8 billion leveraged

buyout of Harman, saying they found financial conditions inside the stereo maker to be unacceptable.

The buyers also said Harman might have tripped certain covenants in the parties' merger agreement related to capital spending, said one person familiar with the matter.

"*The fourth quarter of fiscal 2007 and the first quarter of fiscal 2008 were affected by increased R&D costs, primarily related to recent automotive platform awards*," said Harman Chief Executive Dinesh Paliwal. "We expect substantial margin improvements over the course of fiscal 2008 as we work through these costs" and launch new products. (emphasis added)

98. On September 27, 2007, the Company held a conference call to discuss its almost-completed First Quarter fiscal 2008 financial results and expectations for the full 2008 fiscal year. During the conference call, Dr. Harman stated, in part, the following:

Further, as almost all other manufacturing businesses, we have encountered increases in material costs, which placed pressure on margins. During that period, we have built, staffed and opened a new manufacturing facility in the United States and we are ramping up a new plant in China. The startup of those facilities has represented a consequential challenge. The extraordinary time and attention required by senior management to advance and process the KKR/Goldman merger, that entire process with which you are familiar, including

> the diligence and the negotiations, consumed a significant portion of management's time. The confluence of these events in a six- to eight-month period generated what might be called the perfect storm. Now that storm is over and we are again in full command of our circumstances and our extraordinary future.

99. During the same conference call on September 27, 2007 (three days prior to the end of the fiscal First Quarter 2007), Defendant Paliwal stated, in part, the following:

> In April 2007, we did offer guidance for 2008. For the full year 2008, gross profit is expected to be lower than anticipated in April 2007. On September 24, we reflected the change in modified guidance. The change is due to higher material prices, and more than expected ramp-up costs for the two new manufacturing plants in China and the U.S.

100. During the same conference call, Defendant Brown repeated the revised First Quarter fiscal 2008 forecast for sales, operating expenses, operating income, and earnings per share as stated in the September 24, 2007 press release. He also stated, in part, the following:

> First quarter fiscal '08 sales are forecast to be $950 million, an increase of 15% compared to the first quarter of fiscal '07. Gross profit is forecast to be approximately 28% of sales, down about 7 points from the prior year's quarter. Operating expenses are forecast to be $227 million, an increase of $27 million. Operating income is forecast to be $40 million, down from

$87 million in the first quarter of fiscal ‘07. Forecast diluted earnings per share before transaction, legal and restructuring costs of $0.50 are $0.35 below last year’s first quarter of $0.85. First-quarter sales are projected to increase in each of our three operating segments compared to the prior year. We expect Automotive sales to increase approximately 15% during the quarter, primarily due to the ramp-up of an infotainment system program and higher PND sales in Europe.

* * *

Excluding R&D, we expect other operating expenses to be higher than last year. In particular, marketing costs will be above the prior year’s quarter due to promotions associated with new infotainment system and PND introductions. There have been several recent developments that have tempered our view of fiscal ‘08. While our sales growth remains strong, several factors will influence our operating performance.

Full-year sales for fiscal ‘08 are forecast to be $4.1 billion, an increase of 16% compared to $3.5 billion in fiscal ’07. . . Lower gross profit margin is forecasted Automotive, primarily due to new model and plant launch costs and increases in material prices.

* * *

Finally, we expect fiscal ‘08 earnings per share before transaction, legal and restructuring costs to meet or exceed the $4.14 reported for fiscal ‘07. We will now take your questions.

101. In addition, in answering a question from an analyst, Defendant Brown made the following remarks regarding the Company's First Quarter fiscal 2008 revenues:

> PETER BARRY: Just one final for me. I couldn't help but observe that in what is the lowest seasonal quarter for the year historically, the $950 million of revenue expectation is the highest number you've ever achieved. One, is that observation correct? And to what degree did the spillover of C Class revenues influence that number?
>
> KEVIN BROWN: Yes, Peter, you are correct that that is a very strong first quarter on the top line for us, reflecting getting fully up the ramp curve on Mercedes C Class but also reflecting the fact that *we are bringing additional business on-stream at Chrysler as we ramp up our Missouri plant and in the PND business, where we continue the growth and expansion of that business primarily in Europe.* (emphasis added)

102. The statements in paragraphs 97-101, including Dr. Harman's statement that "The fourth quarter of fiscal 2007 and the first quarter of fiscal 2008 were affected by increased R&D costs, primarily related to recent automotive platform awards"; that margins would increase in fiscal 2008; that the increased costs associated with the new Missouri plant were "over"; that Automotive sales would increase as a result of the "ramp-up of an infotainment system program and higher PND sales in Europe"; that the Company was "bringing additional business on-stream at Chrysler"; and that "growth and expansion" would "continue" in the

Company's PND business, were materially false and misleading when made and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants knowingly or recklessly failed to disclose material adverse facts described above in paragraphs 62-64, 72 and 86. Moreover, the developments that had purportedly caused Defendants to "temper" their guidance for fiscal 2008 had been known to or recklessly disregarded by Defendants throughout the Class Period.

103. On October 22, 2007, Harman entered into a "Termination and Settlement Agreement" with the Purchasing Companies. The Termination Agreement states in pertinent part that KKR and Goldman and their affiliates had determined that they were not obligated to proceed with the Acquisition "based on their belief that a Company Material Adverse Effect has occurred and their belief that the Company has violated the capital expenditures covenant in the Merger Agreement."

104. On October 25, 2007, the Company issued a press release announcing results for the First Quarter of fiscal 2008 ended September 30, 2007. Defendants Paliwal and Dr. Harman issued the following comments:

> We achieved good results during first quarter of fiscal 2008. *Sales growth was strong due to the ramp up of an infotainment system for Chrysler and robust sales of personal navigation devices in Europe*. Our initiative to develop cost saving strategies is underway and we expect to gain procurement, engineering and manufacturing

efficiencies that will improve margins over the course of this fiscal year. (emphasis added).

105. On November 9, 2007, Harman filed its quarterly report on Form 10-Q with the SEC for the First Quarter of 2008 ended September 30, 2007. The 10-Q was signed by Defendant Brown and stated, in relevant part, that for the quarter-ended September 30, 2007, operating income for the Automotive division was $45.98 million on net sales in the amount of $682.3 million. The Form 10-Q further stated the following:

> We design, manufacture and market high-quality, high fidelity audio products and electronic systems for the automotive, consumer and professional markets. . . Our three reportable business segments, Automotive, Consumer and Professional, are based on the end-user markets we serve.
>
> Automotive also provides aftermarket products such as personal navigation devices ("PNDs") to customers primarily in Europe. *Our PNDs leverage many of the successful applications developed by our Automotive segment.*
>
> * * *
>
> Automotive - Net sales for the quarter ended September 30, 2007 increased $81.3 million, or 14 percent compared to the same period last year.... *New introductions of infotainment systems including Chrysler's MyGIG infotainment systems in North America, the roll-out of [other systems] were primary factors contributing to the higher sales. A strong demand for Traffic Assist, our European*

> *aftermarket PND, also contributed significantly to the increase in sales over the prior year period.*
>
> * * *
>
> *Business Outlook* Our first quarter sales were a record and reflect continued top-line strength. We believe all three of our core business segments will continue to produce higher sales for the remainder of this fiscal year. For the full fiscal year ending June 30, 2008, we currently believe our net sales will be approximately $4.1 billion, an increase of 16 percent. We expect earnings per share before transaction, legal and restructuring costs to meet or exceed the prior fiscal year. (emphasis added)

106. The statements in paragraphs 104-105, regarding record sales growth in the First Quarter of fiscal 2008; "robust" PND sales in Europe; "MyGIG infotainment sales to Chrysler as a primary factor contributing to "higher sales" in the First Quarter of fiscal 2008; and projected earnings per share for fiscal 2008 being expected to "meet or exceed" fiscal 2007, were materially false and misleading when made and/or omitted to disclose material facts necessary to make the statements made not misleading because Defendants knowingly or recklessly failed to disclose material adverse facts described above in paragraphs 62-64, 72 and 86. Defendants emphasized higher net sales, but operating income for the Automotive division, as reported in the Form 10-Q for First Quarter of fiscal 2008, had decreased to 6.7% of net sales, which was substantially lower than reported operating margins in the approximate amount of 13% in fiscal 2007, and therefore Defendants had no reasonable basis to state

in November 2007 that earnings in fiscal 2008 would meet or exceed the prior fiscal year.

107. On November 13, 2007, Harman filed a Current Report on Form 8-K with the SEC, announcing that Sandra Robinson had notified the Company that she intended to retire and resign in connection with her retirement effective on November 12, 2007. A former executive administrative assistant who worked in Harman's corporate office in Washington, D.C. in November 2007 (the "Administrative Assistant"), stated that Robinson personally told the Administrative Assistant that Robinson was "totally forced out." The Administrative Assistant further stated that she thought that Defendant Paliwal made Robinson "take the fall for the KKR deal."

108. The Administrative Assistant also stated that she had heard that Harman had submitted the wrong financial figures to KKR—that "they cooked the books" and that when KKR discovered the financial misrepresentation, it backed out of the deal.

109. On January 14, 2008, prior to the market's opening, Harman issued a press release again revising its fiscal 2008 earnings guidance and significantly lowering estimates of earnings per share to between $3.00 and $3.10 per share. The Company's press release, entitled "Harman International Revises Fiscal Year 2008 Earnings Guidance," in pertinent part states:

> The Company now expects non-GAAP diluted EPS for the 2008 fiscal year to be between $3.00 and $3.10, before after-tax merger related costs of $8.0 million, or $0.13 per diluted share. . .

* * *

> The change in guidance was prompted primarily by a major shift in the market for Portable Navigation Devices (PNDs). In recent months this sector has experienced significant pricing pressure which is affecting the entire industry.
>
> "While the growth fundamentals of our core business remain sound, the difficult PND environment presents a challenge. As we have indicated previously, we will be launching a record number of automotive infotainment platforms in 2008. Although, we are not happy with the higher than planned R&D engineering and material costs, the additional investment is necessary to deliver the new platforms to our valued customers," said Dinesh Paliwal, Vice Chairman and Chief Executive Officer.

110. During the Class Period, *after* the Acquisition was terminated, Defendants lowered the Company's guidance more than 40% from Dr. Harman's stated projected fiscal 2008 earnings per share of $5.25 to approximately $3.00 per share. In response to the news Defendants released in the press release, shares of the Company's stock in heavy trading fell precipitously from the prior trading day's close of $68.97 to close at $43.00 per share, which constituted a 37.65% drop and a four-year low.

111. The statements in paragraph 109 regarding the Company's guidance for fiscal 2008; "major shift in the market" for PNDs; and "higher than planned R&D engineering and material costs" were false and misleading when made and/or omitted to disclose material facts necessary to make the statements

made not misleading because Defendants knowingly or recklessly failed to disclose material adverse facts described above in paragraphs 62-64, 72 and 86.

D. The Truth Comes Out

112. On February 5, 2008, Harman issued a press release announcing financial results for fiscal Second Quarter 2008 ended December 31, 2007 (approximately three months after KKR terminated the Acquisition). The Company disclosed that its Automotive division's earnings were "under pressure" due to PNDs and that it had suffered a gross margin decline from lower margins on PND products; product mix change, including higher sales of lower-margin infotainment systems for mid-level vehicles; and higher than expected material costs.

113. Defendant Paliwal finally admitted that although sales were increasing, the Company's "automotive earnings are under pressure due to portable navigation devices (PND), product mix, and higher engineering and material costs. . ." Operating income for the quarter-ended December 31, 2007 was reported at $61 million, a mere 5.7% of sales as compared to $116 million in the same period in 2006, which was 12.4% of sales. The Company admitted that "the decrease in operating income was driven by PND, product mix, and higher engineering, material and merger costs." Defendants further disclosed that PND sales had fallen by $29 million compared to the same period in 2006 and that PND sales and margins decreased "due to aggressive price reduction by competitors, the delay of new products, and the sale of older products at substantial discounts."

114. On this news, shares of the Company's stock fell from a closing price on February 5, 2007 of $45.73 to a closing price of $38.70 on February 6, 2007, which was more than a 15 percent drop in the stock price per share.

E. Post-Class Period Disclosures

115. On February 11, 2008, in the Company's Form 10-Q for the quarter ended December 31, 2007, Defendants repeated the disclosures from the earnings press release regarding PND sales and margins and further disclosed more specifically the reasons why operating income and margins had declined in the first six months of fiscal 2008 (July 1, 2007 through December 31, 2007), as follows:

> For the three and six month periods the gross margin decline was the result of lower margins on PND products, product mix change, including higher sales of lower margin infotainment systems for mid-level vehicles and higher than expected material costs. The reduction of the PND margin is the result of three primary factors: a significant decline in average market prices, delayed introductions and lower volumes of new generation products and the inventory clearance of prior generation models at a loss.
>
> * * *
>
> In January, we announced updated earnings guidance for the fiscal year, which included a decrease in our expected operating profit of more than $100 million. The primary driver of this deterioration is the PND market, with higher-than-expected engineering and material costs also contributing.

> The PND margin outlook for the 2008 fiscal year has declined by about $60 million. This is divided almost equally across three factors: a significant decline in average market prices; delayed introductions and lower volumes of new generation products; and the inventory clearance of prior generation models at a loss.

116. Defendants also admitted in the Form 10-Q for the Second Quarter of fiscal 2008 that its mid-level infotainment system for Chrysler, i.e., the MyGIG radio, was unprofitable as follows:

> Higher sales of lower margin infotainment systems and higher than expected material costs are both exemplified in our infotainment program with Chrysler. This infotainment program award included the supply of both a high- and a mid-level system. *While the Chrysler infotainment program as a whole is slightly profitable, the mid-level system is not*. (emphasis added).

117. During the Class Period, Defendants knowingly or recklessly omitted material adverse information regarding PND and MyGIG sales and margins from their SEC filings, press releases and other statements and also knowingly and recklessly omitted material information regarding the risks posed by these undisclosed material adverse effects on the Company's proposed Acquisition by KKR and Goldman. All of the undisclosed events were known to or recklessly disregarded by Defendants during the Class Period and were knowingly or recklessly concealed from KKR and Goldman and shareholders.

118. During the Class Period, had Lead Plaintiff and other members of the Class known of the material adverse information not disclosed by Defendants, or been aware of the truth behind Defendants' material misstatements, they would not have purchased Harman's common stock, or would not have purchased it at artificially-inflated prices.

VI. CLASS ACTION ALLEGATIONS

119. Lead Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased the common stock of Harman between April 26, 2007 and February 5, 2008, inclusive, and who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

120. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Harman's common stock was actively traded on the New York Stock Exchange. While the exact number of Class members is unknown to Lead Plaintiff at this time and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Harman or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

121. Lead Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

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

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

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period misrepresented or omitted material facts about the business, operations, and management of Harman; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

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

difficulty in the management of this action as a class action.

VII. LOSS CAUSATION

125. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated Harman's stock price and misled Class Period purchasers of Harman stock. In particular, Defendants failed to disclose material adverse facts concerning the Company's financial condition, namely that its capital expenditures had exceeded the levels permitted by the Merger Agreement and that Defendants had knowingly or recklessly breached the agreement; that the Company's relationship with Daimler-Chrysler had materially worsened during the Class Period, putting a large percentage of its net sales at risk; that the Company's financial results would be impacted by increased costs and lower operating margins in late fiscal 2007 (April—June 2007) and the First and Second Quarters of fiscal 2008 (July 1, 2007—December 31, 2007) and beyond; that its marquis midlevel infotainment system known as the MyGIG radio was generating a material loss for the Company; and that the constrained market for PNDs in Europe was materially impacting the Company's operating margins and earnings. At the end of the Class Period, when Harman disclosed the Company's deteriorating financial condition and the truth became apparent to the market, Harman stock fell sharply as the prior artificial inflation came out of the Company's stock price.

126. Had Lead Plaintiff and other members of the Class known of the material adverse information not

disclosed by Defendants, or been aware of the truth behind Defendants' material misstatements, they would not have purchased Harman common stock at the artificially-inflated prices they did. As a result of their purchases of Harman stock during the Class Period, Lead Plaintiff and other members of the Class suffered economic loss, i.e., damages, under the federal securities laws.

127. During the Class Period, Defendants knowingly or recklessly painted a misleading picture of Harman's financial condition and prospects. Instead of truthfully disclosing the Company's deteriorating financial condition, Defendants caused Harman to represent falsely, inter alia, that the Company was financially sound, that its research and development costs would decrease in fiscal 2008, that its relationship with Chrysler and other automakers was strong, and that it expected to occupy a significant market share in the PND business in Europe in fiscal 2007 and fiscal 2008.

128. On September 21, 2007, Defendants began to disclose the truth to the market. Specifically, the Company disclosed that KKR and Goldman believed that a material adverse change in Harman's business had occurred and that Harman had breached the Merger Agreement.

129. In response to this disclosure, the Company's stock price fell from a closing price of $112.34 on the prior day to close at $85.00 on September 21, 2007, falling more than 24 percent that day on extraordinary trading volume of over 22.4 million shares.

130. Additionally, on September 24, 2007, the Company disclosed that its fiscal 2008 financial performance would be impacted by a number of factors including increased R&D costs and reported net sales of $950 million, but disappointing operating profit of $40 million and diluted EPS of $0.50 before merger-related costs, which was less than one-half of what Defendants had projected for First Quarter fiscal 2008 (ended September 30, 2007).

131. On this news, shares of the Company's stock fell to $80.31 on extremely high volume of over 14.5 million shares.

132. Therefore, within two trading days, the Company's share price fell approximately $32.00 per share, or almost 28.5 percent, on extremely heavy trading volume.

133. On January 14, 2008, Harman further revealed aspects of the truth to the market by issuing a press release revising its fiscal 2008 earnings guidance and significantly lowering estimates of earnings per share from $4.14 per share to approximately $3.00 per share.

134. On this news, on extremely heavy trading volume of over 8.3 million shares, shares of the Company's stock fell sharply from the prior trading day's close of $68.97 to $43.00 per share, a 37.65% drop and a four-year low.

135. On February 5, 2008, Harman disclosed that its Automotive division's earnings were being adversely affected by PND sales and that the Company had suffered a gross margin decline from lower margins on PND products and higher sales of lower-margin infotainment systems for mid-level

vehicles and higher than expected material costs. The market reacted to this news as shares of the Company's stock fell from a closing price on February 5, 2007 of $45.73 to a closing price of $38.70 on February 6, 2007, which was more than a 15 percent drop in the stock price per share.

136. During the Class Period, the stock traded as high as $112 per share on September 20, 2007, only days before Defendants' disclosure. This decline was the result of Defendants' false and misleading statements throughout the Class Period, and when the economic impact of Defendants' fraud began to be disclosed, caused shareholders millions of dollars in losses.

137. The greater than 65 percent decline in Harman's stock price from the Class Period high of approximately $122.50 per share on April 26, 2007 to the end of the Class Period on February 5, 2008, was a direct result of the nature and extent of Defendants' fraud finally being revealed to investors and the market. The timing and magnitude of Harman's stock price decline negates any inference that the loss suffered by Lead Plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors, or Company-specific facts unrelated to Defendants' fraudulent conduct.

138. The economic loss, i.e., damages, suffered by Lead Plaintiff and other members of the Class was a direct result of a) Defendants' knowing or reckless materially misleading statements and omissions and fraudulent scheme to artificially inflate Harman's stock price during the Class Period; and b) the subsequent decline in the value of the Company's

stock when Defendants' prior misstatements or omissions regarding Harman's financial condition were revealed to the market.

VIII. ADDITIONAL SCIENTER ALLEGATIONS

139. The Individual Defendants had strong motives to overstate the Company's financial results, condition and prospects during the Class Period. First, the Individual Defendants collectively held more than 5 million shares (including options) for Harman's common stock, which the Purchasing Companies had agreed to buy for $120 per share. The $120 share price was a substantial 17% premium over the trading price of Harman's stock in April 2007, when the Acquisition was publicly announced.

140. According to Harman's October 2007 Proxy Statement (the "Proxy"), the stock, restricted stock and units, and options to purchase stock that the Individual Defendants received as compensation for their executive positions and control over the Company, would collectively have been worth over $613 million if the Acquisition had been completed. With Harman's stock currently trading in the $40 range, the Individual Defendants' holdings are worth one-third of the amount that they would have received in cash from the purchasing Companies for their stock. Moreover, the Individual Defendants' unvested stock options would have fully vested upon the change of control by the Company in the Acquisition. Instead, many of the Individual Defendants' vested and unvested options are now out of the money.

141. Apart from the proposed Acquisition, much of the Individual Defendants' personal wealth was tied

to the Company's financial performance and prospects. During the Class Period, the Individual Defendants' total compensation was tied directly to the reported financial performance of the Company, particularly the Automotive segment, which comprised approximately 70% of Harman's business and generated the bulk of the Company's revenue and earnings. Under annual performance-based incentive plans and long-term equity compensation programs, the Individual Defendants reaped millions of dollars in bonuses in both cash and stock compensation as a direct result of their materially false misrepresentations and omissions during the Class Period.

A. Dr. Sidney Harman

142. During the Class Period, Dr. Harman served as Harman's Executive Chairman, and he also served as the Company's CEO until June 30, 2007, when he relinquished the title to Defendant Paliwal. Dr. Harman co-founded the Company and was a veteran executive with the power to control and who did control the Company and its Board of Directors. During the Class Period, Dr. Harman knowingly or recklessly signed and caused the Company to issue materially-false and misleading Form 8-Ks, Form 10-K for fiscal 2007 and Form 10-Qs for the Third Quarter of fiscal 2007 and First Quarter of fiscal 2008. Dr. Harman also knowingly and recklessly caused each and all of these materially-false and misleading reports to be filed with the SEC. In addition, in each of these reports filed with the SEC, Dr. Harman certified under the Sarbanes-Oxley Act of 2002, as the "Executive Chairman" of Harman, that the Company's disclosure controls and internal

controls over financial reporting were effective and that the reports did not contain any untrue statement of material fact and fairly presented in all material respects the Company's financial condition and results of operations, which Dr. Harman knew or recklessly disregarded was untrue.

143. Dr. Harman further knowingly or recklessly caused the Company to issue materially false and misleading statements in press releases regarding the Company's reported financial performance in each quarter during the Class Period. Dr. Harman knowingly and recklessly made materially false and misleading statements during conference calls with analysts and other investors throughout the Class Period. As alleged herein, Dr. Harman knew at the time of each conference call that reports regarding the Company's financial performance and prospects were misleading and omitted material information regarding material risks to the Acquisition, including the Company's declining operating margins, spiraling costs, unresolved quality control issues, excessive inventory, exuberant capital expenditures and other material adverse events that had violated material terms of the Merger Agreement.

144. After agreeing to relinquish control of the Company he founded to KKR and Goldman, Dr. Harman knowingly or recklessly failed to implement proper procedures and controls to ensure that the Company's capital expenditures did not exceed the limits imposed by the Merger Agreement. After realizing that the Company had violated the CapEx covenant, Dr. Harman knowingly or recklessly failed to disclose related material risks to shareholders and the market.

145. In each quarter during the Class Period, Dr. Harman provided guidance for the Company's earnings per share, which he knew at the time had no reasonable basis and was not achievable because of pervasive problems with PND sales and inventory; decreasing operating margins; material losses resulting from the MyGIG radio contract and related manufacturing problems at the Missouri plant; and the Company's strained relationship with Chrysler, which constituted more than 25% of the Automotive division's sales.

146. Dr. Harman further knew or recklessly disregarded that the Company had not fully disclosed the true nature of its MyGIG contract with Chrysler to shareholders, investors, the Purchasing Companies and the market. Dr. Harman had personally negotiated the MyGIG contract and had actual knowledge that the contract was bid at a loss and that the Company had not been able to renegotiate the MyGIG contract with Chrysler, or re-engineer the MyGIG product to make it profitable to manufacture and sell. During the Class Period, Dr. Harman also knowingly or recklessly misrepresented the true nature of Harman's obsolete PND inventory, sales, operating margins, and earnings prospects, and artificially inflated Harman's stock price.

147. As an octogenarian with much of his personal wealth tied to the Company's performance and stock price, Dr. Harman had strong incentives to present the Company's business and financial condition and prospects more favorably than they actually were so that he could cash out his mega-holdings of Harman stock and options in the Acquisition. According to the

Proxy, Dr. Harman held more than 3.53 million shares of Harman common stock, and he also held an additional 1 million vested and unvested options for the Company's common stock. In fiscal 2007 alone, Dr. Harman was granted options worth $2.44 million, which immediately would have vested in the Acquisition. In total, Dr. Harman and his affiliates and family stood to receive over $543 million in proceeds from sales of stock to the Purchasing Companies in the Acquisition.

148. In addition, Dr. Harman also enjoyed a lucrative compensation package that was tied in large part to the Company's reported financial performance. According to the Proxy, more than one-half of Dr. Harman's compensation during the Class Period was received through awards from the Company's performance-based incentive plan (the "Incentive Plan"). His compensation under the Incentive Plan was based on whether the Company achieved certain preestablished financial and other objectives such as return on stockholder equity. Based upon the materially-false reported quarterly and annual results in fiscal 2007, Dr. Harman received cash and stock compensation of $5.35 million.

149. Dr. Harman received monthly Operating Reports from Harman Becker executives in Germany that clearly reflected the Company's declining operating margins, discounted and returned PND sales, pervasive quality control issues with the MyGIG radio and other products, loss of material contracts for production and sales of future MyGIG products to Chrysler, and the Company's material failure to achieve forecasted sales, revenue and

earnings. Notwithstanding what he learned from the Operating Reports regarding material adverse events, Dr. Harman signed and certified SEC filings which he knew or recklessly disregarded omitted material information which was necessary under the circumstances to avoid making statements which were misleading.

150. During the Class Period, Dr. Harman knowingly and recklessly signed off on all of Harman's materially false and misleading financial reports for fiscal 2007 and the first six months of fiscal 2008, which he knew created an overall impression that was not consistent with the business realities of the Company's financial position and operations.

B. Kevin Brown

151. Defendant Brown served as Harman's Executive Vice President and CFO. During the Class Period, Brown knowingly or recklessly signed and caused the Company to issue materially false and misleading Form 8-Ks, Form 10-K for fiscal 2007 and Form 10-Qs for Third Quarter of fiscal 2007 and First Quarter of fiscal 2008. Defendant Brown also knowingly or recklessly caused each and all of these materially-false and misleading reports to be filed with the SEC.

152. Brown further knowingly or recklessly caused the Company to issue materially false and misleading statements in press releases regarding the Company's reported financial performance in each quarter during the Class Period. Brown knowingly or recklessly made materially false and misleading statements during conference calls with analysts and

other investors throughout the Class Period. As alleged herein, Brown knew at the time of each conference call that reports regarding the Company's financial performance and prospects were misleading and omitted material information regarding material risks to the Acquisition, including the Company's declining operating margins, spiraling costs, unresolved quality control issues, excessive inventory, exuberant capital expenditures and other material adverse events that had violated material terms of the Merger Agreement.

153. After consenting to specific CapEx restrictions requested by the Purchasing Companies in the Merger Agreement, Brown knowingly or recklessly failed to implement proper procedures and controls to ensure that the Company's capital expenditures did not exceed the limits imposed by the Merger Agreement. After realizing that the Company had violated the CapEx covenant, Defendant Brown knowingly or recklessly failed to disclose related material risks to shareholders and the market.

154. In each quarter during the Class Period, Brown and others provided guidance for the Company's earnings per share, which Brown knew at the time had no reasonable basis and was not achievable because of pervasive problems with PND sales and inventory; decreasing operating margins; material losses resulting from the MyGIG radio contract and related manufacturing problems at the Missouri plant; and the Company's strained relationship with Chrysler, which constituted more than 25% of the Automotive division's sales.

155. Brown further knew or recklessly disregarded that the Company had not fully disclosed the true

nature of its MyGIG contract with Chrysler to investors. Brown also knew or recklessly disregarded that the contract was bid at a loss and that the Company had not been able to renegotiate the MyGIG contract with Chrysler, or re-engineer the MyGIG product to make it profitable to manufacture and sell. During the Class Period, Brown also knowingly or recklessly misrepresented the true nature of Harman's obsolete PND inventory, sales, operating margins, and earnings prospects, and artificially inflated Harman's stock price.

156. During the Class Period, Brown had strong incentives to present the Company's business and financial condition and prospects more favorably than they actually were so that he could cash out holdings of Harman stock and unvested options in the Acquisition at a premium price before the Company's materially adverse financial condition became publicly known. According to the Proxy, Brown held 29,000 shares of Harman common stock, and he also held an additional 12,000 vested and 76,000 unvested options for the Company's common stock. In fiscal 2007 alone, Brown was granted options worth more than $885,000, which immediately would have vested in the Acquisition. In total, Brown stood to receive over $14 million in proceeds from sales of stock to the Purchasing Companies in the Acquisition. Brown's options are now all out of the money.

157. In addition, Defendant Brown also enjoyed a lucrative compensation package that was tied in large part to the Company's reported financial performance. According to the Proxy, more than one-half of Brown's compensation during the Class Period

was received through awards from the Company's Incentive Plan. His compensation under the Incentive Plan was based on whether the Company achieved certain pre-established financial and other objectives such as return on stockholder equity. Based upon the materially-false reported quarterly and annual results in fiscal 2007, Brown received cash and stock compensation of $1.89 million.

158. Throughout the Class Period, Brown received monthly Operating Reports from Harman Becker executives in Germany which clearly reflected the Company's declining operating margins, discounted and returned PND sales, pervasive quality control issues with the MyGIG radio and other products, loss of material contracts for future production and sales of MyGIG products to Chrysler, and the Company's failure to achieve forecasted sales, revenue and earnings. Notwithstanding what he learned from the Operating Reports, Brown signed and certified SEC filings which he knew or recklessly disregarded omitted material information which was necessary under the circumstances to avoid making statements which were misleading.

159. During the Class Period, Brown knowingly and recklessly signed off on all of Harman's materially false and misleading financial reports for fiscal 2007 and the first six months of fiscal 2008, which he knew or recklessly disregarded created an overall impression that was not consistent with the business realities of the Company's financial position and operations.

C. Dinesh Paliwal

160. During the Class Period, Paliwal served as Harman's Vice Chairman, CEO and President beginning on July 1, 2007, the first day of fiscal 2008 and immediately after Dr. Harman relinquished the CEO title. During the Class Period and specifically from July 1, 2007 forward, Paliwal knowingly or recklessly signed and caused the Company to issue its materially-false and misleading Form 8-Ks, Form 10-K for fiscal 2007 and Form 10-Q for the First Quarter of fiscal 2008. Paliwal also knowingly and recklessly caused each and all of these materially-false and misleading reports to be filed with the SEC. In addition, in each of these reports filed with the SEC, Dr. Paliwal certified under the Sarbanes-Oxley Act of 2002, as the "Chief Executive Officer and Vice Chairman" of Harman, that the Company's disclosure controls and internal controls over financial reporting were effective and that the reports did not contain any untrue statement of material fact and fairly presented in all material respects the Company's financial condition and results of operations, which Paliwal knew or recklessly disregarded was untrue.

161. Paliwal further knowingly or recklessly caused the Company to issue materially false and misleading statements in press releases regarding the Company's reported financial performance in the First and Second Quarters of fiscal 2008 during the Class Period. Paliwal knowingly or recklessly made materially false and misleading statements during conference calls with analysts and other investors during the Class Period. As alleged herein, Paliwal knew or recklessly disregarded at the time of each conference call he participated in that reports

regarding the Company's financial performance and prospects were misleading and omitted material information regarding material risks to the Acquisition, including the Company's declining operating margins, spiraling costs, unresolved quality control issues, excessive inventory, exuberant capital expenditures and other material adverse events that had violated material terms of the Merger Agreement.

162. Paliwal knew or recklessly disregarded that the Company had violated the CapEx covenant in the Merger Agreement, but knowingly and recklessly failed to disclose related material risks to shareholders and the market. Paliwal himself stated on his first earnings conference call that, after joining the Company, he had made extensive due diligence visits to all of Harman's facilities and met with numerous employees to get up to speed on the Company's operations, financial performance and internal controls and procedures.

163. Paliwal, along with other executives, provided guidance during the Class Period for the Company's earnings per share, which he knew or recklessly disregarded at the time had no reasonable basis and was not achievable because of pervasive problems with PND sales and inventory; decreasing operating margins; material losses resulting from the MyGIG radio contract and related manufacturing problems at the Missouri plant; and the Company's strained relationship with Chrysler, which constituted more than 25% of the Automotive division's sales.

164. Paliwal further knew or recklessly disregarded that the Company had not fully disclosed the true nature of its MyGIG contract with Chrysler

to shareholders, investors, the Purchasing Companies and the market. Paliwal had actual knowledge that the MyGIG contract was bid at a loss and that the Company had not been able to renegotiate the MyGIG contract with Chrysler, or re-engineer the MyGIG product to make it profitable to manufacture and sell. During the Class Period, Paliwal also knowingly or recklessly misrepresented the true nature of Harman's obsolete PND inventory, sales, operating margins, and earnings prospects, and artificially inflated Harman's stock price.

165. Paliwal had strong incentives to present the Company's business and financial condition and prospects more favorably than they actually were so that he could cash out holdings of Harman stock and unvested options in the Acquisition at a premium price before the Company's materially adverse financial condition became publicly known. According to the Proxy, in connection with his joining the Company, Paliwal was granted 100,000 stock options, 64,579 shares of restricted stock, and 32,291 restricted stock units. In total, Paliwal stood to receive over $23.6 million in proceeds from sales of stock to the Purchasing Companies in the Acquisition.

166. Beginning in July 2007, Paliwal received monthly Operating Reports from Harman Becker executives in Germany which clearly reflected the Company's declining operating margins, discounted and returned PND sales, pervasive quality control issues with the MyGIG radio and other products, loss of material contracts for future production and sales of MyGIG products to Chrysler, and the Company's failure to achieve forecasted sales, revenue and earnings. Notwithstanding what he learned from the

Operating Reports, Paliwal signed and certified SEC filings which he knew or recklessly disregarded omitted material information which was necessary under the circumstances to avoid making statements which were made not misleading.

167. During the Class Period, Paliwal knowingly or recklessly signed off on all of Harman's materially false and misleading financial reports for fiscal year-end 2007 and the First Quarter of fiscal 208, which he knew created an overall impression that was not consistent with the business realities of the Company's financial position and operations.

IX. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET DOCTRINE

168. With respect to Lead Plaintiff's claims brought under the 1934 Act and Rule 10b-5, Lead Plaintiff will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

(a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

(b) the omissions and misrepresentations were material;

(c) the Company's securities traded in efficient markets;

(d) the misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

(e) Lead Plaintiff and other members of the Class purchased Harman common stock

between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

169. At all relevant times, the markets for Harman common stock were efficient for the following reasons, among others:

(a) during the Class Period, Harman enjoyed a substantial daily trading volume of approximately 1.1 million shares;

(b) a significant number of securities analysts followed and reported on the Company's common stock during the Class Period;

(c) the New York stock exchange, where Harman's common stock is listed, provided a well-established national system to trade Harman common stock during the Class Period;

(d) as a regulated issuer, Harman filed periodic public reports with the New York Stock Exchange and SEC, and was entitled to file a Form S-3 registration statement; and

(e) as demonstrated by the events alleged herein, the movement of Harman's stock price shows a cause and effect relationship between unexpected corporate events or financial releases and an immediate response in stock price.

170. Had Lead Plaintiff and other members of the Class known of the material adverse information not disclosed by Defendants, or been aware of the truth behind Defendants' material misstatements, they would not have purchased Harman common stock at the artificially-inflated prices they did.

X. NO SAFE HARBOR

171. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Harman who knew that those statements were false when made.

FIRST CLAIM

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder (Against All Defendants)

172. Lead Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

173. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i)

deceive the investing public, including Lead Plaintiff and other Class members, as alleged herein; and (ii) cause Lead Plaintiff and other members of the Class to purchase Harman's common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

174. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Harman's common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

175. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Harman's financial well-being, business relationships, and prospects, as specified herein.

176. These Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Harman's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts

necessary in order to make the statements made about Harman and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Harman's common stock during the Class Period.

177. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of the Individual Defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of the Individual Defendants enjoyed significant personal contact and familiarity with the other Defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of the Individual Defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

178. The Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to

disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Harman's financial well-being, business relationships, and prospects from the investing public and supporting the artificially-inflated price of its common stock. As demonstrated by Defendants' overstatements and misstatements of the Company's financial well-being and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

179. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Harman's common stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of Harman's common stock were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the common stock trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Lead Plaintiff and the other members of the Class acquired Harman's common stock during the Class Period at artificially high prices and were damaged thereby.

180. At the time of said misrepresentations and omissions, Lead Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Lead Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Harman was experiencing, which were not disclosed by Defendants, Lead Plaintiff and other members of the Class would not have purchased or otherwise acquired their Harman common stock, or, if they had acquired such common stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

181. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

182. As a direct and proximate result of Defendants' wrongful conduct, Lead Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's common stock during the Class Period.

SECOND CLAIM

Violation of Section 20(a) of the Exchange Act (Against the Individual Defendants)

183. Lead Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

184. The Individual Defendants acted as controlling persons of Harman within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their

ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements which Lead Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Lead Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

185. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

186. As set forth above, the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of the Individual Defendants' wrongful conduct, Lead Plaintiff and other members of the Class suffered damages in connection with their purchases

of the Company's common stock during the Class Period.

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

(a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

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

(c) Awarding Lead Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

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

JURY TRIAL DEMANDED

Lead Plaintiff hereby demands a trial by jury.

Dated: May 2, 2008

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

By: /s/ Steven J. Toll
Steven J. Toll
(D.C. Bar No. 225623)
Daniel S. Sommers
(D.C. Bar No. 416549)
S. Douglas Bunch (D.C. Bar No. 974054)

1100 New York Avenue,
N.W.
Suite 500, West Tower
Washington, DC 20005
(202) 408-4600
***Lead Counsel for
Lead Plaintiff***

APPENDIX F

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended June 30, 2006
Commission File Number 001-09764

* * *

[Page 8]

Website Information

Our corporate website is located at www.harman.com. Through our website we make available, free of charge, access to our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K filed or furnished by the Company pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934. Our website also provides access to reports filed by our directors, executive officers and certain significant shareholders pursuant to Section 16 of the Securities Exchange Act of 1934. In addition, our Corporate Governance Guidelines, Ethics Code and charters for

three committees of our Board of Directors are available on our website. The information on our website is not incorporated by reference into this report. In addition, the Securities and Exchange Commission ("SEC") maintains a website, www.sec.gov, that contains reports, proxy and information statements and other information that we file electronically with the SEC.

Item 1A. Risk Factors

You should carefully consider the risks described below and the other information in this report.

Our operating results are subject to fluctuations, and if we fail to meet the expectations of securities analysts or investors, our stock price may decrease significantly.

Our operating results may fluctuate significantly and may not meet our expectations or those of securities analysts or investors. The price of our stock will likely decline if this occurs. Factors that may cause fluctuations in our operating results include, but are not limited to, the following:

- automobile industry sales and production rates and the willingness of automobile purchasers to pay for the option of a premium audio system and/or a multi-function infotainment system;
- changes in consumer confidence and spending;
- fluctuations in currency exchange rates and other risks inherent in international trade and business transactions;
- the ability to satisfy contract performance criteria, including technical specifications and due dates;

• the loss of one or more significant customers, including our automotive manufacturer customers;

• competition in the automotive, consumer or professional markets in which we operate;

• model-year changeovers in the automotive industry;

• changes in general economic conditions and specific market conditions; • our ability to enforce or defend our ownership and use of intellectual property;

• our ability to effectively integrate acquisitions; • strikes, work stoppages and labor negotiations at our facilities, or at a facility of one of our significant customers; or work stoppages at a common carrier or a major shipping location;

• the outcome of pending or future litigation and administrative claims, including patent and environmental matters; and

• world political stability.

Currency fluctuations may reduce profits on our foreign sales or increase our costs, either of which could adversely affect our financial results.

A significant amount of our assets and operations are located outside the United States. Consequently, we are subject to fluctuations in foreign currency exchange rates, especially the Euro. Translation losses resulting from currency fluctuations may adversely affect the profits from our foreign operations and have a negative impact on our financial results. In addition, we purchase certain foreign-made products. Although we hedge a portion of our foreign currency exposure and, due to the

multiple currencies involved in our business, foreign currency positions partially offset and are netted against one another to reduce exposure, we cannot assure you that fluctuations in foreign currency exchange rates will not make these products more expensive to purchase. Increases in our cost of purchasing these products could negatively impact our financial results if we are not able to pass those increased costs on to our customers.

Failure to maintain relationships with our largest customers and failure by our customers to continue to purchase expected quantities of our products due to changes in market conditions would have an adverse effect on our operations.

We anticipate that DaimlerChrysler and BMW will continue to account for a significant portion of our sales for the foreseeable future. However, DaimlerChrysler and BMW are not obligated to any long-term purchases of our products. The loss of sales to DaimlerChrysler or BMW would have a material adverse effect on our consolidated sales, earnings and financial position.

Our products may not satisfy shifting consumer demand or compete successfully with competitors' products.

Our business is based on the demand for audio and video products and our ability to introduce distinctive new products that anticipate changing consumer demands and capitalize upon emerging technologies. If we fail to introduce new products, misinterpret consumer preferences or fail to respond to changes in the marketplace, consumer demand for our products

could decrease and our brand image could suffer. In addition, our competitors may introduce superior designs or business strategies, impairing our distinctive image and our products' desirability. If any of these events occur, our sales could decline.

A decrease in discretionary spending would likely reduce our sales.

Our sales are dependent on discretionary spending by consumers, which may be adversely impacted by economic conditions affecting disposable consumer income and retail sales. In addition, our sales of audio, electronic and infotainment products to automotive customers are dependent on the overall success of the automobile industry, as well as the willingness of automobile purchasers to pay for the option of a premium branded automotive audio system or a multi-function digital infotainment system.

Our business could be adversely affected if we are unable to obtain raw materials and components from our suppliers on favorable terms.

We are dependent upon third party suppliers, both in the United States and other countries, for various components, parts, raw materials and finished products. Some of our suppliers may produce products that compete with our products. We use externally sourced microchips in many of our products. A significant disruption in our supply chain and an inability to obtain alternative sources could have a material impact on our consolidated results of operations.

Our business could be adversely affected by a strike or work stoppage at one of our manufacturing plants or at a facility of one of our significant customers or at a common carrier or major shipping location.

One of our manufacturing facilities in the United States operates under a collective bargaining agreement, which was renewed in fiscal 2004. The current contract is scheduled to expire in March 2009. Certain of our automotive customers are unionized and may incur work stoppages or strikes. A work stoppage at our facilities or those of our automotive customers could have a material adverse effect on our consolidated sales, earnings and financial condition. In addition, a work stoppage at a common carrier or a major shipping location could also have a material adverse effect on our consolidated sales, earnings and financial condition.

We may lose market share if we are unable to compete successfully against our current and future competitors.

The audio and video product markets that we serve are fragmented, highly competitive, rapidly changing and characterized by intense price competition.

Many manufacturers, large and small, domestic and foreign, offer audio and video systems that vary widely in price and quality and are marketed through a variety of channels, including audio and video specialty stores, discount stores, department stores, mail order firms, and the Internet. Some of our competitors have financial and other resources greater than ours. We cannot assure you that we will continue to compete effectively against existing or

new competitors that may enter our markets. We also compete indirectly with automobile manufacturers that may improve the quality of original equipment audio and electronic systems, reducing demand for our aftermarket mobile audio products, or change the designs of their cars to make installation of our aftermarket products more difficult or expensive.

If we do not continue to develop, introduce and achieve market acceptance of new and enhanced products, our sales may decrease.

In order to increase sales in current markets and gain entry into new markets, we must maintain and improve existing products, while successfully developing and introducing new products. Our new and enhanced products must respond to technological developments and changing consumer preferences. We may experience difficulties that delay or prevent the development, introduction or market acceptance of new or enhanced products. Furthermore, despite extensive testing, we may be unable to detect and correct defects in some of our products before we ship them. Delays or defects in new product introduction may result in loss of sales or delays in market acceptance. Even after introduction, our new or enhanced products may not satisfy consumer preferences and product failures may cause consumers to reject our products. As a result, these products may not achieve market acceptance. In addition, our competitors' new products and product enhancements may cause consumers to defer or forego purchases of our products.

Our operations could be harmed by factors including political instability, natural disasters,

fluctuations in currency exchange rates and changes in regulations that govern international transactions.

The risks inherent in international trade may reduce our international sales and harm our business and the businesses of our distributors and suppliers. These risks include:

- changes in tariff regulations;
- political instability, war, terrorism and other political risks;
- foreign currency exchange rate fluctuations;
- establishing and maintaining relationships with local distributors and dealers;
- lengthy shipping times and accounts receivable payment cycles;
- import and export licensing requirements;
- compliance with foreign laws and regulations, including unexpected changes in taxation and regulatory requirements;
- greater difficulty in safeguarding intellectual property than in the United States; and
- difficulty in staffing and managing geographically diverse operations.

These and other risks may increase the relative price of our products compared to those manufactured in other countries, reducing the demand for our products.

If we are unable to enforce or defend our ownership and use of our intellectual property, our business may decline.

Our future success will depend, in substantial part, on our intellectual property. We seek to protect our intellectual property rights, but our actions may not adequately protect the rights covered by our patents, patent applications, trademarks and other proprietary rights and prosecution of our claims could be time consuming and costly. In addition, the intellectual property laws of some foreign countries do not protect our proprietary rights, as do the laws of the United States. Despite our efforts to protect our proprietary information, third parties may obtain, disclose or use our proprietary information without our authorization, which could adversely affect our business. From time to time, third parties have alleged that we infringe their proprietary rights. These claims or similar future claims could subject us to significant liability for damages, result in the invalidation of our proprietary rights, limit our ability to use infringing intellectual property or force us to license third-party technology rather than dispute the merits of any infringement claim. Even if we prevail, any associated litigation could be time consuming and expensive and could result in the diversion of our time and resources.

Covenants in our debt agreements could restrict our operations.

Our revolving credit facility contains certain provisions that could restrict our operating and financing activities. They restrict our ability to, among other things:

- create or assume liens;
- enter into sale-leaseback transactions; and
- engage in mergers or consolidations.

Because of the restrictions on our ability to create or assume liens, we may have difficulty securing additional financing in the form of additional indebtedness. In addition, our revolving credit facility contains other and more restrictive covenants, including financial covenants that will require us to achieve specified financial and operating results and maintain compliance with specified financial ratios. We may have to curtail some of our operations to maintain compliance with these covenants.

If we fail to comply with the covenants contained in our debt agreements, the related debt incurred under those agreements could be declared immediately due and payable, which could also trigger a default under other agreements.

Our ability to meet the covenants or requirements in our credit facilities may be affected by events beyond our control, and we cannot assure you that we will satisfy these covenants and requirements. A breach of these covenants or our inability to comply with the financial ratios, tests or other restrictions could result in an event of default under our revolving credit facility. Upon the occurrence of an event of default under our revolving credit facility, the lenders could elect to declare all amounts outstanding under our revolving credit facility, together with accrued interest, to be immediately due and payable. If the payment of our indebtedness is accelerated, we cannot assure you that we will be able to make those payments or borrow sufficient funds from alternative sources to make those payments. Even if we were to obtain additional

financing, that financing may be on unfavorable terms.

Harman International is a holding company with no operations of its own and therefore our cash flow and ability to service debt is dependent upon distributions from our subsidiaries.

Our ability to service our debt and pay dividends is dependent upon the operating earnings of our subsidiaries. The distribution of those earnings, or advances or other distributions of funds by those subsidiaries to Harman International, all of which could be subject to statutory or contractual restrictions, are contingent upon the subsidiaries' earnings and are subject to various business considerations.

Any of the foregoing factors could have a material adverse effect on our business, results of operations and financial condition. In light of these risks and uncertainties, there can be no assurance that the results and events contemplated by the forward-looking statements contained in this report will in fact transpire.

Item 1B. Unresolved Staff Comments

None.

* * *

APPENDIX G

HARMAN INTERNATIONAL INDUSTRIES
Earnings Release Conference Call

HARMAN INTERNATIONAL INDUSTRIES

April 26, 2007

9:30 a.m. EDT

Moderator — Ladies and gentlemen, thank you for standing by. Good morning, and welcome to the Harman International Industries Third Quarter Fiscal 2007 Earnings Release conference call. Now, at this point, all your phones lines are muted or in a listen-only mode. However, later during the conference, there will be opportunities for questions. As a reminder, today's conference is being recorded.

Ladies and gentlemen, if I may have your attention, certain statements by the company during this call are forward-looking statements. These statements include the company's beliefs and expectations as to future events and trends affecting the company's business and are subject to risks and uncertainties. Persons participating on the call today are advised to review the reports filed by

Harman International with the Securities and Exchange Commission regarding these risks and uncertainties.

With that being said, here with our opening remarks is Harman International Industries' Executive Chairman and Chief Executive Officer, Dr. Sidney Harman. Please go ahead, Dr. Harman.

S. Harman Good morning. Joining me in Washington, D.C., are Kevin Brown, our CFO, and Rob Ryan, our principal officer for Investor Relations. We report today on our third quarter results, and we will provide perspective on the balance of the year and the year ahead.

First to comment on the agreement we announced this morning, which merges Harman International into a new company to be financed by Kohlberg Kravis Roberts (KKR) and Goldman Sachs. The new company will carry the Harman International name. I will be its executive chairman and a substantial investor.

We think very well of the deal. It has been structured to provide shareholders with a substantial premium for their shares and, if they elect to do so, to retain a substantial portion of their investment in the

company going forward. The deal rewards our loyal shareholders, a substantial number of whom have been … for many years, and it recognizes the dedication, hard work and commitment of our people.

Until we have moved the transaction through the SEC and other legal processes, we are constrained in what we can say. However, a few highlights may be helpful. The company formed by KKR and Goldman will pay $120 cash for each Harman share in the merger transaction. Shareholders will have the right to elect to retain a portion of their Harman stock up to a maximum of 8.3 million shares in total. If shareholders elect to keep more than 8.3 million shares, the elections will be prorated. If shareholders elect fewer than 8.3 million shares, the remaining shares will be available to those shareholders who wish to pick up the unsubscribed shares in proportion to their original elections.

The agreement includes a go-shop provision under which the company is free for 50 days to consider without significant restriction any alternative bids. If a topping bid were received and successful during the 50-day period, the company would pay the KKR/Goldman group a $75 million

break-up fee. After the 50-day period, a typical so-called no-shop structure and break-up fee would apply. We expect to file a copy of the agreement on a Form 8-K later today.

The KKR/Goldman Sachs group has asked me to continue as chairman of the board, and I am happy to do so. I have, as I have indicated, also committed to continue my proportionate ownership of Harman stock. If another bidder materializes, we will provide the opportunity to make an alternative proposal in accordance with the merger agreement. In the meantime, I assure you that management is committed to the continued growth and development of the company.

We had a good third quarter. Consolidated sales totaled $882,771,000, a 10% increase above the third quarter last year. Earnings per share were $1.07 compared to $0.94 last year. We enter the final quarter of the year with $3.14 EPS through the first nine months. To reach our target of $4.35, we will need a strong fourth quarter, producing EPS of $1.21.

At our mid-year earnings call, I stated we hoped to achieve that target, despite the expectation that R&D costs would exceed plan by $30

million. Our analysis in R&D continues unchanged, but I am less certain that we will be able to absorb it all. It is too early to know with certainty, but I estimate that we should be able to absorb 60% or $0.18 of the $0.30.

We begin the fourth quarter of the year and we look to fiscal '08 with a backlog of $14 billion. We continue to expect fiscal '08 automotive OEM revenues at $2.8 billion and EPS of $5.25, subject to the probability that we will not be able to absorb the $46 million engineering bulge I identified in our previous earnings call. Let me remind that the bulge is driven by work on $1.1 billion of new business unanticipated when we first planned fiscal '08 and by continuing new work on Driver Assist. If we are unable to absorb the $46 million R&D bulge, the projected fiscal '08 EPS would become $4.79.

We have not received a major new award since our last earnings call, but there is a flow of good awards that add extra fiber to the backlog. Land Rover has committed its branded audio business to Harman Kardon for the period of fiscal 2011 through 2015. The estimated annual revenue is $50 million with total value of $250 million. This is business that we had

coveted, but now has been formally awarded.

Let me offer a perspective going forward. Ours is a very healthy business, and we have a special place in both the automotive OEM and the professional sides of our work, but we have no conceit that this is a walk in the park. There are challenges, as there are opportunities, throughout the markets and throughout the technologies with which we work. Those opportunities include geographic expansion in Asia, and especially in China. They include a further expansion of infotainment through mid-range and entry-level automobiles, and they include the promising and challenging new arena of Driver Assist. We are hard at work in all three areas. We have made consequential progress in scaling our systems through the mid-range and entry level, and we are confident that our competitive and comparative advantage on the infotainment side will serve us very well on the Driver Assist side.

A year ago in our earnings call, I said, "Within one year, we expect to unveil the most advanced multimedia system architecture for OEM and consumer applications this industry has seen. It will provide simultaneous and

seamless transport of audio from hard disks, CDs and USB memory sticks from any computer to any other computer. It will accommodate several iPods, each playing music and displaying its playlist in less than one second. Similarly, the system will stream three DVDs across the network in real time."

I said then that we had conducted a series of exclusive presentations and focus groups to review and evaluate the new developments, and the unfailing reaction had been, "That knocked our socks off." Today, a year later, it is fair to say that the connectivity and graphic advances implicit in that expression have been realized. The modules of multi system architecture are incorporated in the L-6 platform to be used throughout the BMW line, and they are used throughout the Audi line. Our media software pack has been developed at QNX, and we plan to offer the modules to our competitors.

I have reviewed the opportunities in Driver Assist in earlier calls. We believe, if we get our job done, that by the year 2014 or 2015, it can represent as much as a 50% enhancement of our revenues in OEM. We have a solid fix on what that means, and we believe that our experience in debugging and

integrating will prove again a unique advantage in the Driver Assist world.

It is interesting to note that in the time since our most recent earnings calls, Siemens Video appears to have determined to leave the business, and TomTom appears to have decided to seek a place in it. That shifting, if it comes about, would come as no surprise to us and should come as no surprise to anyone. Even as we are learning the challenges of the PND business, anyone entering our automotive OEM world will have much to learn. We know that it is not a world that everyone will simply leave to us. We know that we have to continue to build on what is becoming our legacy and that we can take nothing for granted.

As I look forward to our future in OEM, I see an interesting assembly of opportunity and challenge. I've already spoken about market opportunity. Here I recognize and emphasize that recognition that our growth has been accompanied by variances in efficiency. We are determined to rationalize our engineering and to reduce significantly the percentage of sales that R&D represents. I have spoken about this before. I mention it now not because I have some major new

insight, but precisely to emphasize the fact that it is before us that we have our work cut out, but we intend to get it done.

Our professional business continues to develop very well. We have a deep bench and an appetite to match it. Our technology competence is growing, and we are translating that competence into products and services people want to buy. We have turned around the two laggards in our portfolio, and I look to continuing growth, especially as we move forward on the video side of the professional world.

Video presentation is, in my view, the next major pro opportunity. The video signal chain has fundamentally four parts. One is control; two is content service; three, the backbone or hardware; and, four, the projectors. That video chain includes digital video conversion, storage and play-out technology for digital cinema; and digital cinema, after many delays, is now beginning to develop.

Christie/AIX and Technicolor are now funded to service over 7,000 screens through 2008. The movie studios are providing the funding on a basic print fee model, and that domain presents itself as opportunity. Even as it is implicitly good for our pro audio, it

provides opportunity for an expanded engagement in pro video. In essence, the opportunity is for us to integrate audio and video so that it will be possible to monitor and control both from a single remote location.

We continue to support our consumer business. We have all the good traditional reasons to do so, the value of our brands as they facilitate our work in the OEM field, for example, but there are other reasons. Foremost perhaps is our conviction that there is so much potential value in our R&D work that can and should be translated into leading-edge consumer products. There is so much in both the supply chain and the manufacturing programs that encourage us to look for genuine synergies and savings. We know that the production of attractive margins in this arena is challenging, and we are determined to win that struggle.

I had indicated in earlier conference calls that the PND environment in Europe was not as margin challenged as it is in the United States, but that we could surely anticipate it. There was reasonable foresight in that observation. In the recent quarter, the European PND market has become extremely competitive. We are working extraordinarily hard to

increase sales and to maintain adequate margins in that environment.

In our earnings call three months ago, it was noted that Harman Becker PND inventories in Europe had grown substantially. We said then that the inventory had been developed to support a vigorous sales effort and that we plan to reduce it to normal levels at year-end. The plan forecasts total unit sales of 618,000 units for the fiscal '07 year, and that plan is proceeding. Where March 31 inventory was $75 million, we expect April 30 inventory to be approximately $50 million, May 31 inventory to be approximately $30 million, and June 30 inventory to be approximately $15 million; that a very normal level.

Overall, the European market for our high-fidelity and multimedia products is a very bright spot in our consumer business. Our position everywhere is strengthening, and I remain optimistic about our future.

Finally, I can report that we have reached a decision on the new CEO. We are now in that unavoidably complicated process of negotiating terms of employment. We will identify the person and indicate the date of his arrival just as quickly as

	we bring the negotiations to a conclusion. Now here is Kevin.
K. Brown	Thank you, Sidney. Net sales for the third quarter were $882.8 million, an increase of $81.3 million, or 10% compared to the same quarter of last year. Gross profit margin was 34.6%. Operating income was $102.3 million. Earnings per share were $1.07, compared to $0.94 in the prior year, an increase of 14%.
	Net sales for the first nine months were $2.64 billion, an increase of 11%, compared to $2.39 billion in the prior nine-month period. Gross profit margin was 34.6%. Operating income was $305 million. Earnings per share were $3.14 for the nine months, compared to $2.80 last year, an increase of 12%.
	Foreign currency translation had a favorable effect on our third quarter results compared to the prior year. This was due to the strengthening of the euro versus the U.S. dollar. The euro averaged $1.31 during the quarter compared to $1.20 during the same period last year. This contributed approximately $45 million to third quarter sales and improved EPS by $0.08 per share.
	Automotive sales were $624.9 million, an increase of $57.5 million, or 10%

compared to the third quarter of last year. Foreign currency translation is primarily incurred in the automotive operations and improved automotive sales by $39 million compared to the prior year. Automotive operating income was 14.7% of sales. Automotive operating income margins are impacted by the increased R&D expenses Sidney spoke of.

Total Harman International R&D expenses in the third quarter were $90 million, or 10.2% of sales compared to $74 million, or 9.2% of sales in the same quarter of the prior year. As Sidney discussed, R&D is trending higher than we had anticipated as we work to develop new technologies and new programs. We expect fiscal 2007 R&D expenses to approximate 10% of full-year sales. In fiscal 2008, we anticipate R&D will begin to decrease as a percentage of sales.

The increase in R&D explains $16 million of the $20 million increase in SG&A in the third quarter compared to the prior year. Despite the increase in R&D, total SG&A as a percent of sales remained relatively flat at 23% of sales in the quarter.

Consumer sales were $118 million in the quarter, $11.2 million, or 10.4% ahead of the third quarter last year.

Consumer operating profit was 1.5% of sales. Operating margins were lower than the prior-year quarter, primarily due to increased competition in the multimedia segment.

Professional sales of $140 million were $12.6 million, or 9.9% better than the third quarter of last year. Professional operating income was 13.5% of sales, 290 basis points above the year-ago period. Professional benefited from higher sales of products utilizing the HiQnet protocol from the well-received introduction of the JBL Pro and Crown line of powered speakers and from recently introduced digital consoles from Soundcraft and Studer.

The tax rate for the quarter was 30.5% compared to the 33.3% for the third quarter of last year. The tax rate for the prior-year third quarter included a $1.7 million charge for the repatriation of cash from the company's foreign subsidiaries under the American Job Creation Act of 2004.

Inventories were $480 million at March 31st, an increase of $142 million compared to the prior year. As in the second quarter, inventory increases are primarily at automotive to support the growing PND business. Higher sales and new product launches at consumer and pro, as well

as currency translation, also impacted inventories.

Accounts payable at March 31st were $270 million and accounts receivable were $530 million. Capital expenditures during the third quarter were $45 million, while depreciation and amortization was $32 million. Cash at March 31st was $97 million and total debt was $160 million.

The company repurchased 586,800 shares during the third quarter for $56 million. We have spent $129 million for 1.5 million shares during the nine-month period. Due to the merger agreement, we will suspend our share repurchase program. The company has expensed employee stock options since fiscal year 2003. We expensed $3.6 million for stock options during the third quarter, equivalent to $0.04 per share.

In our January 25, 2007, earnings call, we indicated that we were considering actions centered on rationalizing both engineering and manufacturing, and we expected those actions would results in a restructuring charge in the fourth quarter of fiscal '07 in the range of $0.10 to $0.15 per share. That expectation has not changed. We will now take your questions.

Moderator	Our first question comes from the line of Jeff Kessler with Lehman Brothers. Please go ahead.
J. Kessler	Sure. The first comment is, Sidney, congratulations. It's been a long time, and hopefully we can continue to contact each other.
S. Harman	Thank you, Jeff.
J. Kessler	A lot of years.
S. Harman	Yes, indeed.
J. Kessler	I guess the question that we have is around continuing to match R&D to the revenue structure as you see it, given that you have programs in place that are obviously important and obviously have a lot of potential, but getting your hands around the expense levels relative to new programs. You've mentioned one or two that are in line to produce over the next several years. Is there anything that we should be aware of which is maybe going to change that R&D to revenue percentage, let's say 18 months out or so?
S. Harman	Are you asking whether the percentage of revenue represented by R&D will increase or decrease?
J. Kessler	Yes. I'm asking again, how are you going to get that decreased? In other words, where is the return on that R&D going to come from?

S. Harman I've got it. In two ways, really. Understand first that the increase is, from our point of view, a very constructive thing. The so-called bulge was generated by the receipt of awards that we did not contemplate when we were generating the plan and generating our guidance. The engineering represented in that bulge is essentially for the new BMW award and the development of Driver Assist, which we believe has very positive implications down the road. I have not yet answered your question, but I thought it useful to set that base.

Now we believe, and I have made this clear numbers of times, we believe that, in the growth of the company and in the urgency of getting the job done in what was a substantially new world of technology, the primary objective was just that: get it done and, in effect, damn the cost. We are still in that surge mood. I should be careful about the use of that word, I suppose. But I am convinced; Kevin is convinced; our board is convinced that over time, and reasonable time, we can rationalize that engineering so that, as a percentage of sales—and remind you, sales will be going up—so that if the engineering expense stayed fixed, the percentage would decline. It moves us constructively in that

direction, but we believe that we can rationalize, generate efficiencies, such as to permit us to improve that percentage by approximately 100 basis points a year over the next several years.

J. Kessler	All right. One other question, and that is the changing landscape of your competition. Given the potential dropout of what was assumed to be your major competitor and the emergence obviously of a smaller competitor who clearly people thought was waiting in the wings for a while, do you believe this gives you a window of opportunity to essentially solidify what's already an obviously large position in the industry? Can you take advantage of this to solidify that position further?
S. Harman	In fairness, Jeff, we've been taking advantage of the very material that might have driven that decision if, in fact, it is a decision by Siemens. We've been taking advantage of it in the sense that that was a good competitive landscape for us. You know us and you've known me long enough to know that I come at this stuff with that traditional paranoia that says, "I look behind every tree." There is no guarantee where new vigorous competition may or may not arise, but my judgment

	today is that our role in that firmament remains unique. We are the strongest player in that space, and our job is to stay there.
J. Kessler	Okay. Final question, and that is your margins in consumer have obviously bounced around anywhere from 1% to 14% over the last couple of years, depending on product introductions and the competition out there. We've asked in the past, is there some type of middle point that you can foresee these margins coalescing around realizing that we're never going to get a consistent 5% margin or 6% margin every quarter. Has your position changed on where consumer margins should be able to let's just say get a median line through over the next couple of years instead of us trying to guess that it's going to be 10% one quarter or 2% the next quarter, because obviously modeling this division has been very hard?
S. Harman	Fair question, and my position has not changed. I think that 6% to 7% is the reasonable and realizable consistent target.
J. Kessler	Okay. Sidney, once again, congratulations, and please my regards to everybody who I've known at the company for all these years.

S. Harman	Jeff, thank you very much. I remember that you were there very, very early, no forgetting that, buddy.
J. Kessler	Okay, thanks. Take it easy, Sidney.
S. Harman	Fair question, and my position has not changed. I think that 6% to 7% is the reasonable and realizable consistent target.
J. Kessler	Okay. Sidney, once again, congratulations, and please my regards to everybody who I've known at the company for all these years.
S. Harman	Good-bye.
Moderator	Thank you. Next we'll go to the line of Ronald Tadross with Bank of America Securities. Please go ahead.
N. Faron	Hello. This is General Nathan Faron. How did the transaction come about, and are there any interested parties as of now?
S. Harman	I'm sorry. I have to ask you to repeat the question. I had difficulty hearing.
N. Faron	I'm sorry. Regarding the KKR/Goldman transaction, I was wondering, how did this come about? Can you tell us that, and are there any other interested parties at present?
S. Harman	It came about, because they contacted us; and I cannot answer the second part of your question,

	because I do not know.
N. Faron	Okay. Just one more question, on the European PND, you said that because of higher competition, you're seeing pricing pressure, or is it because the growth is slowing and there are more people vying for the same ...
S. Harman	No, I think it's the former.
N. Faron	It's a small competition?
S. Harman	Yes.
N. Faron	Okay. Thank you.
S. Harman	You're welcome.
Moderator	Thank you. We'll go to the line of Jon Rogers with Citigroup. Please go ahead.
J. Rogers	Good morning. I'm just wondering, it looks to me, according to our analysis, that this bid is a little light. Congratulations nonetheless, but is there something, Dr. Harman, as you're sort of at the base of your growth curve; is there something that these partners give you that you couldn't have gotten from the public market?
S. Harman	Jon, it's a fair question, and I answer that in personal terms as well as generally. I think there is a very great deal. This particular organization carries with it, in my judgment, numbers of elements that

I think of as gravitas. They are superbly funded. Lots of other organizations could make the same claim, but I think very, very well of the personnel in this organization. I think very well of their business acuteness. I think very well of the network that becomes available to us that is the consequence of their history and their competence. I must say that I think very well of the fact that Henry Kravis in particular will be a member of this board and actively engaged.

Now, beyond that somewhat personal comment, I'm a vigorous guy. I think you'd agree that I'm a vigorous guy, but you would damn well agree I'm a vigorous guy for a man three months removed from his 89th birthday. I have said that we have identified our CEO and we are in the process of negotiating the terms of his arrangements. There is neither certainty that that will get done, and all experience makes it clear that one cannot be absolutely certain that the consequence of that is going to be an easy path.

As I consider all of that, I consider it an obligation to find, if it is available in really solid terms, what I would think of as a safe, supportive harbor for the company and for its

	employees and for its customers and its suppliers. I think I have indicated to you in the early part of my answer that that is the reason I respond well to this particular firm.
J. Rogers	Okay. Thank you very much. Congratulations again.
S. Harman	Thank you, Jon, and it's been good working with you.
J. Rogers	Absolutely.
Moderator	Thank you. We do have a question from the line of Peter Friedland with Soleil. Please go ahead.
P. Friedland	Any feedback on initial adoption for the MiGig system at Chrysler?
S. Harman	Not in the detail that you might like, Peter, but I think that Kevin may have some data that would be useful here. Do you?
K. Brown	Yes. Peter, as you know, it's just rolling out in this quarter. Total sales from us to Chrysler were in the range of $4 million. We won't see meaningful volume until the 2008 models start to ramp up in the coming quarter and into the first quarter of fiscal '08, so we just really started is the answer.
P. Friedland	Okay. Then as far as Becker PND units, you said you're still on track for 618,000 units for fiscal '07. Where are we year to date? Then the

	second question, on the Harman Kardon PND, what are the units there?
S. Harman	Kevin is checking his records. Let me just tell you that the Harman Kardon PNDs are just too early to even begin to read retail sales. They are moving into retail channels. Ask us in the next quarter. Do you have information?
K. Brown	Yes. The Harman Kardon PND unit sales for the quarter were about 84,000 units; for the nine months, they're over 300,000 units.
S. Harman	You said, "Harmon Kardon."
K. Brown	The Becker, I'm sorry. Did I say Harman Kardon?
S. Harman	Correct it, please.
K. Brown	The Becker — the European PND unit sales.
P. Friedland	Okay. So 300,000, and you still think you can do over 600,000 for the fiscal year?
S. Harman	We do, and we said so.
P. Friedland	Okay, great. Thank you.
S. Harman	Thank you.
Moderator	Thank you. We'll go to the line of Peter Cyrus with Gorilla Capital. Please go ahead.
P. Cyrus	Hi, Sidney.
S. Harman	Hello, Peter.

P. Cyrus	I just realized this is the second time you've done this to me. The first time was at Jervas and then it came back.
S. Harman	Come on, Peter. Jervas was before the Civil War. No one can check on whether your recollection is correct.

* * *

APPENDIX H

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended June 30, 2007
Commission File Number 001-09764

* * *

[Page i]

INDEX

		Page
	Forward-Looking Statements	i
Part I		
Item 1.	Business	1
Item 1A.	Risk Factors	9
Item 1B.	Unresolved Staff Comments	15
Item 2.	Properties	16
Item 3.	Legal Proceedings	17
Item 4.	Submission of Matters to a Vote of Security Holders	18
	Executive Officers of the Registrant	18
Part II		

Item 5.	Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	19
Item 6.	Selected Financial Data	20
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations	21
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	35
Item 8.	Financial Statements and Supplementary Data	37
Item 9.	Changes in and Disagreements With Accountants on Accounting and Financial Disclosure	72
Item 9A.	Controls and Procedures	72
Item 9B.	Other Information	72
Part III		
Item 10.	Directors, Executive Officers and Corporate Governance	72
Item 11.	Executive Compensation	74
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	74
Item 13.	Certain Relationships and Related Transactions, and Director Independence	74
Item 14.	Principal Accounting Fees and Services	74
Part IV		
Item 15.	Exhibits and Financial Statement Schedules	75
Signatures		79

The page numbers in this Table of Contents reflect actual page numbers, not EDGAR page tag numbers.

References to "Harman International," "Harman," the "company," "we," "us" and "our" in this Form 10-K refer to Harman International Industries, Incorporated and its subsidiaries unless the context requires otherwise.

Forward–Looking Statements

This report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). You should not place undue reliance on these statements. Forward-looking statements include information concerning possible or assumed future results of operations, capital expenditures, the outcome of pending legal proceedings and claims, including environmental matters, goals and objectives for future operations, including descriptions of our business strategies and purchase commitments from customers. These statements are typically identified by words such as "believe," "anticipate," "expect," "plan," "intend," "estimate" and similar expressions. We base these statements on particular assumptions that we have made in light of our industry experience, as well as our perception of historical trends, current conditions, expected future developments and other factors that we believe are appropriate under the circumstances. As you read and consider the information in this report, you should understand that these statements are not guarantees of performance or results. They involve risks, uncertainties and assumptions. In light of these risks and uncertainties, there can be no assurance that the

results and events contemplated by the forward-looking statements contained in, or incorporated by reference into, this report will in fact transpire.

You should carefully consider the risks described below and the other information in this report. Our operating results may fluctuate significantly and may not meet our expectations or those of securities analysts or investors. The price of our stock would likely decline if this occurs. In addition, the proposed acquisition of our company by KHI Parent Inc. ("Parent"), a company formed by investment funds affiliated with Kohlberg, Kravis Roberts & Co. L.P. ("KKR") and GS Capital Partners VI Fund, L.P. and its related funds, which are sponsored by Goldman, Sachs & Co. ("GSCP"), as reported on our current report on Form 8-K filed with the Securities and Exchange Commission on April 26, 2007, may cause the price of our stock to fluctuate significantly.

Factors that may cause fluctuations in our operating results and/or the price of our common stock include, but are not limited to, the following:

- the occurrence of any event or other circumstances that could give rise to termination of the merger agreement and the fact that a termination under some circumstances could require our company to reimburse Parent's out-of-pocket transaction expenses up to $20 million and pay a termination fee of up to $225 million (less any transaction expenses reimbursed);
- the outcome of any litigation and judicial actions that have been or may be instituted against our company, Parent and others relating to the merger agreement;

- the inability to complete the merger due to failure to obtain stockholder approval or the failure to satisfy other conditions to complete the merger, including the inability of Parent and its affiliates to obtain regulatory approvals, as required by the merger agreement;
- the possibility that the merger may involve unexpected costs;
- the failure of Parent or its affiliates to obtain the necessary debt financing arrangements set forth in the commitment letters received in connection with the merger agreement, including as the result of the recent disruptions in the debt capital markets;
- the failure of the merger to close for any other reason or any significant delay in the expected completion of the merger;
- risks that the proposed transaction disrupts our company's current plans and operations, and the potential difficulties for our company's employee retention as a result of the announcement or completion of the merger;
- the effect of the announcement or completion of the merger on our company's customer and supplier relationships, operating results and business generally;
- the impact of the substantial indebtedness incurred to finance the merger;
- the amount of costs, fees, expenses and charges related to the merger and the actual terms of the financings to be obtained in connection with the merger;

- the diversion of our company's management's and employees' attention from day-to-day business;
- changes in laws, including increased tax rates, changes in regulations or accounting standards, third-party relations and approvals, and decisions of courts, regulators and governmental bodies;
- automobile industry sales and production rates and the willingness of automobile purchasers to pay for the option of a premium audio system and/or a multi-function infotainment system;
- changes in consumer confidence and spending;
- fluctuations in currency exchange rates and other risks inherent in international trade and business transactions;
- our ability to satisfy contract performance criteria, including technical specifications and due dates;
- our ability to design and manufacture our products profitably under our long-term contractual commitments;
- the loss of one or more significant customers, including our automotive manufacturer customers;
- competition in the automotive, consumer or professional markets in which we operate;
- model-year changeovers in the automotive industry;
- changes in general economic conditions and specific market conditions;
- our ability to enforce or defend our ownership and use of intellectual property;
- our ability to effectively integrate acquisitions made by our company;

- strikes, work stoppages and labor negotiations at our facilities, or at a facility of one of our significant customers; or work stoppages at a common carrier or a major shipping location;
- the outcome of pending or future litigation and administrative claims, including patent and environmental matters; and
- world political stability.

Although we believe that these forward-looking statements are based on reasonable assumptions, you should be aware that many factors could affect our actual financial results, results of operations and/or the price of our common stock and could cause actual results to differ materially from those expressed in the forward-looking statements. As a result, the foregoing factors should not be construed as exhaustive and should be read together with the other cautionary statements included in this and other reports we file with the Securities and Exchange Commission. For additional information regarding certain factors that may cause our actual results to differ from those expected or anticipated, see the information under the caption "Risk Factors" which is located in Item 1A of Part I of this report.

* * *

[Page 13]

reinforcement market include Telex, Electro Voice, Mackie, QSC, Meyer Sound Laboratories, Sennheiser, Peavey, Shure, Audio Technica, and Yamaha. Our Studer, AKG, Soundcraft, JBL Professional and Lexicon branded products compete in the recording and broadcast markets. Principal competitors in these markets include Yamaha, Sennheiser, Loud

Technologies, Inc., Lawo, Harris Corporation, DigiDesign/M-Audio, Genelec, KRK, TC Electronics, Stagetec and Sony. In the music instrument market, competitors for our JBL Professional, DigiTech, dbx, Crown, Soundcraft and AKG products include Yamaha, Peavey, QSC, Shure, Sennheiser, Line 6, Dunlop, Zoom, Audio Technica and Roland. We also compete in the industrial and architectural sound market. Competitors within this market include Siemens, Peavey and Tannoy.

We are subject to various Federal, state, local and international environmental laws and regulations, including those governing the use, discharge and disposal of hazardous materials. We believe that our facilities are in substantial compliance with current laws and regulations. The cost of compliance with current environmental laws and regulations has not been, and is not expected to be, material.

Research and Development

Expenditures for research and development were $356.7 million, $302.0 million and $222.6 million for the fiscal years ended June 30, 2007, 2006 and 2005, respectively.

Number of Employees

At June 30, 2007, we had 11,688 full-time employees, including 5,611 employees located in North America and 6,077 located outside of North America.

Website Information

Our corporate website is located at www.harman.com. Through our website we make available, free of charge, access to our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K filed or furnished by the company pursuant

to Section 13(a) or 15(d) of the Securities Exchange Act of 1934. Our website also provides access to reports filed by our directors, executive officers and certain significant stockholders pursuant to Section 16 of the Securities Exchange Act of 1934. In addition, our Corporate Governance Guidelines, Ethics Code and charters for three committees of our Board of Directors are available on our website. The information on our website is not incorporated by reference into this report. In addition, the Securities and Exchange Commission ("SEC") maintains a website, www.sec.gov, that contains reports, proxy and information statements and other information that we file electronically with the SEC.

Item 1A. Risk Factors

In addition to the other information included in this report, you should carefully consider the risk factors described below.

Risks Related to Harman

Currency fluctuations may reduce profits on our foreign sales or increase our costs, either of which could adversely affect our financial results.

A significant amount of our assets and operations are located outside the United States. Consequently, we are subject to fluctuations in foreign currency exchange rates, especially the Euro. Translation losses resulting from currency fluctuations may adversely affect the profits from our foreign operations and have a negative impact on our financial results. In addition, we purchase certain foreign-made products. Although we hedge a portion of our foreign currency exposure and, due to the multiple currencies involved in our business, foreign

currency positions partially offset and are netted against one another to reduce exposure, we cannot assure you that fluctuations in foreign currency exchange rates will not make these products more expensive to purchase. Increases in our cost of purchasing these products could negatively impact our financial results if we are not able to pass those increased costs on to our customers.

Failure to maintain relationships with our largest customers and failure by our customers to continue to purchase expected quantities of our products due to changes in market conditions would have an adverse effect on our operations.

We anticipate that our automotive customers, including DaimlerChrysler, will continue to account for a significant portion of our sales for the foreseeable future. However, DaimlerChrysler, or our other automotive customers are not obligated to any long-term purchases of our products. The loss of sales to DaimlerChrysler, or to any of our other significant automotive customers, would have a material adverse effect on our consolidated sales, earnings and financial position.

Our products may not satisfy shifting consumer demand or compete successfully with competitors' products.

Our business is based on the demand for audio and video products and our ability to introduce distinctive new products that anticipate changing consumer demands and capitalize upon emerging technologies. If we fail to introduce new products, misinterpret consumer preferences or fail to respond to changes in the marketplace, consumer demand for our products

could decrease and our brand image could suffer. In addition, our competitors may introduce superior designs or business strategies, impairing our distinctive image and our products' desirability. If any of these events occur, our sales could decline.

A decrease in discretionary spending would likely reduce our sales.

Our sales are dependent on discretionary spending by consumers, which may be adversely impacted by economic conditions affecting disposable consumer income and retail sales. In addition, our sales of audio, electronic and infotainment products to automotive customers are dependent on the overall success of the automobile industry, as well as the willingness of automobile purchasers to pay for the option of a premium branded automotive audio system or a multi-function digital infotainment system.

Our business could be adversely affected if we are unable to obtain raw materials and components from our suppliers on favorable terms.

We are dependent upon third party suppliers, both in the United States and other countries, for various components, parts, raw materials and finished products. Some of our suppliers may produce products that compete with our products. We use externally sourced microchips in many of our products. A significant disruption in our supply chain and an inability to obtain alternative sources could have a material impact on our consolidated results of operations.

Our business could be adversely affected by a strike or work stoppage at one of our manufacturing plants or

at a facility of one of our significant customers or at a common carrier or major shipping location.

One of our manufacturing facilities in the United States operates under a collective bargaining agreement. This contract is scheduled to expire in March 2009. Certain of our automotive customers are unionized and may incur work stoppages or strikes. A work stoppage at our facilities or those of our automotive customers could have a material adverse effect on our consolidated sales, earnings and financial condition. In addition, a work stoppage at a common carrier or a major shipping location could also have a material adverse effect on our consolidated sales, earnings and financial condition.

We may lose market share if we are unable to compete successfully against our current and future competitors.

The audio and video product markets that we serve are fragmented, highly competitive, rapidly changing and characterized by intense price competition.

Many manufacturers, large and small, domestic and foreign, offer audio and video systems that vary widely in price and quality and are marketed through a variety of channels, including audio and video specialty stores, discount stores, department stores, mail order firms, and the Internet. Some of our competitors have financial and other resources greater than ours. We cannot assure you that we will continue to compete effectively against existing or new competitors that may enter our markets. We also compete indirectly with automobile manufacturers that may improve the quality of original equipment audio and electronic systems,

reducing demand for our aftermarket mobile audio products, or change the designs of their cars to make installation of our aftermarket products more difficult or expensive.

If we do not continue to develop, introduce and achieve market acceptance of new and enhanced products, our sales may decrease.

In order to increase sales in current markets and gain entry into new markets, we must maintain and improve existing products, while successfully developing and introducing new products. Our new and enhanced products must respond to technological developments and changing consumer preferences. We may experience difficulties that delay or prevent the development, introduction or market acceptance of new or enhanced products. Furthermore, despite extensive testing, we may be unable to detect and correct defects in some of our products before we ship them. Delays or defects in new product introduction may result in loss of sales or delays in market acceptance. Even after introduction, our new or enhanced products may not satisfy consumer preferences and product failures may cause consumers to reject our products. As a result, these products may not achieve market acceptance. In addition, our competitors' new products and product enhancements may cause consumers to defer or forego purchases of our products.

Our operations could be harmed by factors including political instability, natural disasters, fluctuations in currency exchange rates and changes in regulations that govern international transactions.

The risks inherent in international trade may reduce our international sales and harm our business and the businesses of our distributors and suppliers. These risks include:

- changes in tariff regulations;
- political instability, war, terrorism and other political risks;
- foreign currency exchange rate fluctuations;
- establishing and maintaining relationships with local distributors and dealers;
- lengthy shipping times and accounts receivable payment cycles;
- import and export licensing requirements;
- compliance with foreign laws and regulations, including unexpected changes in taxation and regulatory requirements;
- greater difficulty in safeguarding intellectual property than in the United States; and
- difficulty in staffing and managing geographically diverse operations.

These and other risks may increase the relative price of our products compared to those manufactured in other countries, reducing the demand for our products.

If we are unable to enforce or defend our ownership and use of our intellectual property, our business may decline.

Our future success will depend, in substantial part, on our intellectual property. We seek to protect our intellectual property rights, but our actions may not adequately protect the rights covered by our patents, patent applications, trademarks and other proprietary rights and prosecution of our claims could be time consuming and costly. In addition, the intellectual property laws of some foreign countries do not protect our proprietary rights, as do the laws of the United States. Despite our efforts to protect our proprietary information, third parties may obtain, disclose or use our proprietary information without our authorization, which could adversely affect our business. From time to time, third parties have alleged that we infringe their proprietary rights. These claims or similar future claims could subject us to significant liability for damages, result in the invalidation of our proprietary rights, limit our ability to use infringing intellectual property or force us to license third-party technology rather than dispute the merits of any infringement claim. Even if we prevail, any associated litigation could be time consuming and expensive and could result in the diversion of our time and resources.

Covenants in our existing debt agreements could restrict our operations.

Our existing revolving credit facility contains certain provisions that could restrict our operating and financing activities. They restrict our ability to, among other things:

- create or assume liens;
- enter into sale-leaseback transactions; and
- engage in mergers or consolidations.

Because of the restrictions on our ability to create or assume liens, we may have difficulty securing additional financing in the form of additional indebtedness. In addition, our revolving credit facility contains other and more restrictive covenants, including financial covenants that will require us to achieve specified financial and operating results and maintain compliance with specified financial ratios. We may have to curtail some of our operations to maintain compliance with these covenants.

If we fail to comply with the covenants contained in our existing debt agreements, the related debt incurred under those agreements could be declared immediately due and payable, which could also trigger a default under other agreements.

Our ability to meet the covenants or requirements in our credit facilities may be affected by events beyond our control, and we cannot assure you that we will satisfy these covenants and requirements. A breach of these covenants or our inability to comply with the financial ratios, tests or other restrictions could result in an event of default under our revolving credit facility. Upon the occurrence of an event of default under our revolving credit facility, the lenders could elect to declare all amounts outstanding under our revolving credit facility, together with accrued interest, to be immediately due and payable. If the payment of our indebtedness is accelerated, we cannot assure you that we will be able to make those payments or borrow sufficient funds from alternative

sources to make those payments. Even if we were to obtain additional financing, that financing may be on unfavorable terms.

Harman International is a holding company with no operations of its own and therefore our cash flow and ability to service debt is dependent upon distributions from our subsidiaries.

Our ability to service our debt and pay dividends is dependent upon the operating earnings of our subsidiaries. The distribution of those earnings, or advances or other distributions of funds by those subsidiaries to Harman International, all of which could be subject to statutory or contractual restrictions, are contingent upon the subsidiaries' earnings and are subject to various business considerations.

Any of the foregoing factors could have a material adverse effect on our business, results of operations and financial condition. In light of these risks and uncertainties, there can be no assurance that the results and events contemplated by the forward-looking statements contained in this report will in fact transpire.

Risks Related to the Merger with Parent

The merger may not be completed, which could adversely affect our business.

Completion of the merger is subject to the satisfaction of various conditions, including adoption of the merger agreement by holders of a majority of the outstanding shares of our common stock, expiration or termination of applicable waiting periods under the HSR Act (the FTC granted early termination of the applicable waiting period on May

18, 2007) and other non-U.S. competition laws, and other customary closing conditions described in the merger agreement. We cannot guarantee when or if these closing conditions will be satisfied, that the required approvals will be received or that the proposed merger will be successfully completed. In the event that the proposed merger is not completed, we may be subject to several risks, including the following:

- our management's and employees' attention from day-to-day business may be diverted;
- we may lose key employees;
- our relationships with customers and vendors may be substantially disrupted as a result of uncertainties with regard to our business and prospects;
- we would still be required to pay significant transaction costs related to the merger, including legal and accounting fees, and under certain circumstances, we may be required to reimburse Parent's out-of-pocket transaction expenses up to $20 million and pay a termination fee of up to $225 million (less any reimbursed transaction expenses); and
- the market price of shares of our common stock may decline to the extent that the current market price of those shares reflects a market assumption that the proposed merger will be completed.

Uncertainties associated with the merger may have a negative impact on employee and business relationships.

The announcement of the proposed merger may have a negative impact on our ability to attract and retain officers and other key employees and/or maintain relationships with key customers and suppliers. These events could have a material negative impact on our results of operations and financial condition.

As a result of the proposed acquisition, we will have substantially more debt.

We will have substantial indebtedness if the proposed acquisition is consummated. There can be no assurance that our businesses will be able to generate sufficient cash flows from operations to meet our anticipated debt service obligations. Our level of indebtedness will have important consequences, including limiting our ability to invest operating cash flow to expand our businesses or execute our strategies, to capitalize on business opportunities and to react to competitive pressures, because we will need to dedicate a substantial portion of these cash flows to service our debt. In addition, we could be unable to refinance or obtain additional financing because of market conditions, high levels of debt and the debt restrictions expected to be included in the debt instruments executed in connection with the consummation of the proposed acquisition. This new indebtedness is expected to contain restrictive covenants, which may adversely affect our ability to operate our businesses.

The downgrade in our credit ratings resulting from the announcement of the proposed merger could negatively affect our ability to access capital.

After the announcement of the proposed merger, Standard & Poor's Rating Services (S&P) downgraded our corporate credit ratings. The uncertainty about the effect of the merger may further adversely affect our credit rating. Downgrades in our corporate credit ratings generally cause borrowing costs to increase, the potential pool of investors and funding sources to decrease and may have other negative consequences on our business.

Most of our large customers, suppliers and counterparties require an expected level of creditworthiness in order for them to enter into transactions with us. As our corporate credit ratings decline, particularly below investment grade, counterparties may decline to do business with us.

In the future, we could have liquidity needs that could be difficult to satisfy under some circumstances.

The inability to raise capital on favorable terms, particularly during times of uncertainty in the financial markets, could impact our ability to sustain and grow our businesses, which would increase our capital costs. Our access to the financial markets could be adversely impacted by the merger, the recent downgrade in our corporate credit ratings and various other factors, such as:

- changes in credit markets that reduce available credit or the ability to renew existing liquidity facilities on acceptable terms;
- changes in interest rates;

- a deterioration of our credit or a further reduction in our credit ratings;
- a material breakdown in our risk management procedures; and
- the occurrence of material adverse changes in our businesses that restrict our ability to access the credit markets.

A lack of necessary capital and cash reserves could adversely impact the evaluation of our creditworthiness by counterparties and rating agencies, and would likely increase our capital costs. An increase in our capital costs could have a material negative impact on our results of operations and financial condition.

Item IB. Unresolved Staff Comments

None.

* * *

[Page 25]

nonvested restricted stock compensation arrangements granted under the plans. This cost is expected to be recognized over a weighted-average period of 1.13 years. As of June 30, 2007, there was also $1.3 million of total unrecognized compensation expense related to nonvested restricted stock units granted under the plans. This cost is expected to be recognized over a weighted-average period of 2.26 years. The revised standard did require certain changes in our calculations and disclosures. See Note 11, *Stock Option and Incentive Plan*, to our consolidated financial statements included in this report for additional information regarding our stock-based compensation.

Results of Operations

Net Sales

Fiscal 2007 net sales were $3.551 billion, an increase of 9 percent compared to the prior year. The effects of foreign currency translation contributed approximately $144 million to the net sales increase compared to last year. Exclusive of foreign currency, net sales were 5 percent higher than the prior year. Each of our three reportable business segments had higher net sales in fiscal 2007 compared to the prior year. The growth in overall sales was primarily due to higher infotainment system sales to automotive customers, strong growth in automotive aftermarket PND sales, higher multimedia sales in the consumer market, and increased sales of our professional products enabled with the HiQnet protocol.

Net sales in fiscal 2006 increased 7 percent to $3.248 billion when compared to the prior year. The unfavorable effects of foreign currency translation reduced fiscal 2006 net sales by approximately $85 million during the year. Exclusive of foreign currency translation, net sales were 10 percent higher than fiscal 2005. The growth in net sales was primarily due to higher sales of infotainment systems to automotive customers, strong sales of multimedia products, and increased sales in the professional market.

We present below a summary of our net sales by reportable business segment:

($000s omitted)	Fiscal 2007		Fiscal 2006		Fiscal 2005	
Automotive	$ 2,492,815	70%	$2,237,632	69%	$2,127,682	70%
Consumer	497,673	14%	492,977	15%	416,231	14%
Professional	560,656	16%	517,288	16%	486,976	16%
Total	$ 3,551,144	100%	$3,247,897	100%	$3,030,889	100%

Automotive – Automotive net sales increased 11 percent in fiscal 2007 compared to the prior year. Foreign currency translation contributed approximately $122 million to the net sales increase compared to the prior year. Exclusive of foreign currency, net sales were 6 percent higher than last year. Since a significant percentage of our sales are to customers in Europe, the majority of our foreign currency exposure is in the Automotive segment. The growth in net sales was primarily due to higher shipments of audio systems to Lexus for the LS460 and to Toyota for the Camry. We also had higher sales of infotainment system to Audi due to a full year of production of the Q7 platform. Infotainment system sales to DaimlerChrysler were higher than last year due primarily to supplying the Mercedes-Benz GL Class. Automotive had lower sales to BMW, Landrover, Renault, Porsche and PSA Peugeot Citroën compared to the prior year. Sales of aftermarket products, particularly PNDs, were very strong during fiscal 2007.

In fiscal 2006, Automotive net sales increased 5 percent compared to fiscal 2005. The unfavorable effects of foreign currency translation reduced fiscal 2006 net sales by approximately $70 million during the year. Exclusive of foreign currency, net sales increased 9 percent compared to the previous year.

The net sales growth was primarily due to the success of an infotainment system we developed for the Mercedes-Benz S-Class. Also in Europe, net sales to Audi were higher due to the introduction of the Q7 platform and increased shipments for the A6 compared to prior year. BMW sales were higher primarily for the 3-Series. Porsche and Range Rover sales were also higher than the prior year. Strong sales of our new aftermarket PND product *Traffic Assist* also contributed to the sales growth. In North America, we had higher sales to Toyota, Lexus and Hyundai/Kia and lower sales to Chrysler.

Consumer – Consumer net sales increased 1 percent to $498 million when compared to the prior year. Foreign currency translation contributed approximately $14 million to the net sales increase compared to the prior year. Exclusive of foreign currency, net sales were 2 percent lower than the prior year. The sales growth was primarily due to higher multimedia sales in Europe, partially offset by lower multimedia sales in the United States. Multimedia products include popular accessories for the iPod such as the JBL OnStage and OnTime. Sales in the United States were adversely affected by substantial competition in this market. Sales of Harman/Kardon home electronic products were also higher in Europe but lower in the United States. Sales of traditional home loudspeakers were lower in both Europe and the United States. The decrease in U.S. sales is primarily due to our decision to exit distribution through a major North American retailer. Consumer net sales were 18 percent higher in fiscal 2006 compared to the prior year. The sales growth was primarily due to strong demand in the United

States and Europe for our multimedia products. Consumer products for home applications such as Harman/Kardon electronics and JBL and Infinity loudspeakers were also higher compared to the prior year, partially offset by slightly lower sales of high-end Specialty Group audio systems. New product introductions for mobile applications resulted in higher sales compared to the prior year.

Professional – Professional net sales were 8 percent higher than fiscal 2006. Foreign currency translation contributed approximately $8 million to the net sales increase compared to the prior year. Exclusive of foreign currency, net sales were 7 percent higher than the prior year. The sales increase was primarily due to the popularity of our products that incorporate the HiQnet protocol. This system is attractive to audio professionals as it provides centralized monitoring and control of complex audio systems. In particular, Professional sales growth was driven by new JBL Pro and Crown products as well as the introduction of new digital audio consoles.

In fiscal 2006, Professional net sales were 6 percent higher than fiscal 2005. Sales of JBL Professional, Crown and Harman Music Group products increased compared to the prior year, partially offset by lower sales of AKG and Mixer Group products. Our professional business units benefited from a ramp up of products utilizing the newly developed HiQnet protocol. AKG and Mixer Group net sales were lower due to our decision to concentrate on a smaller number of higher-margin core products.

* * *

APPENDIX I

1 of 1 DOCUMENT

Copyright 2007 Voxant, Inc.
All Rights Reserved.
Copyright 2007 CCBN, Inc.
All Rights Reserved.
FD (Fair Disclosure) Wire

September 27, 2007 Thursday

TRANSCRIPT: 092707an.718

LENGTH: 8589 words

HEADLINE: Harman International Industries Guidance Announcement – Final

BODY:

OPERATOR: Ladies and gentlemen, thank you very much for standing by. We do appreciate your patience today while the conference assembled, and good afternoon. Welcome to Harman International Industries' analyst and investor conference call. At this point and during management's prepared remarks, we do have all of your phone lines muted or in a listen-only mode. However, later there will be opportunities for your questions. (OPERATOR INSTRUCTIONS).

As a reminder today's call is being recorded. And ladies and gentlemen, if I may have your full attention, please be aware that certain statements

made by the Company during this call are forward-looking statements. These statements include the Company's beliefs and expectations as to future events and trends affecting the Company's business and are subject to risks and uncertainties. Persons participating on the call today are advised to review the reports filed by Harman International with the Securities and Exchange Commission regarding these risks and uncertainties. So with that being said, let's get right to this quarter's agenda. Here with our opening locks, it's my personal pleasure to turn it over to Harman International Industries' Founder and Executive Chairman, Dr. Sydney Harman. Good afternoon, doctor, and please go ahead.

SIDNEY HARMAN, EXECUTIVE CHAIRMAN, HARMON INTERNATIONAL INDUSTRIES: Thank you, Brent. Good afternoon. I am Sidney Harman. Joining me today in Washington are Dinesh Paliwal, our Chief Executive; Kevin Brown, our Chief Financial Officer; and Rob Ryan, our Treasurer and Principal Investor Relations Officer. Because we have limited time in which to conduct the conference and because I am certain that there are many questions to be asked, I will keep my introduction brief.

You are, of course, aware of the decision by KKR and Goldman Sachs not to proceed with our previously announced merger. We have stated publicly that we disagree strongly with that decision and the judgment that led to it and that we will be vigorous in pressing our position. With that comment, I have said everything I am free to say about the matter and we will not respond to

questions about it on this call. I do hope you understand.

Our performance in the first quarter of the current year and our expectations for the full year have raised a number of questions. Dinesh will deal in detail with both periods, but before he does, I wish to identify a number of significant internal and external events that affected and will affect both periods.

Our CEO transition process was long and difficult. Bernie Girod, who had been my effective colleague for two decades retired, and his initial successor left the company after three months. We learned a great deal from that experience and we were determined to find the right man. That proved a very lengthy process, but we did indeed find him.

Dinesh Paliwal began on July 1, 2007. He has developed a thorough understanding of our business and he has done it at breathtaking speed. As a result of that prolonged process, however, we were effectively without a CEO for the better part of one year.

Coincidence with the CEO succession process, a number of other pressures developed. In our extraordinarily successful Automotive business, we have typically processed one or two major new programs each fiscal year. This year, we are launching seven new programs. The needs and the demands in hiring, training, and integrating hundreds of new engineers have been extraordinary.

Further, as almost all other manufacturing businesses, we have encountered increases in material costs, which placed pressure on margins. During that period, we have built, staffed and opened

a new manufacturing facility in the United States and we are ramping up a new plant in China. The startup of those facilities has represented a consequential challenge. The extraordinary time and attention required by senior management to advance and process the KKR/Goldman merger, that entire process with which you are familiar, including the diligence and the negotiations, consumed a significant portion of management's time. The confluence of these events in a six- to eight-month period generated what might be called the perfect storm. Now that storm is over and we are again in full command of our circumstances and our extraordinary future.

Analysts' consensus EPS for the first quarter was approximately $1.00. We now believe it will be approximately $0.50. Over the past two fiscal years, we have not generally provided quarterly guidance and we did not provide first-quarter guidance until the sponsors indicated to us that our results for the fourth quarter and our expectations for the first quarter had been an influence on their judgment. When we learned it, we issued a press release on September 24th containing our best current information for the quarter.

We have always characterized our consumer business as uneven but controllable. We have said and I reaffirm that our professional business is strong and growing and I say now that although we face some real challenges in our OEM business, it is fundamentally sound. We have that $14 billion backlog and our customers are with us. We are building on a strong foundation and we look to the

future with renewed confidence. Here is Dinesh Paliwal.

DINESH PALIWAL, CEO, HARMON INTERNATIONAL INDUSTRIES: Thank you, Dr. Harman. Ladies and gentlemen, let me say I have arrived at the Company at a very interesting time. I have spent a large portion of my first three months doing my own learning, my own diligence. As anyone, and this is a good thing, I have found things that need immediate attention and things we should address over time.

First, let me say that I have confirmed the belief that prompted me to accept this position as the Company's CEO and let me say that this is a superb company, possessed of world-class brands, world-class products, world-class innovation, and world-class technology. It is a company of good and dedicated people with splendid customer relations around the world. Just today, I spent 45 minutes with our corporate technology council, a group of about 20 senior scientists and engineers from around the world, led by our Chief Technology Officer, Dr. Geiger. What I heard and saw, what was going on, the dynamics in that meeting, the technology, the new solutions discussed, it absolutely blew my mind and enthused me a great deal.

This Company grew at a truly remarkable pace, as you all know. It made a number of wise, strategic acquisitions and it proceeded to grow them. Over the past six years, the Company has doubled the size; clearly that has put strain on the organization and those strains were aggravated by the absence of a CEO for the better part of a year. The addition of the distractions and stress generated by the demands of

the merger transactions itself have been costly. But stress and strain is subject to rapid remedy. And that I believe is the first reason I'm here and that I will get done promptly.

The Company I came from raised business processes to a very high standard and I bring those standards with me.

Let me offer some specifics.

We will simplify our manufacturing and engineering footprint. Well before I arrived, Harman management had intended last year to do a restructuring and spoke about a 10 to $15 million onetime charge in the fourth quarter. Management was so occupied with the merger transaction that the plan was not implemented. We will now detail a restructuring to simplify the manufacturing and engineering footprint and a range of internal business processes. While we complete the detail, I expect a onetime charge of 25 to $30 million over the next six months. The plan will, of course, require tough decisions on jobs, real estate, and global footprint optimization. We will present it to the Board of Directors for their approval as promptly as we are able to complete this plan.

Along with footprint simplification, we will act to reconcile a diverse mix of internal processes, spanning such functions such as finance and accounting, human resources services, legal and more. We have now reached a size where significant synergies in these areas are achievable. The real focus will not be just new tools, but a process-driven culture that drives the logic off those tools. The objective will not be just reduced functional costs, but

better reporting, greater consistency, and faster communications.

As I have traveled the Harman world, and I have done it, I have identified several other areas where we can sharpen our performance. They include cost control, improved approach to managing risk, and the further expansion of our product offerings to the mid-range markets.

In the area of cost, we must maintain a predictable source of supply for the skills, that's the human skill, and the materials from which we craft our products. I come from an industry where commodities such as aluminum, copper, plastics and electrical steel are purchased in the lots ranging up to thousands of tons. Although most Harman products use some much smaller quantities, the lessons I learned still apply here.

We will become more disciplined in shopping smart. When I say shopping smart, I mean shopping around the world, combining the purchasing power of multiple Harman units into a world-class supply chain that matches our world-class products.

Risk management is another opportunity. Whether we are launching a new product line, taking on a major product project, or refining our global footprint, my approach will be to improve the Company's business processes for identifying potential risks and moving responsibility higher into the organization fast. Harman's global footprint will become a sharp focus in both controlling costs and putting resources close to new and our existing customers.

We are proud of Harman quality. That is implied by our products manufactured in anyplace, be it Germany, Switzerland, and the U.S. or China. But achieving that Harman quality does not mean we must procure every component, service or skill locally. Our value chain must reach across geographic and business boundaries to ensure both reliability and competitive cost. While supporting this value chain, the emerging markets will play a key role in opening new horizons for customer relationships. I have had the privilege to live and work in six countries on four continents and I have a deep respect for the opportunities created as billions of new consumers open their wallets to achieve lifestyle outgrowth. We will seize these opportunities through new consumer and automotive products that improve our volume leverage and through professional products that further extend our dominant position in that area, especially the developing world.

I am encouraged by the support received from many key customers in recent days and it meant a lot to me. We are privileged to serve the leading names in the automotive, retail, and entertainment fields and they have shown their true character in encouraging us to [resolve] the distractions of the past few months and focus on doing what we do best. We will deliver on that commitment.

As I shared with you during our August call, a global network company needs a globally networked team. This week, I completed my second monthly review with Harman's division and functional managers. We took a deep dive into the performance of each area, reviewed our business processes, challenges, and opportunities and defined the ground

rules for clear actions and accountability. It is often said that what gets measured gets done right and I have agreed with my senior management team on a set of key measurements that will clearly chart our progress. Living up to the goals embodied in these measurements will be a prerequisite for membership in the team, as will cascading this sense of accountability deeper into the organization.

Many of you were surprised with our guidance earlier this week when compared to first quarter 2007. The year-over-year difference is primarily due to lower gross profit, research and development and SG&A expense, which are higher on a dollar basis. However, both R&D and SG&A are lower on percent of sales basis. They were not as much lower as we had forecasted.

In April 2007, we did offer guidance for 2008. For the full year 2008, gross profit is expected to be lower than anticipated in April 2007. On September 24, we reflected the change in modified guidance. The change is due to higher material prices, and more than expected ramp-up costs for the two new manufacturing plants in China and the U.S. These events might have been forecast better and we are improving the way we model and forecast our growing business.

Ladies and gentlemen, the events of the past few days have been disappointing, but I could not be more proud of the response by our team or more satisfied with my decision to join Harman just three months ago. I have come to a flourishing entrepreneurial Company at a time when it needs further discipline in process and management. I will provide it. I am here to stay and I have taken charge.

I have Dr. Harman's and the Board's full support and considerable help. Dr. Harman and I work well and comfortably together.

I thank you for your attention and now I introduce our Chief Financial Officer, Kevin Brown, to you.

KEVIN BROWN, CFO, HARMON INTERNATIONAL INDUSTRIES: Thank you, Dinesh. We provided guidance for the first quarter and the full year '08 in our press release of September 24th. I will provide further detail and I note that we have not yet completed the first quarter, therefore, I am reviewing our estimates. This information is on a non-GAAP basis before transaction-related costs. I will compare these estimates to fiscal year '07 actual results, excluding nonrecurring transaction restructuring and tax items. A reconciliation of the fiscal year '07 GAAP to non-GAAP results was included in our September 24th, 2007 press release, which is available on our website.

First quarter fiscal '08 sales are forecast to be $950 million, an increase of 15% compared to the first quarter of fiscal '07. Gross profit is forecast to be approximately 28% of sales, down about 7 points from the prior year's quarter. Operating expenses are forecast to be $227 million, an increase of $27 million. Operating income is forecast to be $40 million, down from $87 million in the first quarter of fiscal '07. Forecast diluted earnings per share before transaction, legal and restructuring costs of $0.50 are $0.35 below last year's first quarter of $0.85. First-quarter sales are projected to increase in each of our three operating segments compared to the prior year. We expect Automotive sales to increase approximately 15% during the quarter, primarily due

to the ramp-up of an infotainment system program and higher PND sales in Europe.

Consumer sales are expected to increase about 25%, supported by new product introductions. We expect professional sales to increase 10% as new products are introduced to the market, incorporating our HiQnet protocol.

As I mentioned, gross profit for the first quarter is forecast to decline about 7 percentage points from 34.8% in the record first quarter of fiscal '07 to 27.9% this quarter. The variance is primarily driven by our Automotive segment. We expect gross profit to decline as we enter the mid infotainment segment and the ramp-up of our PND business. However, the planned decline was exacerbated by higher than expected material costs and, as Dr. Harman mentioned, the launch of new infotainment programs and new manufacturing facilities.

The ramp-up in our facility in Missouri was slower than we had expected because over the course of the quarter, our Automotive customers slowed its 2008 model introductions to clear out unsold 2007 models. We expect this to be resolved during the second quarter. We believe our material costs will improve going forward and our new manufacturing facilities will gain efficiencies as they approach full production. Operating expenses are forecast to be $227 million in the quarter, an increase of $27 million from fiscal '07.

Absolute operating expenses increased in both R&D and other SG&A. Automotive gross R&D is $20 million higher compared to the prior year, reflecting the resources added in the third and fourth quarter of fiscal '07. The additional R&D or engineering bulge

we discussed in detail in our January and April earnings calls. It's necessary to support our many new business awards, invest in new areas of technologies such as Driver Assist and to ensure the delivery of the record number of new programs launching in the next several years. We expect these costs to decline over the course of the year.

Excluding R&D, we expect other operating expenses to be higher than last year. In particular, marketing costs will be above the prior year's quarter due to promotions associated with new infotainment system and PND introductions. There have been several recent developments that have tempered our view of fiscal '08. While our sales growth remains strong, several factors will influence our operating performance.

Full-year sales for fiscal '08 are forecast to be $4.1 billion, an increase of 16% compared to $3.5 billion in fiscal '07. We expect each of our three operating segments to produce higher sales than the prior year. Full-year gross profit margin is expected to be 31% of sales, approximately 3 percentage points lower than fiscal '07. Lower gross profit margin is forecasted Automotive, primarily due to new model and plant launch costs and increases in material prices. As Dinesh said, we continue to pursue savings in material costs that we have historically achieved early in a new fiscal year. We will take steps to mitigate the higher costs manufacturers are experiencing, but this will be an ongoing process.

Operating expenses are forecast to be $870 million for the full year fiscal '08. Within operating expenses, we expect R&D costs to improve each quarter but remain high in dollar terms and higher than our

record fiscal '07 level. As a percent of sales, we expect R&D costs to decline about 1 percentage point from fiscal '07's record 10% of sales. Total operating expenses including R&D are forecast to increase about $55 million from fiscal '07. On a percent of sales basis operating expenses should decrease about 1.5 points.

Finally, we expect fiscal '08 earnings per share before transaction, legal and restructuring costs to meet or exceed the $4.14 reported for fiscal '07. We will now take your questions.

OPERATOR: Indeed. Well thank you very much gentleman for your time today. (OPERATOR INSTRUCTIONS). Peter Barry, Bear Stearns.

PETER BARRY, ANALYST, BEAR STEARNS: Good morning — or good afternoon, gentlemen. Sidney or Dinesh, could you speak more specifically to the materials cost reference that you've made several times?

DINESH PALIWAL: We certainly can. Peter, first of all, that's a good question you ask because as our CFO said, every year, we set reasonable targets for material price savings and we achieved those. What we encountered earlier this year, as a two-pronged answer, one is you need to go out and renegotiate and get the pricing, the price reductions from the marketplace. Secondly, you need to put it in the new product which has to be certified and quality tested by your OEM customers. If you miss that, which happens once or twice a year, then you may have a lag. And both of these things are a little bit on the time scale behind and that's what happened to explain what happened in first quarter.

We also said earlier, and Kevin Brown confirmed that we feel very comfortable for our full-year material price savings targets for fiscal 2008.

PETER BARRY: Could you give us an idea, Dinesh, what materials we're talking about?

DINESH PALIWAL: This is actually across the board. It's electronics. It's mechanical components. It's engineering — all of that.

PETER BARRY: Next question. Could you give us an update on both Chrysler and the C Class, please?

DINESH PALIWAL: Yes. We have said in the past that we had two launches. These are the new SOPs and we had two launches going on at that time when we talked to you earlier. And the C Class with Mercedes was supposed to be fully ramped up in fourth quarter of fiscal '07 and for a variety of reasons, it was slowed. It's fully ramped up as we speak in first quarter, and both Mercedes and us, we're happy and we are, in fact, pursuing several new business opportunities with Mercedes as we speak.

Chrysler was another thing which was mentioned by you and here we have some slowdown primarily due to the slow ramp-up by our OEM due to clearing some of their own inventory. And as we speak, it is being ramped up, since we were ready for fully ramped up production, so we had already our fixed overhead and some variable costs associated and that's where we had some material overhead costs, which has reflected in our first quarter.

PETER BARRY: Is it fair to say that new Chrysler management is as enthusiastic about infotainment as that enterprise was under the Daimler banner?

SIDNEY HARMAN: I think I can speak to that. Every bit and more. We have met with them numbers of times in the last numbers of weeks and we have presented to them what we regard as significant new technology, which can inform their new offerings and give them an opportunity to establish leadership, which certainly I am confident they wish to do.

PETER BARRY: So the numbers that we have had in the past, Sidney, are still quite realistic in terms of revenue opportunity at Chrysler?

SIDNEY HARMAN: Yes, I would call them realistic.

PETER BARRY: Just one final for me. I couldn't help but observe that in what is the lowest seasonal quarter for the year historically, the $950 million of revenue expectation is the highest number you've ever achieved. One, is that observation correct? And to what degree did the spillover of C Class revenues influence that number?

DINESH PALIWAL: Kevin?

KEVIN BROWN: Yes, Peter, you are correct that that is a very strong first quarter on the top line for us, reflecting getting fully up the ramp curve on Mercedes C Class but also reflecting the fact that we are bringing additional business on-stream at Chrysler as we ramp up our Missouri plant and in the PND business, where we continue the growth and expansion of that business primarily in Europe.

OPERATOR: David Leiker, Robert W. Baird.

DAVID LEIKER, ANALYST, ROBERT W. BAIRD: Good afternoon, everybody. I just thought I'd clarify a couple of things here first. On the Chrysler, is that

volume running at the level you would have expected it to for the vehicles that you are on? Or is that still behind where you expect it to be?

DINESH PALIWAL: It's being ramped up, David. And it's fairly close to the level we expected. As I mentioned, we expected it to ramp up already in early of the first quarter and it's very close to where it should have been.

DAVID LEIKER: Great. And then one of the things that had been floating around here and going back to last Friday is a lot of talk about a lot of different things, but one of them that seemed pretty consistent was some loss of business that either you currently had, that was in your pipeline that you were going after; can you address that at all for us?

DINESH PALIWAL: I certainly will do that. This is very near and ear to me. The relationship with these OEMs and future business we leave off because it was a long-term relationship we have. First of all, let me state firmly there isn't a single loss of business which I know of. As a matter of fact, both Chrysler and Mercedes, particularly Mercedes, since we had a slow ramp-up from our side as I said and I reiterate we're working on several new business opportunities with them and we are progressing very well.

DAVID LEIKER: Okay. And did you look at these issues that Dr. Harman went through initially? It sounds like those issues are mostly behind you in the first quarter and going into the second quarter they certainly are smaller, but are almost gone. Is that fair? I guess the launch (technical difficulty) is probably still an issue.

DINESH PALIWAL: Look, we have to see this picture in totality. We have shared that we had a pretty steep ramp-up of our R&D to handle new awards and several new start of production on new launches. Therefore, we had started the fiscal '08 at fairly high research and development costs and we expect it to come down in absolute as well as in percent of sales. Fiscal '08 should be about 120 basis points lower as a percent of sales when we are all done with it, so that is something we'll have to manage and we feel comfortable.

And secondly, these new plans which Kevin and Dr. Harman mentioned, one in China and one in Missouri, these are being ramped up and we continue to look for efficiency gains (technical difficulty) all ahead of us.

And thirdly, which is a more long-term — it's not a short-term fiscal '08 issue, the opportunity issue angle, opportunity angle on engineering and manufacturing footprint and something which I'm very high on is low-cost sourcing, be it Mexico, Eastern Europe or Asia, it's the lowest hanging fruit. Without disrupting any business processes or doing anything massive, these are the opportunities which we will go after.

DAVID LEIKER: Okay. And then if you look at the R&D spend six, nine months ago, we talked about an incremental $45 million for the new BMW business, the Mercedes S Class refresh and the Driver Assistant. Is that number still an accurate number or had that changed at all?

KEVIN BROWN: David, the number for the impact on fiscal year '08 that we project at that time

of about 46 million is the accurate number and we are working at that and toward that level.

DAVID LEIKER: Okay and then one last thing, Kevin, it's probably most appropriate for you. What do you think the total of these special items are that are going to run through the P&L here in the quarter? Probably just looking for a ballpark number.

KEVIN BROWN: The guidance that we have given excludes onetime special items, especially related to the transaction. My best guess now and we haven't closed the quarter, is that those are about in the neighborhood of $5 million.

DAVID LEIKER: Okay. Thank you very much.

OPERATOR: Chris Ceraso, Credit Suisse.

CHRIS CERASO, ANALYST, CREDIT SUISSE: Thanks. Good afternoon. A few things. First, if we can start on the Chrysler business, if you can just refresh us on your expected timing of which vehicles will be coming on, the revenue buildup as you walk from '08 to '09 to 2010 because if I recall, the program got bigger each year as new vehicles came in and new programs from you started to get up to speed.

SIDNEY HARMAN: Chris, I would say hello to you, while I'm pausing for Kevin, who will respond to that question.

KEVIN BROWN: Chris, let me remind us of the sequence of events on Chrysler. Late in fiscal '07, we launched the high-end navigation product on a select number of vehicles in a fairly slow ramp-up. And the ramp-up of that product continues on a larger number of platforms throughout fiscal '08.

We also at the beginning of fiscal '08 now have launched the other product, the second product of the two that we produce for Chrysler, and we will be ramped up on almost all Chrysler platforms by the end of fiscal '08 on those two products. We don't hit our full volume, our full annual sales volume until fiscal '09, and at that time, I expect the full annual sales volume is going to be about $100 million higher than we will experience in '08. So we are on the build. The products are launched now and there's a gradual expansion through the year as the new programs and platforms roll out.

CHRIS CERASO: And once everything is fully ramped up, I just want to make sure I'm thinking about the right numbers here, is this still a program that's worth about 500 million? Is that the right number?

KEVIN BROWN: Yes.

DINESH PALIWAL: It's about right.

CHRIS CERASO: Okay. Next question, and this is — this goes back over the past few years where you'd maintained that the Automotive business should be able to do a 16% operating margin even as you go down market with customers like Chrysler and some lower-priced vehicles; is that still the right number? Do you still think that you can get the Automotive business back up to a 16% operating margin?

DINESH PALIWAL: Yes, let me explain that. First of all, the answer is yes. And let me explain how our strategy works because this is a question which brings our strategy.

We have talked in the past about [missed] segment market penetration. That's a high-volume business. That's a growth initiative for us and there are too different businesses. One, the premium business which we have been doing is a high contribution margin also produced high operating profit margins. And the mid segment market business would not be at the same relatively high margin contribution margins. At the same time, mid segment infotainment business does not require the same level of high research and development costs as well as SG&A.

Most importantly, mid segment infotainment business leverages the common platforms which we have developed and scalability which we have talked about. So our strategy is and actually it works out the way it has already worked out, even if we have this business as lower contribution margin, with reduced R&D and reduced SG&A, our operating margins will be protected and hopefully even increased. So in net-net, our total portfolio of OEM business, we should be able to and we aspire to maintain or grow the historic high operating profit margins.

CHRIS CERASO: Okay. How long do you think it takes to get back there? Because of my math is right, you could be as low as maybe 7% in the first quarter and I understand there are a lot of headwinds facing you, but you surely won't be there for the full year of '08. Will you be back to 16% by full-year '09?

DINESH PALIWAL: I think I would hesitate to give a forward-looking assessment at this point for '09.

CHRIS CERASO: Okay. Is it fair though at least for '08 to acknowledge that you won't quite be back to that level?

DINESH PALIWAL: We certainly aspire and I can assure you this is where all our energy would be to make an '09 a better year in operating margins as well as in all other areas.

CHRIS CERASO: Okay. Dr. Harman, I'm interested in your comments with regard to what I would see as a potential competitive threat posed by the acquisition of Siemens VDO by Continental, particularly as it relates to the evolving Driver Assist technology.

SIDNEY HARMAN: There will be, Chris, many players in the driver assist field. It is very difficult to assess how any acquisition works out and I would be loathe, particularly now, to offer a view of the other than to say that history suggests that digesting and incorporating an acquisition is generally a good deal more difficult than anticipated.

We have been through this history before. There will undoubtedly be many firms aspiring to a significant role in that world and why the world would they not?

Our scale in the past years has not been so much that we could develop a component or an aspect of the system.

Our scale has been in the integration of that work and we have demonstrated time and again that A, it is underestimated by most others and B, we are darn good at it. I expect that to be a distinguishing characteristic in the driver assist area.

CHRIS CERASO: Okay, great, thanks. Thanks, everybody, that's helpful.

OPERATOR: Jeff Kessler, Lehman Brothers.

JEFF KESSLER, ANALYST, LEHMAN BROTHERS: Thank you. Dr. Harman and Dinesh, I'm interested in finding out about, you mentioned the middle market strategy that you are attempting. What are — what are the opportunities there? And obviously what are some of the hurdles both economic and competitive that you face in developing a middle market strategy for the Automotive business?

DINESH PALIWAL: That's a very good question. It's perhaps two-part question. One is a strategy and one is the comparative situation. Jeff, let me answer the second part first. The good thing is that mid segment doesn't necessarily come from brand-new customers altogether. Mid segment business is part and parcel of some of our well-established proven relationship customers. Those who have the desire to have an infotainment system which is scalable and can answer lower-priced vehicles they are supplying all or will supply in a growing demand. So I think from their point of view it is fundamentally important that they do not have multiple vendors and multiple platforms from the technology obsolesce (sic) point of view and to technology maintenance point of view. It is very much aligned with our goals. I mentioned earlier the scalability and common platforms so I think from that perspective, it puts us in a better position to penetrate mid segment strategy with our existing customers. Which I would not be able to say for some of the competitors if they are already not in the big worlds of established OEM as we are.

Then the first part, you mentioned was related to the strategy. Well several years ago, we came to the conclusion that for our top-line growth, we have to expand our segment penetration and that's where this mid segment, which we have mentioned in the past, the PSA and some of the opportunities, we are doing because that is a fairly large segment of the market not addressed in the past and there is a great need from the consumers to demand infotainment system which addresses almost what five years ago was considered a premium package. So from that perspective, it is good market to go after. However, contribution margins on mid segment strategy growth would not be as high as we have enjoyed at the premium market level. But as I said earlier, reduced R&D and reduced SG&A and taking advantage of our existing common platforms and scalability, we would be able to control that cost to result into margins which we expect at the bottom line and protect our margins at the operating profit level.

JEFF KESSLER: Is there a geographic focus or skew toward this mid market strategy? Is this aimed at the United States or is this basically worldwide? And is it evenly worldwide or is it skewed toward one geographic area?

DINESH PALIWAL: Jeff, I will certainly turn to Dr. Harman but before I do that, my instinct and my knowledge from my past — previous company because I was also dealing with automotive industry, from robotics side, that instinct tells me it is pretty uniformly distributed in Western world, where the starting base is fairly high. And you would also expect this to grow rapidly in [Brit] companies, the

Brazil, the Russia, in China and India. So I will have Dr. Harman to add something to it.

SIDNEY HARMAN: I believe that we have seen that begin among the European makers. We saw it in the Audi awards. We saw it in PSA. So I think the answer to your question is really before us, Jeff, that has already begun first there. There is no question, and here I share Dinesh's view, it will spread through the world.

I remind you that there was a time when infotainment was considered something of a wrinkle, a fad. The question as to whether it had legs was always around a year, two, three years ago. Nobody questions it today. It is widely, universally, it seems to me, accepted as fundamentals of the car. And how well you developed these systems, how well you move into the new opportunities in driver assist and the like, not only consequential to us, but enormously consequential to the automotives. So I think it fair to say it is both self evident and irresistible. It will become fundamental to the full range of automobiles around the world.

DINESH PALIWAL: Thank you, Dr. Harman.

JEFF KESSLER: Thank you and good luck.

OPERATOR: Scot Ciccarelli, RBC Capital.

SCOT CICCARELLI, ANALYST, RBC CAPITAL MARKETS: Good afternoon, guys. A couple of questions. Given the magnitude of the gross margin reductions, can you just maybe quantify or at least order the impact? Because I guess what I'm confused about is you guys source materials all the time. You've put up manufacturing facilities before. You have launched new programs before. I guess I'm just

trying to understand why the delta is so large versus what you've experienced before. And it seems to have caught you guys and obviously your previous suitors by surprise. And any more detail on that, that might be helpful for everyone.

DINESH PALIWAL: Scot, first, I would not comment on the suitors but I would say it's not a surprise. We have shared with you that we have launched two brand-new manufacturing plants. We don't start new plants every year and I hope not in future either. We are used to and very experienced in bringing out new startup production via new launches from the existing production lines. And these two new plants, obviously, we anticipated some level of under-absorption and learning curve, which generates some inefficiency and cost. And you heard one in China and one in the United States and we had some under-absorption longer than we expected, and we explained to you partly our OEM customer was not prepared for the full ramp-up and we ended up taking some costs.

Secondly, the material price savings which were planned for first quarter did not flow to the bottom line because there was a time delay.

Thirdly, as a newcomer to the Company, I would say we're going to get a bit more prudent and forward-looking in terms of sharing more commodity price increases with our customer base. More transparency you create the more they have understanding how their customers like Harman International are faring and we would have a better chance to either command slightly higher premium on the sales or we we'll be able to pass on some of

that, which, in the past we have done but not necessarily every time.

SIDNEY HARMAN: I must add, Scot, that although we are not happy about this, these events are quite familiar in the normal course of business. We will resolve them and move on in the conduct of our work.

SCOT CICCARELLI: Understood. Any commentary regarding early experiences with Chrysler in terms of application rates? Especially given some of the price decreases and technology improvements we've seen from some of the portable markets, obviously people are concerned about the automotive market, consumer spending in general; just in terms of customer appetite to adopt some of your infotainment technology?

SIDNEY HARMAN: I wish we had that information; we simply don't. And I tell you with confidence that we don't have it because it hasn't come to us and that undoubtedly because it is just too early to develop that information.

SCOT CICCARELLI: Okay, understood. And then the last question is, obviously you guys are coming off a significant distraction. Do you guys start to put your thoughts behind some sort of a capitalization change whether it is reimplementing buyback, etc. just to kind of show investors what you guys think about the long-term prospects of the business? Thank you.

SIDNEY HARMAN: The answer is you are darn right.

SCOT CICCARELLI: Thank you.

OPERATOR: Jairam Nathan, Banc of America Securities.

JAIRAM NATHAN, ANALYST, BANC OF AMERICA SECURITIES: Thank you. If I kind of think about your 16% Automotive operating margin target, gross margins in the process run in like the 34% range in Automotive, operating expenses in the 20% range. And from all you're saying, I guess the 34% comes down so like — and I believe that kind of drives the focus on cost. I'm just wondering how should we think about the 20% in operating expenses going forward? Is that where most of the improvement needs to be to get to the 16%? And what are some of the companies that you will be benchmarking when you are trying to reduce costs?

DINESH PALIWAL: Let me try to take a shot at it and our CFO might help me from the historic point of view. First of all, I think you helped me answer. It's not just the below the line and above the line. It is both. In contribution margin where we have material of cost of goods we're going to go try to get more savings by, as I said earlier, by leveraging our volume and leveraging the global sourcing mechanism, which is available to us and we will certainly benchmark well-run efficient automotive companies. Those are the best in the world from my past experience and there are some good benchmarks for that.

Secondly, we've got to have very disciplined execution approach in R&D, engineering and SG&A.

Look when you are doing so well you continue to — you have the great R&D initiatives going on, we do have good discipline base in terms of [get] model, Gate 1, Gate 2, Gate 3, Gate 4. But in terms of rigors

of evaluating follow-up month-to-month, so that we can have it quick and early decisions, where do we slow down and where do we expedite certain programs? That's where the cost efficiencies will come in as well so we will improve both at the contribution margin level as well as at SG&A level so that our operating margins stay healthy at the historic levels or improve.

JAIRAM NATHAN: Next question, again, with the mid segment level, what kind of penetration do you require to get those economies of scale? Currently I guess penetration is kind of running at that low double-digit rate.

DINESH PALIWAL: Look, while my colleagues are looking for it, there is a number to share with you I will certainly do, but fundamentally, we should always remember that mid segment market is not breaking new ground. It is using existing platforms. It is using our scalability, taking advantage of the R&D and engineering we have already done. This is repackaging. As I said, [mid-market] infotainment system is, in my simple words, and I'm still learning, is not much different from what the premier system was five years ago. So by nature, this will not carry the heavy R&D, the heavy SG&A impact so even if it has slightly lower contribution margin, our operating margins will be pretty healthy.

So in terms of scale, you ask me what is the cash flow which we must hit to achieve the savings, I think larger the volume the better off we will be because we're going to be spreading that fixed or rather close to fixed, although it's a variable cost, over a larger volume so that our SG&A would be even

lower. Do we have the number, Kevin, in terms of threshold?

KEVIN BROWN: I mean, let me provide you a little bit of context and range on the mid segment vehicles. The penetration rate varies significantly by the type and class of the vehicle in the mid segment and it can range from 10% on a niche car, but the penetration rate can be significantly higher than that, 20, 30% on a family car or a higher contented vehicle, like a minivan, for example. And when you get up to 20 or 30% of the very high volumes that those mass-market cars sell at, you get to extremely —- you get to very high volumes compared to our luxury systems and you get to very high dollar sales that are generated.

DINESH PALIWAL: (multiple speakers) please go ahead.

JAIRAM NATHAN: Sorry, Kevin, just one more question for you on CapEx. Do you have a number for us for '08 or —?

KEVIN BROWN: While we're not going to provide specific CapEx guidance at this time, I will tell you directionally where we see CapEx in fiscal '08. CapEx spending for the full year '08 should be less than the 175 million we spent in fiscal '07, as our new Missouri plant is complete now and the spending for many of the new programs that we will be launching is well underway. CapEx for '07, as you will recall, was back-end loaded as we launched the Missouri plant, as we started the new programs. And for similar reasons, we expect fiscal '08 CapEx spending will be front-end loaded, as we spend on the new China plant and the program spending continues. So

I think that gives you a pretty good sense of where it's going to go.

JAIRAM NATHAN: Thank you.

SIDNEY HARMAN: Gentlemen, we have almost run out of time and I am therefore going to recognize that Peter Barry and David Leiker have asked to be requeued, and I ask each of you, if you will, Peter, if you will first in that order, to be brief.

OPERATOR: Certainly and thank you, doctor, and Mr. Barry, your line is open.

PETER BARRY: Thank you, Sidney. Sidney, in your opening remarks, you referred to seven new programs to be launched this year. Could you very briefly go through what they are?

DINESH PALIWAL: Yes, I can try to do that. We have talked about that in the past we had typically done one or two SOPs or start of production. In '08, we have an all-time high, a record, seven launches, we will be conducting or actually going about and these are with Chrysler, with Hyundai, [Samyung], Audi, Porsche, BMW and PSA. Peter, does that answer your question?

PETER BARRY: That's certainly seven, Dinesh.

DINESH PALIWAL: Thank you.

PETER BARRY: Let me ask you, you referenced key measuring devices that you would use going forward. But I don't think you developed what they were. Could you provide us with that detail please?

DINESH PALIWAL: You meant the measurement metrics?

PETER BARRY: Yes.

DINESH PALIWAL: Well, you know, there is no new rocket science. The Company has been running rather successfully and they have been managing and they have been following up. What I intend to do is the [rigor], I don't know whether it's a fashionable thing to say, but when the CEO takes time, a whole week of business reviews, operational reviews, capital expenditures spending review, different programs, launch review, whether it's the consumer, whether it's the OEM, gate model review, these are all KPIs in technology, into engineering, into R&D, and also in sales side, what contribution margins are coming in, what are the future forecasts, what are the projections, what the probability are. And then most importantly, what is the up and down side analysis for every business forcing people to think out of the box that there are in business risks we are here to manage. Things do go wrong. Are you thinking proactively? What should go very well too. What are the opportunities to offset if something goes wrong, so irrespective, those are the KPIs I would follow on a monthly basis, in some places on a weekly basis by telephone or others, so that's what I meant.

PETER BARRY: Thank you, Dinesh. Sidney, thank you for the accommodation.

SIDNEY HARMAN: Thank you Peter and David.

OPERATOR: And thank you, very much, Mr. Barry. And yes, here is Mr. Leiker. Please go ahead with your follow-up.

DAVID LEIKER: Thank you, Dr. Harman, for the opportunity. I have got two — I hope simple questions. One is, as you go through the course of the year by quarter and you work through these costs,

are you at the point at the end of the fourth quarter that these unusual items that you are working your way through are behind you and you're back to more business as usual going 12 months from now? Or are those costs going to carry over into 2009?

KEVIN BROWN: No, I think by the end of the year, as we discussed, David, we will have worked through the material cost recovery for the most part. We will have worked through the R&D and started to leverage that down and we will be leveraging down our other functional costs, so I think you're back to a more normalized level by the end of the year.

DAVID LEIKER: And as we go through the quarters, is that kind of a linear pace of recovery or is there a steep recovery in the second half versus the first half?

DINESH PALIWAL: I think, here, let me just add, Kevin — please feel free to comment. As we said, our fiscal '07 was back loaded for R&D as well as capital expenditure because we were ramping up, we were preparing for seven new start of productions. And same is the case for the first half of 2008, where our R&D costs are high and we know why they are high and we have no problem with it. So these will be ramped down so they are not linear in that fashion.

DAVID LEIKER: Okay and then the last item here, is there anything related to whatever course of action you take regarding KKR and Goldman Sachs that would preclude you from stepping in the market and buying stock back today?

DINESH PALIWAL: I will have Dr. Harman answer that.

SIDNEY HARMAN: I will say only that we must respect the agreement which, as I, as far as I know, continues now. If that agreement precludes us from buying stock, we have the option of buying it or seeking relief from that provision and we will do one of those.

DAVID LEIKER: Has that agreement formally been terminated?

SIDNEY HARMAN: We are not free and you can well imagine, David, that the attorneys are saying to me make no comment about the agreement.

DAVID LEIKER: Okay. I understand that. I'll respect it. Thank you.

SIDNEY HARMAN: Thank you all, and —
OPERATOR: And with that, Dr. Harman, any closing remarks, sir?

SIDNEY HARMAN: Yes, I must say that all of this has been a real challenge to the character of our Company and its people. Although we are a bit tired, we are stronger now because of it. We know who we are and what we can do and we will do it. We will continue to build a superb company and we will enhance our reputation. Thank you all very much.

OPERATOR: And we thank you, Dr. Harman, for those nice words and your time today and to our executive team. We appreciate that. And ladies and gentlemen, as you know, Dr. Harman is making today's call available for digitized replay. It's for one full week and also the Web replay for seven days as well. To access AT&T's Executive Replay Service, please dial 800-475-6701 and at the voice prompt, enter today's conference ID of 888651. Alternatively, you may go to www.Harman.com to listen to the

replay, as well and once again, enter today's access code, 888651.

That does conclude our call for this quarter. Thank you very much for your participation as well as for using AT&T's Executive Teleconference Service. You may now disconnect.

[Thomson Financial reserves the right to make changes to documents, content, or other information on this web site without obligation to notify any person of such changes.

In the conference calls upon which Event Transcripts are based, companies may make projections or other forward-looking statements regarding a variety of items. Such forward-looking statements are based upon current expectations and involve risks and uncertainties. Actual results may differ materially from those stated in any forward-looking statement based on a number of important factors and risks, which are more specifically identified in the companies' most recent SEC filings. Although the companies may indicate and believe that the assumptions underlying the forward-looking statements are reasonable, any of the assumptions could prove inaccurate or incorrect and, therefore, there can be no assurance that the results contemplated in the forward-looking statements will be realized.

THE INFORMATION CONTAINED IN EVENT TRANSCRIPTS IS A TEXTUAL REPRESENTATION OF THE APPLICABLE COMPANY'S CONFERENCE CALL AND WHILE EFFORTS ARE MADE TO PROVIDE AN ACCURATE TRANSCRIPTION, THERE MAY BE

MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORTING OF THE SUBSTANCE OF THE CONFERENCE CALLS. IN NO WAY DOES THOMSON FINANCIAL OR THE APPLICABLE COMPANY OR THE APPLICABLE COMPANY ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED ON THIS WEB SITE OR IN ANY EVENT TRANSCRIPT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S CONFERENCE CALL ITSELF AND THE APPLICABLE COMPANY'S SEC FILINGS BEFORE MAKING ANY INVESTMENT OR OTHER DECISIONS.]

LOAD-DATE: December 17, 2007

APPENDIX J

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended ***September 30, 2007***

Commission File Number: ***1-9764***

Harman International Industries, Incorporated

* * *

[Page 5]

Condensed Consolidated Statements of Operations

Harman International Industries, Incorporated and Subsidiaries (000s omitted except per share amounts) (Unaudited)

	Three months ended September 30,	
	2007	2006
Net sales	$ 946,962	825,543
Cost of sales	682,387	538,254
Gross profit	264,575	287,289

Selling, general and administrative expenses	223,134	200,371
Operating income	41,441	86,918
Other expenses:		
Interest expense, net	1,410	139
Miscellaneous, net	671	861
Income before income taxes and minority interest	39,360	85,918
Income tax expense, net Minority interest	3,657 (826)	29,635 (325)
Net income	$ 35,529	56,608
Basic earnings per share	$ 0.56	0.86
Diluted earnings per share	$ 0.55	0.85
Weighted average shares outstanding – basic	65,242	65,517
Weighted average shares outstanding – diluted	66,363	66,676

APPENDIX K

Harman International Industries F1Q08 (Qtr End 9/30/07) Earnings Call Transcript

* * *

[Page 3]

With this foundation in place, we can truly turn our full attention to strengthening our business, as Dr. Harman said. We will implement strategic initiatives for controlling costs, managing risks better, simplifying our global footprint, and expanding our activities in the mid-range markets. Each of these offers tremendous opportunity, and we will pursue them aggressively.

First quarter sales of $947 million were a record, I remind all time high record, and reflect continued top-line strength with double-digit growth for each of our three businesses.

Automotive sales for the quarter, up 14%, were supported by several factors, including higher sales of portable navigation devices, we call PND, the ramp-up of Chrysler Infotainment systems, and sales increased to luxury automakers, including Audi and BMW.

Consumer net sales were up sharply, 28% from the same period last year, as we continue to expand our product offering and leverage the merchandising power of leading retailers such as Best Buy in America and Media Mart in Europe.

Our professional sales continue to grow, up 11% for the quarter, as we serve the leading names in sports and entertainment, particularly in large speaker areas and mixing equipment for touring artists and facilities.

In a few moments, our Chief Financial Officer, Kevin Brown, will review our profitability in three divisions. But I must say I take a great deal of pleasure in sharing at least at the outset, that the guidance we gave you a few weeks ago, we have come out better than that. And Kevin will share with you the details.

It goes without saying, however, that improving this element of our performance in the Consumer business remains a high priority in terms of profitability margins. In the Consumer sector, our strategic relationship with companies such as Apple, Nokia, and Motorola often provide first-to-market opportunities for us. And that is a valuable reward for engaging them in our up-front R&D.

We are among the top sellers through e-commerce sites, such as Amazon and eBay. And we are supporting leading retailers through modular merchandising concepts, such as the Harman Entertainment Lounge. We actually kicked off this great concept of Harman Entertainment Lounge in IFA, Berlin, and there was a tremendous feedback from thousands or hundreds of customers who visited us.

We recently met with more than 1,000 top sales people from Best Buy locations across the U.S. at a multi-day event that brings Best Buy's top achievers face-to-face with their key vendors and new products. We were told and we believe that Harman stole the

show. The positive feedback continued after the show, and we're very, very pleased with the prospect that has established for us going forward.

Our professional systems continue to be the choice of both world-class entertainers and facilities. In the first quarter, we delivered Harman systems for such prestigious venues as Gucci in Japan, the Alamo Dome in Texas, and Atlantis Hotel in Dubai.

For the 2008 Summer Olympics in Beijing, we are installing systems for nearly every major venue, including the National Stadium, National Aquatic Center, Olympic Sports Center Gymnasium, Shanghai soccer stadium and Hong Kong equestrian venues.

I'm personally excited by the energy these world-class customers bring to Harman's business. We will continue to serve them with focus and enthusiasm, leveraging both Harman's traditional market strengths and a renewed corporate spirit. We are energized, committed, and moving to reach our full potential at pretty rapid pace.

Ladies and gentlemen, thank you for your attention. And now I will hand over to our Chief Financial Officer, Kevin Brown, for a closer look at first quarter results. And then we will open up for Q&A.

Kevin Brown

Thank you, Dinesh. I will provide certain information on a non-GAAP basis to give you a better understanding of our results, exclusive of merger-related costs. These costs, primarily advisory legal fees, were $4.7 million during the quarter. A reconciliation of first quarter GAAP to non-GAAP

results was included in our press release, which is available on our website.

Net sales for the first quarter were $947 million, an increase of 15% compared to the same quarter last year. Gross profit margin was 27.9%, compared to 34.8% last year. Operating income was $41.4 million, compared to $86.9 million in the prior year period. Excluding merger-related costs, operating income was $46.1 million.

Net income for the quarter was $36.5 million, and earnings per diluted share were $0.55. Excluding merger-related costs, net income was $41.2 million and earnings per share were $0.62, compared to last year's record $0.85.

Foreign currency translation affected our first quarter results as the Euro strengthened about 8% compared to the same quarter last year. The Euro averaged $1.37 in the quarter compared to $1.27 last year. As a result, foreign currency translation improved sales by approximately $42 million and contributed $0.07 to earnings per share in the quarter.

Gross profit margin was 27.9% during the first quarter, a decrease of 6.9 percentage points compared to the same period last year. During our September 27th conference call, we discussed Automotive's changing product mix and its effect on gross margins. We expected gross profit to decline as we entered the mid-infotainment segment and ramped up our PND business. However, the planned decline was burdened by higher than expected material costs and the launch of new infotainment programs and new manufacturing facilities.

The ramp up at our facility in Missouri was slower than we had expected because over the course of the quarter, our automotive customers slowed its 2008 model introductions to clear out unsold 2007 model inventory. We expect this to be resolved in the second quarter. We believe our material costs will improve going forward and our new manufacturing facilities will gain efficiencies as they approach full production.

Operating expenses were $223 million for the quarter, an increase of $23 million from fiscal '07. Operating expenses in the quarter include the $4.7 million of merger-related costs mentioned previously. We expect significant additional costs related to the resolution of the merger in the second quarter.

Absolute operating expenses increased in both R&D and other SG&A. Automotive gross R&D is $13 million higher compared to the prior year, reflecting the resources added in the third and fourth quarter of fiscal 2007.

The additional R&D or engineering bulge we discussed in detail in our January and April earnings calls, is necessary to support our many new business awards, invest in new areas of technology such as Driver Assist, and to ensure the delivery of the record number of new programs launching in the next several years.

The first quarter tax rate was 9.3% compared to 34.5% during the same period last year. The lower tax rate reflects a credit from the settlement of a prior period tax audit in Germany.

As Dinesh said, first quarter sales increased in each of our three operating segments compared to the

prior year. Automotive sales increased $81 million or 14% during the quarter. Automotive gross profit, down nine points from the prior year, was affected by product mix, material costs, and new programs. Automotive operating income of 6.7% of sales was impacted by the gross profit decline.

Consumer sales increased $26 million or 28%, driven by new product introductions and strong international sales. Consumer gross profit was 1.7 points below the same quarter last year, as competition in the multimedia space has depressed margins. Consumer reported an operating loss in the traditionally weak first quarter of negative 2.6% of sales; however, that was a 2.2 point improvement compared to the prior year.

Professional sales increased $14 million or 11%, due to new product introductions at JBL Pro and Soundcraft Studer. Professional gross profit exceeded the prior year in both dollar terms and as a percent of sales. Professional operating profit improved 1 point to 14% of sales.

At September 30th, our cash balance was $77 million and total debt was $183 million. During the quarter we made tax payments of $73 million, primarily in Germany, and paid $18 million to retire our remaining senior debt. Capital expenditures during the quarter were $27 million. And depreciation and amortization was $34 million.

Accounts receivable at September 30th were $580 million. Inventory was $475 million. And accounts payable were $326 million. As we reviewed in the September call, sales growth remains strong but

several factors will affect full-year operating performance.

Full-year sales for fiscal ‘08 are forecast to be $4.1 billion, an increase of 16% compared to $3.5 billion in fiscal ‘07. We expect each of our three operating segments to produce higher sales than the prior year.

Full-year gross profit margin is expected to be 31% of sales, approximately 3 percentage points lower than fiscal ‘07. Lower gross profit margin is forecasted in Automotive, primarily due to product mix, new model and plant launch costs and increases in material costs. Operating expenses before transaction costs are forecast to be $870 million for fiscal ‘08.

Within operating expenses, we expect R&D costs to improve each quarter but remain higher in dollar terms than our FY ‘07 record. As a percent of sales, we expect R&D costs to be lower than fiscal ‘07. Total operating expenses including R&D are forecast to increase about $55 million from fiscal ‘07. On a percent of sales basis, operating expenses should decrease from fiscal ‘07.

Finally, we expect fiscal year ‘08 earnings per share before transaction, legal, and restructuring costs, to meet or exceed the $4.14 reported for fiscal ‘07.

As announced on Monday, we will implement an accelerated stock repurchase program. An accelerated stock repurchase program allows us to immediately retire over 4 million shares or about 6% of the outstanding shares of the company. We expect that accelerated share repurchase will improve fiscal ‘08 earnings per share by about 4%.

We will now take your questions.

Question-and-Answer Session

Operator

Representing RBC Capital Markets, our first question comes from the line of Scot Ciccarelli.

Scot Ciccarelli – RBC Capital Markets

Wanted to ask about the gross margin on the auto side. Obviously it was down about 9 points, according to Kevin's commentary. Can you give us an idea of what is an ongoing pressure on the margin, because we're moving into mid- and entry level programs? And what is what you have termed sort of one-time-ish that we should get past?

Dinesh Paliwal

Yes, Scot, let me share my view on that. As we have said, in the long run, we may have pressure on the contribution margin. But we have also said before, and I said it, and I repeat again, we are aspiring and feel pretty confident to hold on to good profitable operating margins we have maintained. And we're not there yet.

What has happened in last quarter or actually a short period here, we had couple of brand-new plants started up, one in U.S. and one in China; we had also PND portable navigation device business taking off on a very good level; from 2006 to 2007 to 2008, we're seeing phenomenal growth and here we have a lot more material price increase, which has impacted on a short-term basis.

Also, material substitution in our OEMs, which allows us once a year, typically, to take it to our customers for cost reduction or design changes, which will take costs out; typically allows us once a year,

but we are in vigorously trying and actually succeeding to do that twice a year. So we missed that in first quarter and we actually ended up taking material price variance in the wrong direction, which should not happen going forward.

And similar things could be said for some of the ramp-ups, which we had said that the plant start-up in the United States had a slower ramp-up due to our customers' request as they had some unsold old inventory and they wanted us to slow down, so we ended up taking some cost—overhead fixed cost as well as some variable cost—which otherwise wouldn't have hit the bottom line.

So, those are some of the one-offs that put a lot of pressure on our bottom line, which we don't believe should continue, going forward.

Scot Ciccarelli – RBC Capital Markets

* * *

APPENDIX L

HARMAN INTERNATIONAL REVISES FISCAL YEAR 2008 EARNINGS

WASHINGTON, D.C. January 14, 2008 – Harman International Industries, Incorporated [*sic*] today revised its previously announced guidance for the current fiscal year ending June [*sic*] Company now expects non-GAAP diluted EPS for the 2008 fiscal year to be between $ [*sic*] before after-tax merger related costs of $8.0 million, or $0.13 per diluted share but inch the Company's ongoing accelerated share repurchase (ASR). Because the accounting in [*sic*] previously announced restructuring charges has not been determined, it is not included [*sic*] estimated and, therefore, no GAAP diluted EPS for the fiscal 2008 year is provided.

The change in guidance was prompted primarily by a major shift in the market for Portable [*sic*] Devices (PNDs). In recent months this sector has experienced significant pricing pressure [*sic*] affecting the entire industry.

"While the growth fundamentals of our core business remain sound, the difficult PND [*sic*] presents a challenge. As we have indicated previously, we will be launching a record [*sic*] automotive infotainment platforms in 2008. Although, we are not happy with the high [*sic*] R&D engineering and material costs, the additional investment is necessary to deliver [*sic*] to our valued customers," said Dinesh Paliwal, Vice Chairman and Chief Executive Officer [*sic*] continues

to have excellent business prospects, and we are confident that we will capita [*sic*] opportunities as we position our Company to achieve its full potential."

The Company is implementing a series of strategic initiatives to optimize its global food [*sic*] manufacturing, engineering and sourcing, to drive profitable growth and to enhance sha [*sic*] The Company will provide further details on these initiatives during its quarterly earnings on February 5, 2008.

General Information

Harman International designs, manufactures and markets a wide range of products for the [*sic*] consumer and professional markets. Its brands include Harman Karden®, JBL®, Reve [*sic*] Levinson®, Infinity®, Levinson®, Infinity®, Lexicon®, Soundcraft-Studer®, AKG®, Becker®, and QNX® [*sic*] maintains a strong presence in the Americas, Europe and Asia and employs more than [*sic*] Harman International (www.harman.com) is a leading manufacturer of high-quality hig [*sic*] products and electronic systems for the automotive, consumer and professional markets [*sic*] stock is traded on the New York Stock Exchange under the Symbol: HAR.

Forward-Looking Informaton

Note: Except for historical information contained herein, the matters discussed are for [*sic*] statements within the meaning of Section 21E of the Securities Exchange Act. You sh [*sic*] undue reliance on these statements. We base these statements on particular assumption[*sic*] made in light of our industry experience, as well as our perception of historical

trends, conditions, operating expectations, current economic data, expected future development [*sic*] that we believe are appropriate under the circumstances. These statements involve risk that could cause actual results to differ materially from those suggested in the forward- [*sic*] including but not limited to our ability to successfully develop and implement cost sav [*sic*] to gain procurement, engineering and manufacturing efficiencies to deliver improved [*sic*] of competitive pressure on the market for PNDs, the effect of changes in consumer [*sic*] interest rates affecting consumer spending, automobile industry sales and production [*sic*] or more significant customers, including our automotive customers, model-year chang [*sic*] customer acceptance in the automotive industry, our ability to satisfy contract perform availability of key components to the products we manufacture, competitive products, acceptance of our consumer and professional products, fluctuations in currency exchange outcome of pending or future litigation and other claims, including the litigation result terminated merger agreement with a company formed by investment funds affiliated w [*sic*] Kravis Roberts & Co. L.P. and GS Capital Partners VI Fund L.P., labor disputes at ou [*sic*] of our customers or common carriers, general economic conditions and other risks det [*sic*] made by Harman International with the Securities and Exchange Commission, including [*sic*] Report on Form 10-K for the fiscal year ended June 30, 2007.

APPENDIX M

Harman International
PRESS RELEASE
February 5, 2008

FOR IMMEDIATE RELEASE

Contact: Robert C. Ryan
Vice President – Treasurer
Harman International Industries, Incorporated
(202) 393-1101

HARMAN INTERNATIONAL REPORTS HIGHER SALES FOR SECOND QUARTER FISCAL YEAR 2008; EARNINGS DOWN ON PND, PRODUCT MIX AND COSTS

Announces Analyst and Investor Conference Call

WASHINGTON, D.C., February 5, 2008 – Harman International Industries, Incorporated (NYSE: HAR) today announced results for the second quarter ending December 31, 2007. Net sales for the quarter were $1.066 billion, a 14.4 percent increase compared to $932 million for the same period last year. Earnings per diluted share in the second quarter were $0.68 compared to $1.22 in the same period last

year. Excluding merger-related costs, earnings per diluted share were $0.73.

"Although we continue to increase sales across all divisions, our automotive earnings are under pressure due to portable navigation devices (PND), product mix, and higher engineering and material costs during a period of record launch activity," said Dinesh Paliwal, Harman's Chief Executive Officer. "We are accelerating a number of strategic actions to improve our cost structure and optimize our global footprint in the automotive sector, while flattening our broader organization to instill a strong culture of execution."

FY 2008 Second Quarter Key Figures	**Three Months Ending December 31, 2007**			
$ millions unless otherwise indicated	**2007**	**2006**	Including Currency Changes	Excluding Currency Changes[2]
Net sales	1,066	932	14.4%	5.9%
Gross profit	301	320	(5.8%)	
Percent of net sales	28.3%	34.3%		
Operating income	61	116	(47.4%)	(53.0%)
Percent of net sales	5.7%	12.4%		
Net income	43	81	(47.3%)	(53.0%)
Percent of net sales	4.0%	8.7%		
GAAP diluted earnings per share ($)	0.68	1.22		
Non-GAAP diluted earnings per share[1] ($)	0.73	1.22		
	63	67		

[1]Adjusted for costs associated with the terminated merger.
[2]Non-GAAP measure. See reconciliation later in this release.

Summary of Operations

Net sales continued to grow across all three divisions. The growth in overall net sales was primarily due to increased shipments of infotainment systems to automotive customers and higher sales of consumer and professional products to major distributors. Gross profit, as a percentage of net sales, decreased 6.0 percentage points to 28.3 percent for the quarter ending December 31, 2007. The gross margin decline was primarily in the Automotive division which experienced lower margins on PND products, product mix change, including higher sales of lower-margin infotainment systems for mid-level vehicles, and higher than expected material costs.

Selling, general and administrative (SG&A) expenses were $240 million for the quarter, an increase of $36 million from the second quarter of fiscal 2007. SG&A expenses in the quarter include $9 million of merger-related costs. SG&A was also impacted by higher engineering costs and foreign currency translation.

Operating income for the quarter ending December 31, 2007 was $61 million, or 5.7 percent of sales, compared to $116 million, or 12.4 percent of sales, in the same period last year. The decrease in operating income was driven by PND, product mix, and higher engineering, material and merger costs.

The effective tax rate for the second quarter fiscal 2008 was 25.6 percent compared to 29.5 percent during the same period last year. The lower effective tax rate was a result of the termination of the merger agreement in the second quarter, which allowed

merger costs to be tax deductible, and lower corporate tax rates in Germany.

For the quarter, net income was $43 million and earnings per diluted share were $0.68. Excluding merger-related costs, net income was $46 million and earnings per diluted share were $0.73 compared to last year's record $1.22.

Foreign currency translation positively impacted quarterly results as the Euro strengthened approximately 12 percent compared to the same quarter last year. The Euro averaged $1.45 in the second quarter compared to $1.29 in the same period last year. As a result, foreign currency translation improved sales by approximately $75 million and contributed $0.15 to earnings per diluted share in the quarter.

Divisional Performance Q2 FY2008

Automotive Division

	Three Months Ending December 31, 2007			
FY 2008 Second Quarter Key Figures			**Increase (Decrease)**	
$ millions unless otherwise indicated	**2007**	**2006**	Including Currency Changes	Excluding Currency Changes[1]
Net sales	730	632	15.5%	5.4%
Gross profit	194	225	(14.1%)	
Percent of net sales	26.5%	35.7%		
Operating income	36	92	(60.0%)	(64.3%)
Percent of net sales	5.0%	14.6%		
[1]Non-GAAP measure. See reconciliation later in this release.				

Automotive net sales for the quarter were up 15.5 percent from the same period one year ago. Excluding currency effects, sales were 5.4 percent higher compared to the same period last year. Sales continued to be strong to key automotive customers including Audi, BMW, Chrysler, Toyota/Lexus, and Porsche. Gross profit, as a percentage of sales, fell by 9.2 percentage points to 26.5 percent. The gross margin decline was a result of lower margins on PND, product mix, and material costs. Operating income, as a percentage of net sales, for the division was down 9.6 percentage points due to gross margin effects, higher engineering, and other SG&A.

The majority of PND sales are recorded in the Automotive division. PND sales fell by $29 million compared to the same period last year. Both PND sales and margins decreased due to aggressive price reductions by competitors, the delay of new products, and the sale of older products at substantial discounts.

Professional Division

	Three Months Ending December 31, 2007			
FY 2008 Second Quarter Key Figures			**Increase (Decrease)**	
$ millions unless otherwise indicated	**2007**	**2006**	Including Currency Changes	Excluding Currency Changes[1]
Net sales	152	136	11.2%	8.6%
Gross profit	60	52	14.7%	
Percent of net sales	39.7%	38.4%		
Operating income	23	20	16.2%	13.7%

Percent of net sales	15.2%	14.7%		
[1]Non-GAAP measure. See reconciliation later in this release.				

Professional division net sales for the quarter ending December 31, 2007 were up 11.2 percent from the same period one year ago. Excluding currency effects, second quarter sales were 8.6 percent higher than the same period in fiscal 2007. Sales grew across a number of the division's vertical markets, particularly the touring and installed sound markets. Gross profit, as a percentage of sales, increased by 1.3 points due to a more favorable product mix and lower variable expenses. Operating income, as a percentage of sales, was up by 0.5 of a percentage point to 15.2 percent.

The Professional division continues to report strong customer response to its portfolio of solutions for performing artists and facilities. Second quarter projects included Harman Professional division bookings for Boston's Four Seasons Hotel, Shanghai TV, the Jewish Museum of Berlin, AIDA Cruise Lines, and the Sydney, Australia Conservatorium of Music. Work is continuing in Beijing, China to equip more than a dozen key venues for the 2008 Summer Olympics with Harman professional audio systems.

Consumer Division

	Three Months Ending December 31, 2007			
FY 2008 Second Quarter Key Figures			**Increase (Decrease)**	
$ millions unless otherwise	**2007**	**2006**	Including Currency	Excluding Currency

indicated			Changes	Changes[1]
Net sales	184	163	12.7%	5.6%
Gross profit	49	43	12.8%	
Percent of net sales	26.4%	26.4%		
Operating income	17	15	20.6%	8.6%
Percent of net sales	9.5%	9.0%		
[1]Non-GAAP measure. See reconciliation later in this release.				

Consumer division net sales for the quarter ending December 31, 2007 increased $21 million, or 12.7 percent, compared to the same period last year. Excluding currency effects, second quarter sales were 5.6 percent higher than the same period in fiscal 2007. The sales growth was primarily in international operations where multimedia and home theater systems continue to be strong. Gross profit, as a percentage of sales, was 26.4 percent, consistent with the same period last year. For the quarter, operating margins were 9.5 percent of sales, up 0.5 of a percentage point from the same period a year ago.

In the Consumer division, market trends continue to show additional focus on the integration of large flat screens, iPod music players and wireless applications. Key Harman rollouts in 2008 will offer greater integration and connectivity of audio and entertainment systems. These include the Harman Digital Lounge, a "store within a store" merchandising concept for retailers, and the Harman/Kardon DMC 1000 Media Server that delivers content to as many as four separate household zones.

Strategic Appointments

Harman's Board of Directors has been expanded to eight members, bringing new expertise and global range. Brian Carroll has joined from KKR, bringing strong financial expertise. Dr. Harald Einsmann, a German national who has worked with such industry leaders as Procter & Gamble, the Wallenberg Group, and the Carlson Group, brings international business experience. Gary Steel, a Scottish national with experience from Europe's Shell and ABB Groups, adds deep expertise in human resources, restructuring, and corporate governance.

The Company has also announced several significant additions to its senior management team in recent weeks.

- Richard Sorota, an experienced executive with premium consumer brand companies, Procter & Gamble and Royal Phillips, has joined the Company as Consumer Division President.
- John Stacey, with 20 years of experience in employee and organizational development across the Americas and Europe, is joining Harman as Vice President of Human Resources.
- Robert Lardon has joined the Company as Vice President, Strategy and Investor Relations. In addition to his experience as a management consultant at PwC, Accenture, and Booz Allen, Mr. Lardon was Chief Strategy Officer at Porter Novelli, a global Top 10 communications agency.
- Kent Moerk, a Danish national, has been appointed to manage the newly established global PND business unit which will integrate

the Company's two lines of portable navigation devices.

- Dr. Wolfgang Ptacek, who has held senior management positions at T-Mobile and Bosch, has been appointed Chief Technology Officer for Harman automotive operations worldwide.
- Bronson Reed, an experienced international finance executive at ABB, joined the Company as Vice President, Group Controller.

In order to strengthen the leadership and to improve common processes across multiple Harman businesses, the Company has created the new position of Country Manager in the United States and Japan, and will extend this concept shortly to Germany, China, India, and Russia. Blake Augsburger, who leads the global Professional division, has taken this additional role in the US. Ken Yasuda, President of Harman Consumer Japan, assumes the additional group-wide country role in Japan. These individuals will serve as country champion for functional best practices, and will directly participate in such business activities as project risk reviews, large supply or investment proposals, restructurings, and key human resource decisions.

Strategic Initiatives

During the fiscal second quarter, the Company initiated an extensive review of its global footprint and launched a number of key initiatives to improve simplicity and cost. In the third quarter, restructuring of the Company's automotive footprint was accelerated with the decision to close plants in Northridge, California and Martinsville, Indiana.

Also during the third quarter, the Company decided to shut down two smaller facilities in Massachusetts serving the Consumer division. These operations will be integrated with other Harman facilities in California and New York. Consolidations of additional Harman manufacturing and engineering facilities in Europe and Africa are under review.

These actions are expected to result in restructuring charges of $25 to $30 million in the third quarter and $5 to $10 million in the fourth quarter of fiscal 2008. About 1400 jobs will be affected, of which 500 jobs will be eliminated and the balance transferred to other Harman facilities in the United States, Germany, China, and Mexico.

The Company has added several hundred new jobs at its plants in Mexico and China and extensive job training is now being completed. The Company has also decided to add capacity to its plant in Hungary in order to expand production of audio electronics and speakers.

The Company is in the final stage of completing its plan to outsource its information technology infrastructure. This step will blend an outside service provider's solutions expertise with emerging-country resources to bring us significant gains in both agility and cost. This initiative will also help us take a closer look at alternative resources for project-related software, systems and costs.

In the third quarter, the Company also decided to consolidate resources from Washington, DC and Northridge, California to its new corporate headquarters in Stamford, Connecticut. This will

accelerate the speed of decision making and improve coordination across key company functions.

Outlook

The Company expects continued growth in sales across its three divisions, although the economic slowdown may affect some of this growth. Fiscal 2008 performance will be adversely affected by lower PND margins, product mix, and higher engineering and material costs due to several new infotainment platform launches.

"We expect the remainder of 2008 and 2009 to be difficult as we complete the launch of a record number of infotainment platforms and face continued pricing pressures," said Dinesh Paliwal. "Management is responding aggressively to address these issues with a company-wide restructuring program to improve productivity and cost structure across manufacturing, engineering, and sourcing."

Investor Call on February 5, 2008

At 4:30 p.m. EST today, Harman management will host an analyst and investor conference call to discuss the second quarter results for the fiscal year 2008. To participate in the conference call, please dial (800) 230-1766 (US) or (612) 332-0107 (International), and reference Harman International.

A replay of the call will also be available following the completion of the call at approximately 6:30 p.m. EST. The replay will be available through February 19, 2008. To listen to the replay, dial (800) 475-6701 (US) or (320) 365-3844 (International), Access Code: 908855.

AT&T will also be web-casting the presentation. The web-cast can be accessed at

http://65.197.1.5/att/confcast, enter the Conference ID: 908855, then enter the pass code: Harman and click Go. There will also be a link to the web-cast at www.harman.com. Participation through the web-cast will be in listen-only mode. If you need technical assistance, call the toll-free AT&T Conference Casting Support Help Line at (888) 793-6118 (US) or (678) 749-8002 (International).

The Company is making slides available on its website, www.harman.com, which provide an overview of its Automotive division landscape.

General Information

Harman International (www.harman.com) designs, manufactures and markets a wide range of audio and infotainment products for the automotive, consumer and professional markets. The Company maintains a strong presence in the Americas, Europe and Asia and employs more than 11,000 people worldwide. The Harman International family of brands spans some 15 leading names including AKG, Audioaccess, Becker, BSS, Crown, dbx, DigiTech, DOD, Harman Kardon, Infinity, JBL, Lexicon, Mark Levinson, Revel, QNX, Soundcraft and Studer. The Company's stock is traded on the New York Stock Exchange under the Symbol HAR.

A reconciliation of the non-GAAP measures included in this press release to the most comparable GAAP measures is provided in the tables contained at the end of this press release.

Forward-Looking Information

Except for historical information contained herein, the matters discussed are forward-looking statements within the meaning of Section 21E of the Securities

Exchange Act. One should not place undue reliance on these statements. We base these statements on particular assumptions that we have made in light of our industry experience, as well as our perception of historical trends, current market conditions, current economic data, expected future developments and other factors that we believe are appropriate under the circumstances. These statements involve risks and uncertainties that could cause actual results to differ materially from those suggested in the forward-looking statements, including but not limited to (1) changes in consumer confidence and general economic conditions in the U.S. and Europe; (2) the effect of changes in consumer confidence; (3) a change in interest rates affecting consumer spending; (4) automobile industry sales and production rates; (5) the loss of one or more significant customers, including our automotive customers; (6) model-year changeovers and customer acceptance in the automotive industry; (7) our ability to satisfy contract performance criteria at expected profit margins; (8) availability of key components for the products we manufacture; (9) customer acceptance of our consumer and professional products; (10) competition in the automotive, consumer or professional markets in which the Company operates, including pricing pressure in the market for PNDs and other products; (11) fluctuations in currency exchange rates; (12) the outcome of pending or future litigation and other claims, including, but not limited to the current stockholder and ERISA lawsuits or any claims or litigation arising out of our business, labor disputes at our facilities and those of our customers or common carriers; and (13) other risks detailed in Harman's

Annual Report on Form 10-K for the fiscal year ended June 30, 2007 and other filings made by Harman with the Securities and Exchange Commission.

APPENDIX N

Seeking Alpha α

Harman International Industries Inc. F2Q08 (Qtr End 12/31/07) Earnings Call Transcript

posted on: February 06, 2008 | about stocks: HAR

Harman International Industries Inc. (HAR)

F2Q08 Earnings Call Transcript

February 5, 2008 4:30 pm ET

Executives

Dinesh Paliwal – CEO

Kevin Brown – CFO

Analysts

Jeffrey Kessler – Lehman Brothers

Peter Barry – Bear Stearns

Scot Ciccarelli – RBC Capital Markets

Chris Ceraso – Credit Suisse

Peter Friedland – Soleil

David Niederman – Pacific Crest Securities

David Leiker – Robert W. Baird

Presentation

Operator

Ladies and gentlemen, thank you for standing by, good afternoon and welcome to the Harman International Industries second quarter fiscal 2008

earnings release conference call. At this point all of your phone lines are muted or in a listen only mode. However, later during the conference there will be opportunities for questions and those instructions will be given at that time. As a reminder, today's conference is being recorded. And ladies and gentlemen, if I may have your attention, certain statements made by the company during this call are forward looking statements.

These statements include the company's beliefs and expectations as to future events and trends affecting the company's business and are subject to risks and uncertainties. Actual results may differ materially from the statements about the company's current beliefs and expectations. Persons participating on the call today are advised to review the company's earnings release issued today and reports filed by Harman International with the Securities and Exchange Commission regarding these risks and uncertainties. With that being said, here with our opening remarks is Harman International Industries' Chief Executive Officer Dinesh Paliwal. Please go ahead Mr. Paliwal.

Dinesh Paliwal

Thank you Kathy and good afternoon ladies and gentlemen on this wonderful Super Tuesday afternoon and I thank you for joining the Harman second quarter fiscal year 2008 investor and analyst call. The past weeks have been very eventful and our discussion today is intended to reinforce a spirit of decisive action as we strategically address the challenges facing our company. I'm joined today by Kevin Brown, our Chief Financial Officer, Rob Ryan, our Vice President Tresurer and Robert Lardon who

recently joined the company as Vice President Strategy and Investor Relations.

Our Chairman Dr. Harman and I have agreed that it is appropriate that I lead the earnings review and discussion with you this afternoon. He has asked me to extend his regards to the many analysts and investors with whom he has worked over the years and I very much appreciate his counsel and support. As reference for our discussion, I'll call your attention to the company's press release dated today and to a set of slides which provide an overview of our automotive division landscape and margin outlook for the company. I hope you have had access to these slides as well. Both of these are available on our corporate website at www.harman.com.

Harman results for the quarter ending December 31, 2007 show continued top line growth coupled with some distinct challenges that are impacting profitability. Net sales for the quarter were $1.1 billion, a 14% increase compared to $932 million for the same period last year. Earnings per diluted share in the second quarter were $0.68 compared to $1.22 in the same period last year. Excluding merger related costs, earnings per diluted share were $0.73. Gross profit as a percent of net sales decreased 6% points to 28.3% for the quarter ended December 31.

Operating income for the quarter ended December 31 was $61 million or 5.7% of sales compared to $116 million or 12.4% of sales in the same period last year. Our Chief Financial Officer, Kevin Brown, will take you deeper into the numbers later in the call. As we shared with you in our press release today, we expect to face continuing bottom line pressure through 2008 and well into the next year. This challenge is largely

due to factors which I will explain in some detail along with actions we are taking. In January we announced revised earnings guidance for the year which included a decrease in operating profit of more than $100 million.

The primary drivers of this deterioration are P&D, engineering and material cost and I'll take you through in detail later. The P&D margin outlook for the year has declined by about $60 million, this is divided almost equally across three factors. One-third was driven by a 60% decline in average market prices, another one-third was due to delayed product introductions and lower volume of new generation products for us and the rest of the one-third was the inventory clearance of prior generation models at a loss. Needless to say, we have learned some key lessons and I'll share later.

Engineering cost will continue to run higher than expected into fiscal 09 to support the 13 new product launches this year and next for which we simply underestimated the magnitude and complexity. We originally planned for a decline in engineering cost in the second half of fiscal 08 but we cannot risk the timely launch of customer programs and therefore will incur about $30 million of additional engineering this year. Material cost will be about $20 million higher than forecast due to delayed implementation of planned material cost improvements.

Once again, we are unwilling to risk such changes amidst an unprecedented concentration of new program launches. Although we continue to view P&D as an important tool for driving future sales of OEM infotainment systems, it is clear that we must sharpen our strategy in this business. However,

Harman markets in the past had two lines of P&D, ones sold primarily in the United States under the Harman Kardon brand and the other mostly in Europe under the Becker brand. We are improving our leverage across these two parallel product lines through the creation of a global business unit responsible for all P&D activities worldwide.

An experienced manager has been appointed to lead this business unit and he has full P&L responsibilities. He has been tasked with creating one, one line of Harman P&D, achieving significant synergies in development, supply chain, time to market, distribution channels and of course all for one brand, not two. These experiences also reinforce the need for timely action in raising productivity and optimizing the cost base for our automotive operations globally. We took several additional steps in this process within the past weeks, announcing the closure of our automotive manufacturing facilities in North Ridge, California and Martinsville, Indiana.

These are the first of multiple actions that will improve our cost structure while shifting [some] resources to other sites in both mature and emerging markets. As we evolve our structure, I have made it clear to my senior management team that personal accountability will be a prerequisite going forward and have redesigned our compensation programs accordingly. Beginning this fiscal year, compensation for many senior managers will be based on Harman group wide performance. This will help our businesses to strengthen the mindset of accountability, not only within each division but also across business lines that impact their Harman peers. Ladies and gentlemen, we have a lot of hard work

ahead and this work is underway in earnest. I will comment further on significant recent events after first asking our CFO, Kevin Brown, to provide a closer look at the numbers underlying our second quarter results. Kevin.

Kevin Brown

Thank you Dinesh. I will provide certain information on a non GAAP basis, give you a better understanding of our results exclusive of merger related costs. These costs were $9 million and $14 million for the three and six months ending December 31, 2007. A reconciliation of our GAAP to non GAAP results was included in our press release earlier today which is available today on our website. Net sales for the second quarter were $1.1 billion, an increase of 14.4% compared to the same quarter last year.

Gross profit margin was 28.3% compared to 34.3% a year ago. Operating income was $61 million compared to $116 million last year. Excluding merger related costs, second quarter operating income was $70 million. Net income for the second quarter was $43 million and earnings per diluted share were $0.68. Excluding merger related costs, net income for the quarter was $46 million and earnings per diluted share were $0.73. For the six months ended December 31, 2007, net sales were $2.0 billion compared to $1.8 billion for the same period last year, an increase of 14%.

Gross profit margin was 28.1% compared to 34.5% last year. Operating income was $102 million versus $203 million a year ago. Excluding merger related costs, operating income was $116 million, net income

for the six month period was $79 million and earnings per diluted share were $1.23. Excluding merger related cost, net income was $87 million and earnings per diluted share were $1.35. In the second quarter, net sales continued to grow across all three divisions. The growth in overall sales was primarily due to increased shipments of infotainment systems to automotive customers and higher sales of consumer and professional products.

Gross profit as a percentage of net sales decreased 6% points to 28.3% for the quarter. The margin decline was in the automotive division which experienced lower margins on P&D products, product mix range change including higher sales of infotainment systems to mid level vehicles and higher than expected material costs. Selling general and administrative expenses were $240 million for the quarter, an increase of $36 million from the second quarter of fiscal 2007. SG&A expenses for the quarter include $9 million of merger related costs.

SG&A was also impacted by higher engineering costs and foreign currency translation. Operating income for the quarter was $61 million or 5.7% of sales compared to $116 million or 12.4% of sales in the same period last year. The decrease in operating income was driven by P&D, product mix, higher engineering material and merger related costs. The effective tax rate for the second quarter was 25.6% compared to 29.5% during the same period last year. The termination of the merger agreement in the second quarter allowed merger costs to be tax deductible, lowering the effective tax rate.

Foreign currency translation positively impacted quarterly results as the Euro strengthened

approximately 12% compared to the same quarter last year. The Euro averaged $1.45 in the second quarter compared to $1.29 last year. As a result, foreign currency translation improved sales by approximately $75 million and contributed $0.15 to earnings per share in the quarter. Our December 31 balance sheet was strong with a cash balance of $159 million and total debt of $581 million.

The debt balance includes proceeds from the issuance of $400 million of convertible notes which were used to purchase and retire 4.8 million shares of the company's stock. We expect to retire an additional 2 million shares of stock in the third quarter as we complete the share repurchase program. During the second quarter we also used cash to make capital expenditures of $35 million and we made tax payments of $17 million. Accounts receivable at December 31 were $541 million and inventory was $435 million.

Compared to our fiscal year end in June, accounts receivable balance was higher primarily due to the holiday selling season. Our inventory balance was lower. I will now provide some additional information regarding the performance of our three divisions, first with automotive. Automotive net sales for the quarter were up 15.5% from the same period last year, excluding currency effects, sales were 5.4% higher. Sales continued to be strong to key automotive customers, including Audi, BMW, Chrysler, Toyota Lexus and Porsche.

Gross profit as a percentage of sales fell by 9.2 points to 26.5%. The gross margin decline was a result of lower margins on P&Ds, product mix and material costs. Operating income as a percentage of sales for

the automotive division was down 9.6 points due to the gross margin impacts and higher engineering and SG&A. The majority of the P&D business is in the automotive division. In the second quarter, P&D sales and margin were down about $30 million and $20 million respectively compared to the same quarter last year.

Both P&D sales and margin were significantly lower due to aggressive price reductions by competitors, the sale of older products at substantial discounts and the delay of new product introductions. In the quarter we reduced P&D inventory by over 30% as we sold down prior generation products, but many of those were sold at a loss. Professional division nets sales for the quarter ended December 31 were up 11.2% from the same period a year ago.

Excluding currency effects, second quarter net sales were nearly 9% higher than the same period in 2007. Professional sales grew across a number of the division's vertical markets, particularly the touring and installed sound markets. Gross profit as a percentage of sales increased by 1.3 points due to more favorable product mix and lower expenses. Operating income as a percentage of sales was up by 0.5 percentage points to 15.2% in the quarter. Consumer division net sales for the quarter increased $21 million or 12.7% compared to the same period last year.

Excluding currency effects, second quarter consumer sales were nearly 6% higher than the same period in fiscal 2007. The sales growth was primarily in international operations where multimedia and home theatre systems continue to be strong. Gross profit as a percentage of sales in consumer was 26.4%,

consistent with the same period last year. For the quarter, operating margins were 9.5% of sales, up 0.5 points from the same period a year ago. Dinesh will now offer a closer look at ongoing strategic initiatives.

Dinesh Paliwal

Thank you Kevin. Well ladies and gentlemen, we have been working on a number of strategic actions and initiatives. Let me start with the top, Harman's Board of Directors has been expanded to eight members, bringing new expertise and global range. Brian Carroll had joined from KKR, bringing strong financial expertise, Dr. Harald Einsmann, a German national who has worked with such industry leaders as Proctor & Gamble, the Wallenberg Group and the Carlson Group, brings international business experience, Gary Steel, a Scottish national brings experience from Europe's Shell and ABB Groups, including deep expertise in human resources, restructuring and corporate governance. We have also announced several significant additions to our senior management team in recent weeks.

Richard Sorota, an experienced executive with premium consumer brand companies Procter & Gamble and Royal Phillips had joined the company as consumer division president. John Stacey with 20 years of experience in employee and organizational development across the Americas and Europe is joining Harman this month as vice president of human resources worldwide.

Robert Lardon had joined the company as vice president strategy and investor relations. In addition to Robert's experience as a management consultant at PWC, Accenture and Booz Allen, he was chief

strategy officer at Porter Novelli, a global top ten communications agency. Kent Moerk, a Danish national has been appointed to manage the newly established global portable navigation device business which will integrate the company's two lines of portable navigation devices worldwide with full P&L accountability.

Dr. Wolfgang Ptacek, who has held senior management positions at Deutsche Telecom and Bosch, was appointed chief technology officer for Harman automotive operations worldwide. Bronson Reed, an experienced international finance executive at ABB joined the company as vice president and group controller. In order to strengthen the leadership and to improve common processes across multiple Harman business, we have created the new position of country manager in the United States and Japan and will extend this concept shortly to Germany, China, India and Russia. Blake Augsburger, who leads the global professional division, has taken this additional role in the US. Ken Yasuda, president of Harman consumer group assumes the additional group-wide country role in Japan.

During the fiscal second quarter, we initiated an extensive review of our global footprint and launched a number of key initiatives to improve simplicity and cost. As noted earlier, restructuring our automotive footprint has been accelerated with the decision to close our automotive plants in North Ridge, California and Martinsville, Indiana. We have also decided to close two smaller facilities in Massachusetts, serving the consumer division. These

operations will be integrated with other Harman facilities in California and New York.

Closures and consolidations of additional Harman manufacturing and engineering facilities in Europe and Africa are under review. As a matter of fact, I was in Germany last week speaking with [works counsel] and [eagel matel] and our [buld] as well as employees to bring them the reality check and prepare them for the strategic actions to follow. These actions are expected to result in restructuring charges of $25-$30 million in the third quarter and additional $5-$10 million restructuring charge in the fourth quarter of fiscal 2008. About 1,400 jobs will be affected of which 500 jobs will be eliminated in high cost countries and the balance transferred to other Harman facilities in the United States, Germany, China and Mexico. This will generate more than $50 million in sustainable annual savings.

During this period, we have added several hundred new jobs at our plants in Mexico and China and extensive job training is now underway. We have also decided to add capacity to our plant in Hungary in order to expand production of audio electronics and speakers. We have also taken several important steps to optimize our functional processes. Beginning with the launch of a shared financial service center for our units across North America, this step will consolidate accounting people and processes from some 20 plus Harman locations into one functional team for cost efficiency, common practices and more consistent reporting on time.

We expect to complete full integration within the current calendar year. And then we'll move on to achieve the same synergy in Europe and in Asia. The

company is in the final stage of completing an agreement to outsource its information technology back office infrastructure services. This step will blend an outside service provider solution expertise with emerging country resources to bring us significant gains in both agility and most importantly cost for the same or better quality of services. This initiative will also help us take a closer look at alternative resources for projects related software systems and other related cost. In the third quarter we also decided to consolidate corporate resources from Washington DC and North Ridge, California to our new corporate headquarters in Stamford, Connecticut. This will accelerate the speed of decision making and improve coordination across key company functions.

We expect continued growth in sales across our three divisions, although the economic slowdown may impact some of this growth. Fiscal 2008 performance will be adversely affected by lower P&D margin, as I mentioned earlier, product mix and higher engineering and materials cost associated with new platform launches. We anticipated this and we are reiterating the guidance provided on January 14, 2008. Ladies and gentlemen, in the slice distributed today and they have available on Harman website, we have provided a reconciliation of GAAP to non GAAP guidance for fiscal year 2008. We also expect 2009 to be challenging as we complete the launch of this record number of infotainment platforms.

We are currently at an inflection point in our automotive business with a number of high margin platforms reaching the end of their life cycle and about 70% of our 2009 volume will come from new

projects launched in 2008 and 2009. That's the great news, because we will have a brand new portfolio going forward. Now, some of these will be in mixed segment platforms launched at relatively lower margins and at the same time I should remind ourself and to you, we have traditionally seen an improvement of 100-150 basis points annually every year as these new platforms ramp up. [As of essence] for this, I call your attention to slide number five which titled as automotive profitability through 2013.

Please make reference to that.

To reach well beyond this traditional margin growth, we are acting decisively with a companywide restructuring program to improve our productivity and cost structure. Our expectation for this series of initiatives are summarized on slide number nine with the title automotive margin improvement beyond 2010. We estimate that improvements in supply chain, engineering, manufacturing and product mix will yield an additional margin improvement of a minimum of 7%. Ladies and gentlemen, as I look around the broader Harman organization, I am encouraged, not only by our response to current challenges but also by the continued spirit of our people to help in raising the bar.

I have launched a series of regular all employee communications to outline key restructuring principles and the high stakes for achieving them. Employees at many levels across the company are responding with suggestions and support. Three weeks ago, I spoke to a group of some 400 global distributors and channel partners from our professional business in Huntington Beach, California. I came away with a new sense of the

spirit that has made this division a consistent profit leader.

Harman professional systems were on hand for Sunday's Super Bowl halftime show and the others will support the 50th annual Grammy Awards in California this coming Sunday. Work is continuing in Beijing, China on equipping more than a dozen key venues for the 2008 summer Olympics, with Harman audio systems. In our automotive division, we have successfully launched our first infotainment platform, one of the seven for this year, for the leading Korean automaker Hyundai and it was introduced at the Detroit International Auto Show last month.

This new Hyundai luxury sports sedan named Genesis features a state of the art navigation system and a 17 speaker surround sound system from our Lexicon brand. It is worth noting that Harman Lexicon supplies a similar system for the Rolls Royce Phantom. JBL and Infinity consumer brands are stepping up the volume beginning this month with new advertising to the home theatre and whole house audio markets. These target both high end audio enthusiasts and dealer installers from the related trades.

To help in capturing this diverse energy, we launched a new corporate website on February 1, this new site is designed for greater interaction with our brand sites from the three divisions and to help stakeholders chart our progress across this rich landscape. I sincerely encourage all of you to visit our new website which I'm very proud of at www.hamran.com and please take a closer look. Thank you for your attention ladies and gentlemen and I must say I want to say this, I know many of you

have been asking us to give you greater details, more information.

I hope I'll pass at least one test that I have fulfilled that request and we have given you, this is a new day, this is a new environment we're given you a lot more information, lot more details and we hope this will continue based on your advice and as inputs we will receive. Secondly I'll remind you that restructuring and strategic initiatives which we have begun. I've done it more than once in my life at much more complex environment and a much more distributed environment across hundred countries at ABB. I'm ready for it, my team is ready for it. It's going to be hard work but we are all up to it. With that, once again, I think you for your attention and we will now open up for your comments and questions. Thank you.

Question-and-Answer Session

Operator

Thank you and ladies and gentlemen if you'd like to ask a question please press star then one on your touchtone phone. You'll hear a tone indicating you have been placed in queue. You may remove yourself from queue at any time by pressing the pound key. If you're using a speakerphone, please pick up your handset before dialing. Our first question is from the line of Jeffrey Kessler with Lehman Brothers, go ahead please.

Jeffrey Kessler – Lehman Brothers

Thank you very much, can we delve into a little more detail on the P&D issue with regard to number one, because obviously a rather small piece of business inside automotive had a very large effect on the

quarter, while it was not the entire effect, it was a good portion of that effect.

Number one, are you in a position now where you feel you know where your market share is, is the competitive environment so tough that it hearts back to let's say consumer electronics of ten years ago when it was impossible to make any money and is that division, are the products so integral to the brand or identification with Harman automotive that trying to sell as much P&D as you are trying to do now is that the right strategy?

Dinesh Paliwal

Jeffrey, it's a great question and I'm happy pleased to share my views with you and rest of the colleagues there. You are absolutely right, the P&D is rather small component of our total portfolio. We did have great ambition to grow in 2008 and of course we learned how this market is evolving. With that said, we plan this business to be around $300 million out of about $4 billion sales we will have in this fiscal year and majority of that $300 million was planned in automotive business.

Market did change rather significantly because when we gave you the forecast if I recall correctly in September, we did check with all our employees and sales and distributors bottom up and we found out that they were enough confidence in the marketplace for the new products and functionality we were bringing that we could sustain those volumes. However, word got completely upside down during the month of October, November, December, 60% price decline even more and don't need to remind that few of our competitors have felt the heat too.

We got burned couple ways, one, we did not introduce some of the newer generation products on time. So we ended up selling the older generation product at heavy discount. Secondly, market had five, six suppliers in this space and if you look at, I still have a German newspaper in my office, 19 suppliers were pushing their products in the month of December. So everybody was going after the same pie so our volumes shrunk and our margins shrunk and inventories started to be also a bit of a challenge.

So second quarter was effected as our CFO mentioned, but we also have seen now what is the market scenario going forward, we have estimated that impact with our external internal auditors so we have taken a $60 million hit on this business which was supposed to be $300 million. Big hit, lot of lessons learn, you reminded me very correctly that this is, reminds us of consumer electronics in the past. I think we have figured out consumer electronics at least in some sense that we are learning where to play and where not to play.

* * *