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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 MICHAEL RADO, Derivatively on
20 Behalf of Nominal Defendant
21 STAMPS.COM, INC.,

22 Plaintiff,

23 v.

24 KENNETH T. MCBRIDE, MOHAN P.
25 ANANDA, DAVID C. HABIGER,
26 G. BRADFORD JONES, and
27 THEODORE R. SAMUELS, II,

28 Defendants.

and

STAMPS.COM, INC., a Delaware
Corporation,

Nominal Defendant,

Case No. 2:19-CV-04416

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

1 Plaintiff Michael Rado (“Plaintiff”), by and through his undersigned
2 attorneys, brings this derivative complaint for the benefit of nominal defendant,
3 Stamps.com, Inc. (“Stamps.com” or the “Company”), against certain members of its
4 Board of Directors (the “Board”) and certain of its executive officers seeking to
5 remedy defendants’ breaches of fiduciary duties, unjust enrichment, waste of
6 corporate assets, and violations of §§10(b), 20(a) of the Securities Exchange Act of
7 1934 (the “Exchange Act”). Plaintiff’s allegations are based upon his personal
8 knowledge as to himself and his own acts, and upon information and belief,
9 developed from the investigation and analysis by Plaintiff’s counsel, including a
10 review of publicly available information, including filings by Stamps.com with the
11 U.S. Securities and Exchange Commission (“SEC”), press releases, news reports,
12 analyst reports, investor conference transcripts, publicly available filings in lawsuits,
13 and matters of public record.

14 **NATURE AND SUMMARY OF THE ACTION**

15 1. Stamps.com provides Internet-based mailing and shipping solutions in
16 the United States. Under the Stamps.com and Endicia brands, the Company allows
17 customers to ship mail and packages through United States Postal Service (“USPS”)
18 at discounted postage rates compared to USPS.com and USPS retail locations.

19 2. In 1999, Stamps.com became the first USPS-approved PC Postage
20 vendor offering software-only mailing and shipping solutions. Under the
21 Stamps.com and Endicia brands, the Company allows customers to ship mail and
22 packages through USPS at discounted postage rates compared to USPS.com and
23 USPS retail locations.

24 3. At all relevant times, the Company emphasized strong financial results
25 and relationship with USPS. For example, in connection with the Company’s second
26 quarter 2017 financial results, the Company’s Chief Executive Officer claimed that
27 “the partnership with the Postal Service is continuing to be stronger and stronger.”
28

1 4. On February 21, 2019, the Company announced that it had
2 discontinued its “shipping partnership with the USPS so that [it] can fully embrace
3 partnerships with other carriers,” thus ending a relationship that accounted for 87%
4 of the Company’s earnings.

5 5. On this news, the Company’s share price fell \$114.43, nearly 58%, to
6 close at \$83.65 per share on February 22, 2019, on unusually heavy trading volume.

7 6. On February 26, 2019, media reported that USPS had terminated its
8 relationship with Stamps.com due to the Company’s increasing demands and abuse
9 of the reseller program.

10 7. These revelations precipitated the filing of a securities class action in
11 this District against Stamps.com and certain of defendants *Karinski v. Stamps.com*,
12 *et al.*, Case No. 2:19-cv-01828 (the “Securities Class Action”).¹

13 8. At least half of Stamps.com’s current Board is not disinterested and
14 independent and/or faces a substantial likelihood of liability in connection with the
15 wrongdoing detailed herein.

16 **JURISDICTION AND VENUE**

17 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
18 1331 in that this Complaint states a federal question: violations of Sections 10(b)
19 and 20(a) of the Securities Exchange Act of 1934. This Court has supplemental
20 jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. §
21 1367(a). This action is not a collusive one to confer jurisdiction on a court of the
22 United States which it would not otherwise have.

23 10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1401
24 because a substantial portion of the transactions and wrongs complained of herein
25

26 _____
27 ¹ Another action alleging similar claims was voluntarily dismissed without prejudice
28 on April 23, 2019. *See Grabisch v. Stamps.com, et al.*, Case No. 2:19-cv-01497.

1 occurred in this District, and the Defendants have received substantial compensation
2 in this district by engaging in numerous activities that had an effect in this District.

3 **PARTIES**

4 **Plaintiff**

5 11. Plaintiff Michael Rado purchased 320 shares of Stamps.com on August
6 10, 2016 and has continuously owned his Stamps.com stock since that date.

7 **Nominal Defendant**

8 12. Nominal Defendant Stamps.com is a Delaware corporation with its
9 principal executive offices located at 1990 E. Grand Avenue, El Segundo, California
10 90245. The Company's stock trades on the NASDAQ exchange under the symbol
11 "STMP."

12 **Defendants**

13 13. Defendant Kenneth T. McBride ("McBride") has served as Chief
14 Executive Officer and director of the Company since August 2001.

15 14. Defendant Mohan P. Ananda ("Ananda") has served as a director of the
16 Company since 1998. Defendant Ananda is a member of the Audit, Compensation,
17 and Nominating Committees.

18 15. Defendant David C. Habiger ("Habiger") has served as a director of the
19 Company since 2016.

20 16. Defendant G. Bradford Jones ("Jones") has served as a director of the
21 Company since 1998. Defendant Jones is Chair of the Audit Committee.

22 17. Defendant Theodore R. Samuels, II ("Samuels") has served as a
23 director of the Company since 1998. Defendant Samuels is a member of the Audit
24 Committee.

25 18. The defendants named in ¶¶13-17 are sometimes referred to hereinafter
26 as the "Individual Defendants."
27
28

1 **Non-Party Director**

2 19. Kate Ann May (“May”) was appointed to the Board on March 29,
3 2019.

4 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

5 20. By reason of their positions as officers, directors, and/or fiduciaries of
6 Stamps.com and because of their ability to control the business and corporate affairs
7 of Stamps.com, at all relevant times, the Individual Defendants owed Stamps.com
8 and its shareholders fiduciary obligations of good faith, loyalty, and candor, and
9 were required to use their utmost ability to control and manage Stamps.com in a fair,
10 just, honest, and equitable manner. The Individual Defendants were required to act
11 in furtherance of the best interests of Stamps.com and its shareholders so as to
12 benefit all shareholders equally and not in furtherance of their personal interest or
13 benefit. Each director and officer of the Company owes to Stamps.com and its
14 shareholders a fiduciary duty to exercise good faith and diligence in the
15 administration of the affairs of the Company and in the use and preservation of its
16 property and assets, and the highest obligations of fair dealing.

17 21. The Individual Defendants, because of their positions of control and
18 authority as directors and/or officers of Stamps.com, were able to and did, directly
19 and/or indirectly, exercise control over the wrongful acts complained of herein.
20 Because of their advisory, executive, managerial, and directorial positions with
21 Stamps.com, each of the Individual Defendants had knowledge of material non-
22 public information regarding the Company.

23 22. To discharge their duties, the officers and directors of Stamps.com
24 were required to exercise reasonable and prudent supervision over the management,
25 policies, practices and controls of the Company. By virtue of such duties, the
26 officers and directors of Stamps.com were required to, among other things:

27 a. Exercise good faith to ensure that the affairs of the Company
28 were conducted in an efficient, business-like manner so as to

1 make it possible to provide the highest quality performance of
2 their business;

3 b. Exercise good faith to ensure that the Company was operated in
4 a diligent, honest, and prudent manner and complied with all
5 applicable federal and state laws, rules, regulations and
6 requirements, and all contractual obligations, including acting
7 only within the scope of its legal authority;

8 c. Exercise good faith to ensure that the Company's
9 communications with the public and with shareholders are made
10 with due candor in a timely and complete fashion; and

11 d. When put on notice of problems with the Company's business
12 practices and operations, exercise good faith in taking
13 appropriate action to correct the misconduct and prevent its
14 recurrence.

15 **SUBSTANTIVE ALLEGATIONS**

16 23. In 1999, Stamps.com became the first USPS-approved PC Postage
17 vendor offering software-only mailing and shipping solutions. Under the
18 Stamps.com and Endicia brands, the Company allows customers to ship mail and
19 packages through USPS at discounted postage rates compared to USPS.com and
20 USPS retail locations. Customers can purchase and print postage twenty-four hours
21 a day, seven days a week, through software or web interfaces.

22 **The Individual Defendants Caused the Company to Issue Misleading
23 Statements**

24 24. The Individual Defendants repeatedly caused the Company to tout its
25 purportedly strong financial results and relationship with USPS. For example, on
26 May 3, 2017, the Individual Defendants caused the Company to issue its first
27 quarter 2017 financial results in a press release that stated, in relevant part:

28 "We are very pleased with our continued strong revenue and earnings
growth this quarter," said Ken McBride, Stamps.com's chairman and

1 CEO. “In addition to our overall revenue and earnings growth, during
2 the first quarter we reached our highest level of paid customers, we saw
3 continued strong growth in our shipping business areas, and we
4 experienced strong contributions from all of our subsidiaries. We
5 remain very excited about our future prospects and, combined with our
6 first quarter performance, led us to increase our guidance for 2017.”

7 ***First Quarter 2017 Detailed Results***

8 First quarter 2017 total revenue was \$105.0 million, up 28% compared
9 to the first quarter of 2016. First quarter 2017 Mailing and Shipping
10 revenue (which includes service, product and insurance revenue but
11 excludes Customized Postage and Other revenue) was \$102.6 million,
12 up 30% versus the first quarter of 2016. First quarter 2017 Customized
13 Postage revenue was \$2.4 million, down 7% versus the first quarter of
14 2016.

15 First quarter 2017 GAAP income from operations was \$34.6
16 million and GAAP net income was \$33.1 million. GAAP net income
17 per share was \$1.82 based on 18.2 million fully diluted shares
18 outstanding. This compares to first quarter 2016 GAAP income from
19 operations of \$22.2 million and GAAP net income of \$13.2
20 million or \$0.71 per share based on fully diluted shares outstanding of
21 18.7 million. First quarter 2017 GAAP income from operations, GAAP
22 net income and GAAP income per fully diluted share increased by
23 56%, 150% and 157% year-over-year, respectively.

24 First quarter 2017 GAAP income from operations included \$11.4
25 million of non-cash stock-based compensation expense and \$4.0
26 million of non-cash amortization of acquired intangibles. First quarter
27 2017 GAAP net income also included \$93 thousand of non-cash
28 amortization of debt issuance costs. Excluding the non-cash stock-
based compensation expense and non-cash amortization of acquired
intangibles, first quarter 2017 non-GAAP income from operations
was \$50.0 million. Also excluding non-cash amortization of debt
issuance costs, first quarter 2017 non-GAAP pre-tax income was \$49.3
million. First quarter 2017 non-GAAP income tax expense was \$16.0
million, which was \$15.3 million higher than the \$660 thousand GAAP
income tax expense for the quarter. The higher non-GAAP tax expense
reflects the tax impact on the non-GAAP pre-tax income at a non-
GAAP effective tax rate of 32.5%, which was materially higher than
the actual GAAP effective tax rate for the quarter. See the section later

1 in this press release entitled “About Non-GAAP Financial Measures”
2 for more information on how non-GAAP taxes are calculated. Taking
3 into account the non-GAAP adjustments, first quarter 2017 non-GAAP
4 adjusted income was \$33.2 million or \$1.83 per share based on 18.2
million fully diluted shares outstanding.

5 25. On August 2, 2017, the Company held a conference call to discuss its
6 second quarter 2017 financial results with analysts and investors. During the call,
7 Defendant McBride stated: “[T]he partnership with the Postal Service is continuing
8 to be stronger and stronger and some of the – we have multiple contracts and
9 various partnerships with the Postal Service. And so in this case, we were able to get
10 a couple of our contracts renewed at improved terms.”

11 26. The above statements identified in ¶¶24-25 were misleading because
12 they failed to disclose that: (1) the Company’s financial results depend on the
13 manipulation of a USPS reseller program that cost USPS an estimated \$235 million
14 per year; and (2) as a result, the Company’s business was unsustainable and its
15 financial results were highly misleading.

16 **The Truth Begins to Emerge**

17 27. On February 21, 2019, the Company held a conference call to discuss
18 its fourth quarter and full year 2018 financial results, as well as “certain strategic
19 items . . . that impact [its] business outlook for 2019,” with analysts and investors.
20 During the call, Defendant McBride discussed the Company’s discussions with
21 USPS regarding renewal of its revenue share agreement and claimed that
22 Stamps.com:

23 will no longer be exclusive to the USPS and that’s nonnegotiable.
24 USPS has not agreed to accept these terms or any other terms of our
25 partnership proposal. So, at this point, we decided to discontinue our
26 shipping partnership with the USPS so that we can fully embrace
27 partnerships with other carriers who we think will be well-positioned to
28 win in a shipping business in the next five years.

1 28. The Company further stated that 2019 revenue was expected to decline
2 5.4%, compared to previous expectations of strong growth.

3 29. The Company had ended a business relationship that accounted for
4 87% of its earnings.

5 30. On this news, the Company's share price fell \$114.43, nearly 58%, to
6 close at \$83.65 per share on February 22, 2019, on unusually heavy trading volume.

7 31. On February 26, 2019, media reported that USPS had terminated its
8 relationship with Stamps.com due to the Company's increasing demands and abuse
9 of the reseller program.

10 **STAMPS.COM'S STOCK REPURCHASE PROGRAM**

11 32. On April 24, 2017, the Individual Defendants approved a stock
12 repurchase program that authorized the Company to repurchase up to \$90 million of
13 stock over the six months following its effective date on May 8, 2017.

14 33. On October 24, 2017, the Individual Defendants approved a stock
15 repurchase program that authorized the Company to repurchase up to \$90 million of
16 stock over the six months following its effective date on November 10, 2017.

17 34. On April 25, 2018, the Individual Defendants approved a stock
18 repurchase program that authorized the Company to repurchase up to \$90 million of
19 stock over the six months following its effective date on May 11, 2018.

20 35. On October 24, 2018, the Individual Defendants approved a stock
21 repurchase program that authorized the Company to repurchase up to \$90 million of
22 stock over the six months following its effective date on November 11, 2018.

23 **IN REPURCHASING STOCK, STAMPS.COM RELIED ON DEFENDANT**
24 **MCBRIDE'S FALSE OR MISLEADING STATEMENTS**

25 36. In purchasing common stock in connection with the stock repurchase
26 program, Stamps.com relied on defendant McBride's false or misleading statements,
27 either directly or through the "fraud on the market" doctrine articulated in *Basic Inc.*
28 *v. Levinson*, 485 U.S. 224 (1988), and *Halliburton Co. v. Erica P. John Fund, Inc.*,

1 573 U.S. 258 (2014), or through the doctrine articulated in *Affiliated Ute Citizens of*
2 *Utah v. United States*, 406 U.S. 128 (1972).

3 37. Stamps.com justifiably expected defendant McBride to disclose
4 material information as required by law and SEC regulations in the Company's
5 periodic filings with the SEC and in statements made to the investing public.
6 Stamps.com would not have purchased its securities at artificially inflated prices had
7 defendant McBride disclosed all material information known to him or that was so
8 obvious it should have been known to him, as detailed herein. Thus, reliance by the
9 Company should be presumed with respect to defendant McBride's omissions of
10 material information as established by the *Affiliated Ute* presumption of reliance.

11 38. Additionally, the "fraud on the market" presumption applies to
12 defendant McBride's misstatements of material facts or failures to disclose material
13 facts.

14 39. At all relevant times, the market for stock was efficient market for the
15 following reasons, among others:

16 a. Stamps.com stock met the requirements for listing, and was
17 listed and actively traded on NASDAQ, a highly efficient and automated market;

18 b. As a regulated issuer, Stamps.com filed periodic public reports
19 with the SEC and the NASDAQ;

20 c. Stamps.com regularly and publicly communicated with public
21 investors via established market communication mechanisms, including through
22 regular disseminations of press releases on the national circuits of major newswire
23 services and through other wide-ranging public disclosures, such as communications
24 with the financial press and other similar reporting services;

25 d. Stamps.com was followed by several securities analysts
26 employed by major brokerage firm(s) who wrote reports which were distributed to
27 the sales force and certain customers of their respective brokerage firm(s). Each of
28 these reports was publicly available and entered the public marketplace; and

1 e. The market price of Stamps.com’s stock reacted rapidly to new
2 information entering the market.

3 40. As a result of the foregoing, the market for Stamps.com stock promptly
4 digested current information regarding the Company from all publicly available
5 sources and reflected such information in the price of Stamps.com’s common stock.
6 The foregoing facts indicate the existence of an efficient market for trading of
7 Stamps.com’s stock and support application of the fraud-on-the-market doctrine.

8 41. Stamps.com relied on the integrity of the market price for the
9 repurchase of its common stock and is entitled to a presumption of reliance with
10 respect to defendant McBride’s misstatements and omissions alleged herein.

11 42. Had Stamps.com known of the material adverse information not
12 disclosed by defendant McBride or been aware of the truth behind defendant
13 McBride’s material misstatements, the Company would not have purchased
14 Stamps.com stock at artificially inflated prices.

15 **NEITHER THE STATUTORY “SAFE HARBOR” NOR THE “BESPEAKS**
16 **CAUTION” DOCTRINE APPLIES TO DEFENDANT MCBRIDE’S**
MISREPRESENTATIONS

17 43. Neither the safe-harbor provision of the Private Securities Litigation
18 Reform Act of 1995 (“PSLRA”) nor the judicially created “bespeaks caution”
19 doctrine applicable to forward looking statements under certain circumstances
20 applies to any of the false or misleading statements pleaded herein. None of the
21 subject statements constituted a forward-looking statement; rather, they were
22 historical statements or statements of purportedly current facts and conditions at the
23 time the statements were made, including statements about (a) the Company’s
24 financial results depend on the manipulation of a USPS reseller program that cost
25 USPS an estimated \$235 million per year; and (b) as a result, the Company’s
26 business was unsustainable and its financial results were highly misleading.

27 44. Alternatively, to the extent any of the false or misleading statements
28 pleaded herein could be construed as forward-looking statements, they were not

1 accompanied by any meaningful cautionary language identifying important fact that
2 could cause actual results to differ materially from those in the purportedly forward-
3 looking statements. Further, to the extent the PSLRA's safe harbor would otherwise
4 apply to any forward-looking statements pleaded herein, defendant McBride is
5 liable for those false or misleading forward-looking statements pleaded herein
6 because, at the time each such statement was made, the speaker(s) knew the
7 statement was false or misleading, or the statement was authorized and/or approved
8 by defendant McBride who knew that the statement was materially false or
9 misleading when made. None of the historic or present tense statements made by
10 defendant McBride were assumptions underlying or relating to any plan, projection,
11 or statement of future economic performance, as they were not stated to be such
12 assumptions underlying or relating to any projection or statement of future
13 economic performance when made, nor were any of the projections or forecasts
14 made by defendant McBride expressly related to, or stated to be dependent on, those
15 historic or present tense statements when made.

16 **DAMAGES TO THE COMPANY**

17 45. As a direct and proximate result of the Individual Defendants' conduct,
18 Stamps.com has been seriously harmed and will continue to be. Such harm includes,
19 but is not limited to:

- 20 a. Legal fees incurred in connection with the Securities Class
21 Action;
- 22 b. Any funds paid to settle the Securities Class Action; and
- 23 c. Costs incurred from compensation and benefits paid to the
24 defendants who have breached their duties to Stamps.com.

25 46. In addition, Stamps.com's business, goodwill, and reputation with its
26 business partners, regulators, and shareholders have been gravely impaired. The
27 Company still has not fully admitted the nature of its false statements and the true
28

1 condition of its business. The credibility and motives of management are now in
2 serious doubt.

3 47. The actions complained of herein have irreparably damaged
4 Stamps.com's corporate image and goodwill. For at least the foreseeable future,
5 Stamps.com will suffer from what is known as the "liar's discount," a term applied
6 to the stocks of companies who have been implicated in illegal behavior and have
7 misled the investing public, such that Stamps.com's ability to raise equity capital or
8 debt on favorable terms in the future is now impaired.

9 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

10 48. Plaintiff brings this action derivatively in the right and for the benefit of
11 Stamps.com to redress injuries suffered, and to be suffered, by Stamps.com as a
12 direct result of breaches of fiduciary duty by the Individual Defendants, unjust
13 enrichment, waste of corporate assets, and violations of Sections 10(b) and 20(a) of
14 the Exchange Act. Stamps.com is named as a nominal defendant solely in a
15 derivative capacity. This is not a collusive action to confer jurisdiction on this Court
16 that it would not otherwise have.

17 49. Plaintiff will adequately and fairly represent the interests of
18 Stamps.com in enforcing and prosecuting its rights.

19 50. Plaintiff has continuously been a shareholder of Stamps.com at times
20 relevant to the wrongdoing complained of and is a current Stamps.com shareholder.

21 51. When this action was filed, Stamps.com's Board of Directors consisted
22 of director defendants McBride, Ananda, Habiger, Jones, and Samuels and non-
23 party director May. Plaintiff did not make any demand on the Board to institute this
24 action because such a demand would be a futile, wasteful, and useless act, for the
25 reasons set forth below.

26 **Defendant McBride**

27 52. At all relevant times, McBride was the Company's CEO and Chairman
28 of the Board. As an employee, McBride derives substantially all of his income from

1 his employment with Stamps.com, thus he is not independent. Moreover, McBride
2 personally issued the misleading statements and concealed the material facts
3 described herein. As a result, McBride would be interested in a demand regarding
4 his own wrongdoing and demand is futile as to him.

5 **Defendants Ananda, Jones, and Samuels**

6 53. Defendants Ananda, Jones, and Samuels served as the members of the
7 Audit Committee at all relevant times. As such, they are responsible for the
8 effectiveness of the Company's internal controls, the integrity of its financial
9 statements, and its compliance with laws and regulations. Defendants Ananda,
10 Jones, and Samuels failed to ensure the integrity of the Company's internal controls,
11 allowing the misleading statements to be disseminated in the Company's SEC
12 filings and other disclosures. Thus, defendants Ananda, Jones, and Samuels
13 breached their fiduciary duties and are not disinterested, and demand is excused as
14 to them.

15 54. According to the charter of the Audit Committee, Ananda, Jones, and
16 Samuels were required to review: (i) the Company's financial statements "and any
17 other relevant reports or other financial information" and (ii) "the regular internal
18 financial reports prepared by management." As a result of their review, Ananda,
19 Jones, and Samuels knew that they and McBride were causing the Company to
20 withdraw from a financial relationship representing over 85% of the Company's
21 revenue. They nevertheless allowed the Company to re-purchase its own stock at
22 inflated levels and allowed the Company's disclosures to conceal the truth. The
23 decision to conceal the truth about the Company's relationship with the USPS and
24 the decisions to cause it to repurchase its stock at artificially inflated levels were not
25 valid exercises of business judgment. Accordingly, demand is excused as to
26 Ananda, Jones, and Samuels on that basis.

27
28

1 **The Entire Board**

2 55. Each of the Individual Defendants managed the Company and was
3 affirmatively aware of significant developments in its core business. The
4 relationship between Stamps.com and the USPS was the vast majority of the
5 Company's business, and effectively was the Company's *raison d'etre*.
6 Accordingly, knowledge of the truth regarding the relationship with USPS was
7 known by each of the Individual Defendants at all relevant times. The decisions of
8 each Individual Defendant to permit misleading statements, the concealment of
9 material facts, and stock repurchases at inflated prices were not valid exercises of
10 business judgment and demand is excused on that basis.

11 **FIRST CAUSE OF ACTION**

12 **(Against all Defendants for Breach of Fiduciary Duty)**

13 56. Plaintiff incorporates by reference and realleges each and every
14 allegation contained above, as though fully set forth herein.

15 57. Each Individual Defendant owes and owed to the Company the duty to
16 exercise candor, good faith, and loyalty in the management and administration of
17 Stamps.com's business and affairs, particularly with respect to issues as
18 fundamental as public disclosures.

19 58. The Individual Defendants' conduct set forth herein was due to their
20 intentional or reckless breach of the fiduciary duties they owed to the Company. The
21 Individual Defendants intentionally or recklessly breached or disregarded their
22 fiduciary duties to protect the rights and interests of Stamps.com.

23 59. In breach of their fiduciary duties owed to Stamps.com, the Individual
24 Defendants willfully participated in and caused the Company to expend
25 unnecessarily its corporate funds, rendering them personally liable to the Company
26 for breaching their fiduciary duties.

1 60. In particular, the Individual Defendants knowingly or recklessly made
 2 untrue statements and/or permitted the Company’s public filings, disclosures, and
 3 statements to misleadingly report revenue and the Company’s overall prospects.

4 61. As a direct and proximate result of the Individual Defendants’ breaches
 5 of their fiduciary obligations, Stamps.com has sustained and continues to sustain
 6 significant damages. Including direct monetary damages, exposure to liability from
 7 securities litigation and a loss of goodwill in the capital markets. As a result of the
 8 misconduct alleged herein, defendants are liable to the Company.

9 **SECOND CAUSE OF ACTION**
 10 **(Against All Defendants for Unjust Enrichment)**

11 62. Plaintiff incorporates by reference and realleges each and every
 12 allegation contained above, as though fully set forth herein.

13 63. By their wrongful acts and omissions, the Individual Defendants were
 14 unjustly enriched at the expense of and to the detriment of Stamps.com. The
 15 Individual Defendants were unjustly enriched as a result of the compensation and
 16 director remuneration they received while breaching fiduciary duties owed to
 17 Stamps.com.

18 64. Plaintiff, as a stockholder and representative of Stamps.com, seeks
 19 restitution from these defendants, and each of them, and seeks an order of this Court
 20 disgorging all profits, benefits, and other compensation obtained by these
 21 defendants, and each of them, from their wrongful conduct and fiduciary breaches.

22 65. Plaintiff, on behalf of Stamps.com, has no adequate remedy at law.

23 **THIRD CAUSE OF ACTION**
 24 **(Against All Defendants for Waste of Corporate Assets)**

25 66. Plaintiff incorporates by reference and realleges each and every
 26 allegation contained above, as though fully set forth herein.

27 67. The Individual Defendants knowingly, intentionally, recklessly, or
 28 negligently breached their fiduciary duties and, thereby, caused the Company to
 waste its assets, expend millions of dollars of corporate funds, and impair its

1 reputation and credibility for no legitimate business purpose, as a result of which
2 Stamps.com has been and continues to be substantially damaged.

3 68. In light of their deficient performance in supervising controls and
4 financial affairs of the Company, the Individual Defendants have wasted corporate
5 assets by overly compensating themselves and the Company's executives during
6 times when the Company was materially misstating its performance to the investing
7 public.

8 69. Accordingly, the Individual Defendants should be required to make the
9 Company whole for such waste.

10 **FOURTH CAUSE OF ACTION**
11 **(Derivative Claim for Violations of Section 10(b) of the Exchange Act and SEC**
12 **Rule 10b-5 Promulgated Thereunder Against Defendant McBride)**

13 70. Plaintiff incorporates by reference and realleges each and every
14 allegation contained above, as though fully set forth herein.

15 71. This Count is asserted on behalf of the Company against Defendant
16 McBride for violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and
17 Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

18 72. At all relevant times, in connection with Stamps.com's repurchases of
19 its shares, Defendant McBride made, disseminated, or approved false or misleading
20 statements about the Company specified herein, which he knew or deliberately
21 disregarded were false or misleading and were intended to deceive, manipulate, or
22 defraud. Those false or misleading statements and Defendant McBride's course of
23 conduct were designed to artificially inflate the price of the Company's common
24 stock.

25 73. At the same time that the price of the Company's common stock was
26 inflated due to the false and misleading statements by Defendant McBride, he
27 caused the Company to repurchase millions of shares of its own stock at prices that
28 were artificially inflated due to his false or misleading statements. Defendant

1 McBride engaged in a scheme to defraud the Company by causing it to repurchase
2 its shares at inflated prices.

3 74. Defendant McBride violated Section 10(b) of the Exchange Act and
4 Rule 10b-5 in that he (a) employed devices, schemes, and artifices to defraud; (b)
5 made untrue statements of material facts or omitted to state material facts necessary
6 in order to make the statements made, in light of the circumstances under which
7 they were made, not misleading; and/or (c) engaged in acts, practices, and a course
8 of business that operated as a fraud or deceit upon the Company in connection with
9 the Company's purchases of Stamps.com common stock at all relevant times.

10 75. Defendant McBride, directly and indirectly, by the use of means or
11 instrumentalities of interstate commerce and/or of the U.S. mails, engaged and
12 participated in a continuous course of conduct that operated as a fraud and deceit
13 upon the Company; made or disseminated various false and/or misleading
14 statements of material facts and omitted to state material facts necessary in order to
15 make the statements made or disseminated, in light of the circumstances under
16 which they were made or disseminated, not misleading; made or disseminated the
17 above statements intentionally or with a deliberately reckless disregard for the truth;
18 and employed devices and artifices to defraud in connection with the Company's
19 purchase of Stamps.com common stock, which were intended to, and did deceive
20 the Company that (i) the Company's financial results depend on the manipulation of
21 a USPS reseller program that cost USPS an estimated \$235 million per year; and (ii)
22 as a result, the Company's business was unsustainable and its financial results were
23 highly misleading.

24 76. Defendant McBride was among the senior management and a director
25 of the Company, and was therefore directly responsible for, and are liable for, all
26 materially false or misleading statements made at all relevant times, as alleged
27 above.

28

1 77. As described above, Defendant McBride acted with scienter at all
2 relevant times, in that he acted either with intent to deceive, manipulate, or defraud,
3 or with severe recklessness. The misstatements and omissions of material facts set
4 forth herein were either known to Defendant McBride or were so that he should
5 have been aware of them.

6 78. As a result of Defendant McBride's misconduct, Stamps.com has
7 suffered damages in that it paid artificially inflated prices for Stamps.com common
8 stock as part of the repurchase program and suffered losses when the true facts
9 became known. The Company would not have purchased Stamps.com common
10 stock at the prices it paid, or at all, but for the artificial inflation in the Company's
11 stock price caused by Defendant McBride's false or misleading statements.

12 79. As a direct and proximate result of Defendant McBride's wrongful
13 conduct, the Company suffered damages in connection with its repurchases of
14 Stamps.com common stock during the Relevant Period. By reason of such conduct,
15 Defendant McBride is liable to the Company pursuant to Section 10(b) of the
16 Exchange Act and SEC Rule 10b-5.

17 80. Plaintiff brought this claim within two years of its discovery of the
18 facts constituting the violation and within five years of the violation.

19 **FIFTH CAUSE OF ACTION**
20 **(Derivative Claim for Violations of Section 20(a) of the Exchange Act Against**
21 **Defendant McBride)**

22 81. Plaintiff incorporates by reference and realleges each and every
23 allegation contained above, as though fully set forth herein.

24 82. This Count is asserted on behalf of the Company against Defendant
25 McBride for violations of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

26 83. During his tenure as an officer and/or Chairman of the Board,
27 Defendant McBride was a controlling person within the meaning of Section 20(a) of
28 the Exchange Act. By reason of his absolute control, Defendant McBride had the
power and authority to direct the management and activities of the other executive

1 employees, to hire and fire other executive employees at whim, and to cause other
2 executive employees to engage in the wrongful conduct complained of herein.
3 Defendant McBride was able to and did control, directly or indirectly, the content of
4 the public statements made by all other executive employees at all relevant times,
5 including the materially misleading financial statements, thereby causing the
6 dissemination of the false and misleading statements and omissions of material facts
7 as alleged herein.

8 84. In his capacity as senior executive, and Chairman of the Board of
9 Stamps.com, Defendant McBride had direct involvement in and oversight over the
10 day-to-day operations of the executive employees and the Company's employees,
11 who would not act unless Defendant McBride agreed with their course of conduct.

12 85. Defendant McBride, individually, was a controlling person of the other
13 executive employees within the meaning of Section 20(a) of the Exchange Act.

14 86. As set forth above, Defendant McBride violated Section 10(b) of the
15 Exchange Act by his acts and omissions as alleged herein. To the extent Defendant
16 McBride is not the maker or disseminator of a specific false or misleading statement
17 made by the Company, Defendant McBride is liable pursuant to Section 20(a) of the
18 Exchange Act.

19 87. As a direct and proximate result of Defendant McBride's conduct, the
20 Company suffered damages in connection with its purchase of Stamps.com common
21 stock pursuant to the stock repurchase program.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, plaintiff, on behalf of Stamps.com, demands judgment as
24 follows:

25 A. Declaring that plaintiff may maintain this action on behalf of
26 Stamps.com and that plaintiff is an adequate representative of the Company;

27
28

1 B. Against all of the defendants and in favor of the Company for the
2 amount of damages sustained by the Company as a result of the defendants'
3 breaches of fiduciary duties, waste of corporate assets, and unjust enrichment;

4 C. Declaring that Defendants have breached and/or aided and abetted the
5 breach of their fiduciary duties to Stamps.com;

6 D. Directing Stamps.com to take all necessary actions to reform and
7 improve its corporate governance and internal procedures to comply with applicable
8 laws and to protect Stamps.com and its stockholders from a repeat of the damaging
9 events described herein, including, but not limited to, putting forward for
10 stockholder vote, resolutions for amendments to the Company's Bylaws or Articles
11 of Incorporation and taking such other action as may be necessary to place before
12 stockholders for a vote of the following corporate governance policies:

13 1. a proposal to strengthen the Company's controls over financial
14 reporting;

15 2. a proposal to strengthen the Board's supervision of operations
16 and develop and implement procedures for greater stockholder input into the
17 policies and guidelines of the Board;

18 3. a proposal to strengthen Stamps.com's oversight of its disclosure
19 procedures;

20 4. a provision to control insider transactions; and

21 5. a provision to permit the stockholders of Stamps.com to
22 nominate at least three candidates for election to the Board;

23 E. Extraordinary equitable and/or injunctive relief as permitted by law,
24 equity, and state statutory provisions sued hereunder, including attaching,
25 impounding, imposing a constructive trust on, or otherwise restricting the proceeds
26 of defendants' trading activities or their other assets so as to assure that plaintiff on
27 behalf of Stamps.com has an effective remedy;

28

1 F. Awarding to Stamps.com restitution from defendants, and each of
2 them, and ordering disgorgement of all profits, benefits, and other compensation
3 obtained by the defendants;

4 G. Awarding to plaintiff the costs and disbursements of the action,
5 including reasonable attorneys' fees, accountants' and experts' fees, costs, and
6 expenses; and

7 H. Granting such other and further relief as the Court deems just and
8 proper.

9 **JURY DEMAND**

10 Pursuant to Fed. R. Civ. P. 38(b), plaintiff demands a trial by jury.

11
12 DATED: May 21, 2019

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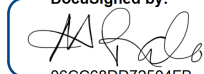
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28 *Attorneys for Plaintiff Michael Rado*

STAMPS.COM, INC. VERIFICATION

I, Michael Rado, hereby verify that I am familiar with the allegations in the Verified Shareholder Derivative Complaint, and that I have authorized the filing of the Verified Shareholder Derivative Complaint Complaint, and that the foregoing is true and correct to the best of my knowledge, information, and belief.

Date: 5/20/2019

DocuSigned by:

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Michael Rado