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20 UNITED STATES DISTRICT COURT  
21 DISTRICT OF ARIZONA

22 **In re AudioEye, Inc. Sec. Litig.,**

23 **CV-15-163-TUC-DCB (LEAD)**

24 **CLASS ACTION**

25 **CONSOLIDATED AMENDED  
26 CLASS ACTION COMPLAINT FOR  
27 VIOLATION OF THE FEDERAL  
28 SECURITIES LAWS**

**DEMAND FOR TRIAL BY JURY**

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1 By and through their undersigned counsel, Lead Plaintiffs Globis Capital  
2 Partners, L.P. and Globis Overseas Fund, Ltd. (collectively, “Plaintiffs”) allege the  
3 following against defendants AudioEye, Inc. (“AudioEye” or the “Company”),  
4 Nathaniel Bradley (“Bradley”), and Edward O’Donnell (“O’Donnell”) (collectively,  
5 “Defendants”), upon personal knowledge as to those allegations concerning Plaintiffs  
6 and, as to all other matters, upon information and belief based on the investigation of  
7 counsel, which included, without limitation: (a) review and analysis of public filings  
8 made by AudioEye and other related parties and non-parties with the U.S. Securities  
9 and Exchange Commission (“SEC”); (b) review and analysis of press releases and other  
10 publications disseminated by certain of the Defendants; (c) review of news articles,  
11 analyst reports, and shareholder communications; (d) review of other publicly available  
12 information concerning Defendants and related non-parties; and (e) consultation with  
13 experts.

14 Plaintiff believes that further substantial evidentiary support will exist for the  
15 allegations set forth herein after a reasonable opportunity for discovery. Most of the  
16 facts supporting the allegations contained herein are known only to the defendants or  
17 are exclusively within their control.

## 18 **I. SUMMARY OF THE ACTION**

19 1. This is a federal securities class action against AudioEye and certain of its  
20 officers for violations of the federal securities laws. Plaintiffs bring this action under  
21 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”)  
22 on behalf of themselves and a class (the “Class”) consisting of all persons or entities  
23 who acquired shares of AudioEye stock during the period between May 14, 2014  
24 through April 1, 2015 (the “Class Period”). Plaintiffs allege that, during the Class  
25 Period, Defendants engaged in a fraudulent scheme to artificially inflate the Company’s  
26 stock price by overstating the Company’s revenues by more than 3,000%. As a result  
27

1 of this fraud, as described more fully below, shareholders suffered millions of dollars in  
2 losses.

3 2. AudioEye is an internet technology company that provides enhanced  
4 access and usability for its clients' websites through a patented technology that delivers  
5 an audio equivalent of a visual or mobile website in a format that can be navigated,  
6 utilized, interacted with and transacted from, without the use of a monitor or mouse, by  
7 individuals with visual impairments.

8 3. In the first three quarters of 2014, Defendants reported that the Company  
9 sold thirty-six licenses for its intellectual property to a total of at least twenty-two  
10 different customers. Defendants claimed that these licensing transactions generated  
11 revenues for the Company of \$225,000 per license, for aggregate revenues of \$8.1  
12 million – a material increase over the \$1.4 million in revenues that the Company had  
13 reported in the entire of 2013.

14 4. The licensing transactions did not involve the receipt of cash by the  
15 Company. Instead, the transactions were “nonmonetary,” wherein the Company  
16 provided its technology to each customer in exchange for services to be provided by the  
17 customer and/or technology licenses belonging to the customer.

18 5. Throughout the Class Period Defendants assured investors that the  
19 Company complied with General Accepted Accounting Principles (“GAAP”) in  
20 recognizing the revenues from the nonmonetary licensing transactions.

21 6. Specifically, Defendants claimed that the Company “follows” Accounting  
22 Standards Codification (“ASC”) 845-10-30-1, which allows companies to report  
23 revenue from nonmonetary transactions based on the “fair values” of the assets they  
24 receive in those transactions, provided that “fair value” is “determinable within  
25 reasonable limits.” If fair value is not “determinable within reasonable limits,”  
26

1 transactions are required to be accounted for based on the recorded book value of the  
2 assets that the reporting entity “relinquished” in the exchange.

3 7. During the Class Period Defendants repeatedly represented that the  
4 Company’s nonmonetary licensing transactions met the requirements of ASC 845-10-  
5 30-1, including that “fair value” was “determinable within reasonable limits.”

6 8. On February 6, 2015, Defendant O’Donnell explained the basis for the  
7 Company’s “fair value” determinations in a letter to the SEC that was publicly filed on  
8 the SEC’s EDGAR electronic filing system (“EDGAR”). Specifically, Defendant  
9 O’Donnell stated that the Company based those determinations on the “standard billing  
10 rates” of its customers, *i.e.*, “those entities’ standard billing rates for similar services  
11 provided to third-party customers . . . and all of which are substantive and in the normal  
12 course of business that these Company customers conduct with their respective  
13 customers.”

14 9. In fact, however, as investors later would learn, the Company did not  
15 possess any evidence or backup documentation confirming that the supposed  
16 “standard” rates or prices used to determine the fair values reflected actual market  
17 transactions. Instead, the Company and its counterparties simply had contrived those  
18 numbers out of thin air for purposes of reporting inflated revenues.

19 10. On April 1, 2015, investors in AudioEye stock began to learn the truth.  
20 On that day, the Company issued a press release announcing that the Company’s first,  
21 second, and third quarter 2014 financial statements “cannot be relied on and that  
22 material restatements will be forthcoming.”

23 11. The release went on to state that the Company anticipated erasing *all* of  
24 the previously reported \$8.1 million in revenues from the thirty-six nonmonetary  
25 licensing transactions.  
26  
27

1           12. The press release also revealed that, effective March 29, 2015, Defendant  
2 O'Donnell had resigned from his position as the Company's CFO.

3           13. As a result of the April 1, 2015 revelations, AudioEye's stock price  
4 plummeted 26% on unusually heavy trading volume, falling from a close of 41 cents  
5 per share on March 31, 2015, to a close of 30.5 cents per share on April 1, 2015,  
6 causing millions of dollars in investor losses. In the days that followed, AudioEye  
7 stock continued to decline, sinking to less than 10 cents per share on April 21, 2015.

8           14. On May 18, 2015, the Company filed amended Form 10-Qs for the first,  
9 second, and third quarters of 2014, restating those quarters' financial statements. As  
10 anticipated, the restatements erased all \$8.1 million of the revenues previously reported  
11 by the Company in connection with the nonmonetary licensing transactions.

12           15. The restatements additionally admitted the reason for those revenues'  
13 removal – specifically, that there was a complete “absence of documentation to support  
14 [the] transactions” upon which the Company's purported fair value measurements were  
15 based, including a “failure to trace the delivery of services.”

16           16. In other words, the Company had no evidence or backup documentation  
17 establishing or confirming the supposed “standard” rates or prices used to determine  
18 fair value, or that any third-party transactions even had occurred. Hence, at no time  
19 during the Class Period were the fair values of the services or licenses that the  
20 Company received “determinable within reasonable limits.” Consequently, GAAP  
21 required the transactions to be recorded at the book values of the Company's own  
22 licenses, which were zero.

23           17. The scheme had continued through three quarters of unaudited financial  
24 statements until the SEC demanded backup documentation which the Company did not  
25 have and which did not exist, finally putting an end to the ruse, but not before  
26 Defendants were able to take advantage of the stock price inflation to raise \$8.1 million  
27

1 from a series of private placements of the Company's securities and warrant exchange  
2 offers during the Class Period.

3 **II. JURISDICTION AND VENUE**

4 18. The claims asserted herein arise under and pursuant to Sections 10(b) and  
5 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated  
6 thereunder by the SEC, 17 C.F.R. §240.10b-5. This Court has jurisdiction over the  
7 subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the  
8 Exchange Act, 15 U.S.C. §78aa.

9 19. Venue is proper in this District pursuant to Section 27 of the Exchange  
10 Act (15 U.S.C. §78aa), and 28 U.S.C. §1391(b). Many of the false and misleading  
11 statements and omissions were made in or issued from this District. AudioEye's  
12 principal executive offices are located at 5210 E. Williams, Circle, Suite 500, Tuscon,  
13 Arizona 85711, and many of the acts and transactions giving rise to the violations of  
14 law complained of occurred in this District.

15 20. In connection with the challenged conduct, Defendants, directly or  
16 indirectly, used the means and instrumentalities of interstate commerce, including, but  
17 not limited to, the United States mails, interstate telephone communications, and the  
18 facilities of the national securities markets.

19 **III. PARTIES**

20 **A. Plaintiffs**

21 21. Plaintiffs Globis Capital Partners, L.P. and Globis Overseas Fund, Ltd.  
22 were appointed as Lead Plaintiffs in this action by Order of this Court dated July 31,  
23 2015 [ECF No. 35]. As shown in Plaintiffs' certification filed with the Court on June  
24 15, 2015 [ECF No. 14-1] and incorporated herein, Plaintiffs purchased AudioEye  
25 common stock at artificially inflated prices during the Class Period and suffered  
26 economic loss when the true facts about the revenues supposedly derived from the  
27



1 nonmonetary licensing transactions were disclosed, and the stock price resultantly  
2 declined.

3 **B. Defendants**

4 22. Defendant AudioEye focuses on creating voice driven technologies to  
5 enhance the mobility, usability, and accessibility of the Internet based content in the  
6 United States. The Company has a cloud-based cross-platform/cross-browser reader  
7 solution for accessible web browsing. The Company owns patented technology that  
8 changes vision-dependent user experiences on the computer (such as keypads and mice)  
9 to a voice-driven medium. AudioEye is a Delaware corporation headquartered in  
10 Tucson, Arizona and trades on the OTCQB Venture Marketplace (“OTC”) under the  
11 ticker symbol “AEYE.”

12 23. Defendant Nathaniel Bradley (“Bradley”) has served as the Company’s  
13 President and Chief Executive Officer (“CEO”) at all relevant times.

14 24. Defendant Edward O’Donnell (“O’Donnell”) at all relevant times served  
15 as the Company’s Chief Financial Officer (“CFO”) until his resignation on March 29,  
16 2015.

17 25. Defendants Bradley and O’Donnell are sometimes referred to as the  
18 “Individual Defendants.”

19 26. During and prior to the Class Period, the Individual Defendants, as senior  
20 executive officers of AudioEye, were privy to confidential and proprietary information  
21 concerning AudioEye, its operations, finances and financial condition, including  
22 material adverse nonpublic information concerning AuidoEye’s nonmonetary licensing  
23 transactions, as alleged below. Because of their possession of such information, the  
24 Individual Defendants knew or recklessly disregarded that the adverse facts specified  
25 herein had not been disclosed to, and were being concealed from, the investing public.  
26

1           27. The Individual Defendants are liable as direct participants in the wrongs  
2 complained of herein. In addition, the Individual Defendants, by reason of their status  
3 as senior executive officers, were “controlling persons” within the meaning of Section  
4 20(a) of the Exchange Act and had the power and influence to cause the Company to  
5 engage in the unlawful conduct complained of herein. Because of their positions of  
6 control, the Individual Defendants were able to, and did, directly or indirectly, control  
7 the conduct of AudioEye’s business.

8 **IV. SUBSTANTIVE ALLEGATIONS**

9 **A. Background**

10           28. As alleged above, AudioEye is an internet technology company that  
11 focuses on the provision of “voice driven” technologies. The Company’s stated  
12 business strategy during the Class Period was to commercialize its intellectual property  
13 by generating revenues through the licensing of its technology.

14           29. In the periods immediately prior to the Class Period, the Company  
15 reported strong revenue growth. The Company reported revenues of \$125,521 for the  
16 year ended December 2011, \$279,062 for the year ended December 2012, and \$1.4  
17 million for the year ended December 2013.

18           30. Defendants were eager to continue to report accelerating revenue growth  
19 in 2014.

20 **B. Applicable Accounting Principles**

21           31. As a public company, AudioEye was required to comply with, among  
22 other things, the Securities Act, the Exchange Act, and the regulations of the SEC.  
23 These laws and regulations are intended to protect the investing public by ensuring that  
24 public companies like AudioEye fairly, accurately, and timely report their financial  
25 results and condition.

1           32. To ensure fair and accurate reports to the investing public, the federal  
2 securities laws and the SEC’s regulations promulgated thereunder require public  
3 companies such as AudioEye to prepare and present their reports and financial  
4 statements in conformity with GAAP. Financial statements filed with the Commission  
5 that are not prepared in accordance with GAAP are presumed to be misleading and  
6 inaccurate. Regulation S-X § 210.4-01 [17 C.F.R. § 210.4-01]. The Financial  
7 Accounting Standards Board (“FASB”) Accounting Standards Codification is the  
8 source of authoritative GAAP recognized by the FASB to be applied by  
9 nongovernmental entities (Accounting Standards Codification (“ASC”) Section 105-10-  
10 05-1).

11           33. Most business transactions involve exchanges of cash or other monetary  
12 assets for goods or services. The amounts of cash or monetary assets exchanged  
13 generally provide an objective basis to value those transactions.

14           34. Some transactions, however, involve exchanges of nonmonetary assets or  
15 services. Accounting for such transactions is governed by ASC 845-10-30-1, which  
16 states the general principle that accounting for nonmonetary transactions should be  
17 based on the “fair value” of the assets or services exchanged. Typically, the fair value  
18 of the asset “surrendered” or “relinquished” by the reporting entity in the exchange is  
19 used to account for the transaction. However, if the fair value of the asset that the  
20 reporting entity received is more “clearly evident,” that is to be used to measure the  
21 transaction.

22           35. Specifically, ASC 845-10-30-1 states, in pertinent part:

23  
24           In general, the accounting for nonmonetary transactions should be based on  
25 the fair values of the assets (or services” involved, which is the same basis  
26 as that used in monetary transactions. Thus, the cost of a nonmonetary  
27 asset acquired in exchange for another nonmonetary asset is the fair value  
of the asset surrendered to obtain it, and a gain or loss shall be recognized  
on the exchange. *The fair value of the asset received shall be used to*

1            *measure the cost if it is more clearly evident than the fair value of the asset*  
2            *surrendered.*<sup>[1]</sup>

3            36. ASC 845-10-30-1, however, is subject to an important requirement.  
4            Specifically, fair value must be “determinable within reasonable limits.” If fair value is  
5            not “determinable within reasonable limits,” the transactions are required to be  
6            accounted for based on the recorded book value of the assets that the reporting entity  
7            “relinquished” in the exchange.

8            37. ASC 845-10-30-3 states, in pertinent part:

9            A nonmonetary exchange shall be measured *based on the recorded*  
10           *amount . . . of the nonmonetary asset(s) relinquished, and not on the values*  
11           *of the exchanged assets, if . . . (a) The fair value of neither the asset(s)*  
12           *received nor the asset(s) relinquished is determinable within reasonable*  
13           *limits. . . .*

14           38. Fair value determinations are subject to ASC 820. ASC 820-35-2 defines  
15           “fair value” as “the price that would be received to sell an asset . . . in an orderly  
16           transaction between market participants at the measuring date.” ASC 820-1-05-1B  
17           emphasizes that “fair value is a market-based measurement . . . .” Under ASC 820-35-  
18           24, reporting entities are required to use “valuation techniques that are appropriate in  
19           the circumstances *and for which sufficient data are available* to measure fair value  
20           maximizing the use of relevant observable inputs and minimizing the use of  
21           unobservable inputs.”

22           39. The primary valuation technique is the “market approach,” which uses  
23           observed prices and other relevant information generated by market transactions  
24           involving identical or comparable assets. *See* ASC 820-55-3A. An example of the  
25           “market approach” would be to estimate the value of a security based on quoted prices

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26           <sup>1</sup> All emphasis herein is supplied unless otherwise indicated.

1 in active markets for identical securities, or, if no such markets existed, on comparable  
2 securities.

3 40. Another example of the “market approach” would be to value a  
4 technology license based on prices paid for similar licenses or services in actual cash  
5 transactions, *i.e.*, the method that AudioEye purported to implement here.

6 **C. Defendants’ Revenue-Inflation Scheme**

7 41. In the first three quarters of 2014, Defendants reported that the Company  
8 sold thirty-six licenses for its intellectual property – four licenses in the first quarter,<sup>2</sup>  
9 thirteen licenses in the second quarter, and nineteen licenses in the third quarter.  
10 Defendants claimed that these licensing transactions generated revenues for the  
11 Company of \$225,000 per license, for aggregate revenues of \$8.1 million. This  
12 comprised 92% of the Company’s total revenues reported in those quarters of \$8.8  
13 million.

14 42. Throughout the Class Period, Defendants repeatedly assured investors  
15 that the Company complied with GAAP in recognizing the revenues from the  
16 nonmonetary licensing transactions.

17 43. Specifically, as set forth in detail below (*see* ¶¶66, 81, 91), Defendants  
18 claimed that the Company “follows” ASC 845-10-30-1, and that the nonmonetary  
19 licensing transactions “were determined to meet” or “met” the criteria of that provision,  
20 including that “fair value” was “determinable within reasonable limits.”

21 44. Furthermore, seizing upon the advantage of the Company’s inflated stock  
22 price during the Class Period, Defendants raised \$4.4 million in proceeds from  
23 accredited and institutional investors in four separate private placements of the  
24

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25 <sup>2</sup> The Company initially reported that one licensing transaction in the first quarter of 2014 was  
26 for “cash.” In the second quarter of 2014, however, the Company reclassified that “cash”  
27 transaction as “nonmonetary.”

1 Company's securities, and an additional \$3.7 million in proceeds from holders of  
2 warrants on the Company's stock in two separate warrant exercise offers, as alleged in  
3 detail below in ¶¶144-46.

4 45. On December 3, 2014, the SEC issued a letter to Defendant O'Donnell, as  
5 CFO, questioning the Company's accounting for the nonmonetary licensing  
6 transactions. The letter, which was filed on EDGAR, asked, *inter alia*, why the  
7 Company did "not record licenses at historical cost [*i.e.*, recorded book value] in  
8 transactions where you engage in a non-cash exchange of a license for the license of a  
9 customer."

10 46. Defendant O'Donnell responded by letter filed on EDGAR dated  
11 December 15, 2014, asserting, *inter alia*, that "[t]he fair value of the technology or  
12 services exchanged or received is determined within reasonable limits . . . ."

13 47. On January 16, 2015, the SEC issued a follow-up letter to Defendant  
14 O'Donnell, which was also filed on EDGAR, stating, *inter alia*, that "[i]t remains  
15 unclear to us how you determined the fair value of the licenses involved in the  
16 exchange. . . . Please advise." The SEC also asked Defendant O'Donnell for "your  
17 analysis of each of these licenses that supports the culmination of the earnings process  
18 by demonstrating . . . [that the] fair value of the product received or exchanged  
19 exists . . . ."

20 48. Defendant O'Donnell responded by letter filed on EDGAR dated  
21 February 6, 2015, further purporting to explain the Company's fair value  
22 determinations. Specifically, Defendant O'Donnell stated that the Company based  
23 those determinations on the "standard billing rates" of its customers, *i.e.*, "those  
24 entities' standard billing rates for similar services provided to third-party customers . . .  
25 and all of which are substantive and in the normal course of business that these  
26 Company customers conduct with their respective customers."

1           49. For example, the Company sold its licenses to one customer in exchange  
2 “for consulting, geographic and location setup services . . . at [the customer]’s standard  
3 client rate of \$200 per hour for 1,125 hours in total, for a total value of \$225,000.  
4 *Other clients of this service provider have paid \$200 per hour in cash, supporting the*  
5 *Company’s assertions on fair value. . . ,*” Defendant O’Donnell stated in the letter.

6           50. Notably, the Company failed to provide the SEC with further backup  
7 documentation or evidence supporting the “standard” rates or prices charged by its  
8 customers in the transactions that the Company referenced in its letter to the SEC and  
9 that it used for the fair valuations. This is because no backup documentation or  
10 evidence existed. Rather, as investors later would learn, the Company and its  
11 counterparties simply had contrived the numbers out of thin air for purposes of  
12 reporting inflated revenues.

13           51. On March 12, 2015, the SEC issued a third letter to Defendant O’Donnell,  
14 which was also filed on EDGAR, setting forth additional questions regarding the  
15 Company’s accounting for the nonmonetary licensing transactions.

16           52. On March 24, 2015, the Company filed a letter to the SEC on EDGAR,  
17 this time signed not by Defendant O’Donnell but, instead, by Defendant Bradley. The  
18 letter stated that the Company intended to respond to the SEC’s March 12, 2015 letter  
19 by April 3, 2015.

20           **D. The Revelation that the Company’s First, Second, and Third Quarter**  
21           **2014 Financials Would Have to be Restated**

22           53. Because Defendants did not actually have evidence supporting the fair  
23 values of any of the technology or services that AudioEye received in any of the thirty-  
24 six nonmonetary licensing transactions from which it booked a total of \$8.1 million in  
25 revenue, AudioEye was unable to respond to the SEC’s March 12, 2015 inquiry.

1           54.     Instead, on April 1, 2015, Defendants issued a press release announcing  
2 that the Company's first, second, and third quarter 2014 financial statements "cannot be  
3 relied on and that material restatements will be forthcoming." Specifically, the release  
4 stated, in pertinent part, that:

5  
6           [T]he Audit Committee of the Company's Board of Directors, based in part  
7 on the recommendation of the Company's management and in consultation  
8 with the Company's auditors and advisors, concluded that because of errors  
9 identified in the Company's previously issued financial statements, *the*  
10 *Company will restate its previously issued financial statements for the*  
11 *quarters ended March 31, June 30 and September 30, 2014.*

12           The Audit Committee also authorized an internal review of controls and  
13 policies. Accordingly, investors should no longer rely upon the Company's  
14 previously released financial statements or other financial data for these  
15 periods, including any interim period financial statements, and any earnings  
16 releases relating to these periods. . . .

17           55.     The release went on to state that the Company anticipated eliminating *all*  
18 of the previously reported \$8.1 million in revenues from the thirty-six nonmonetary  
19 licensing transactions:

20           Based on the review to date, *the Company anticipates removing all revenue*  
21 *derived from non-cash exchanges of a license of the Company for the*  
22 *license of the Company's customer and all revenue from non-cash*  
23 *exchanges of a license of the Company for services of the Company's*  
24 *customer, and reducing by a material amount previously reported license*  
25 *cash revenue. The aggregate amount of revenue reported for the first nine*  
26 *months of 2014 for non-cash transactions was approximately*  
27 *\$8,100,000. . . .*

28           56.     In other words, this was *not* a case of the Company having support for the  
value of only *some* of the thirty-six transactions. Nor was this a case of the Company  
having support for only *some* value of the technology and licenses received, but simply  
at levels below the \$225,000 claimed. Rather, the Company had *no* support sufficient  
to recognize *any* revenue from *any* of the nonmonetary licensing transactions, which, as  
alleged above, comprised 92% of the Company's reported revenues during the first  
three quarters of 2014.



1           57. The release also stated that the Company expected to report “material  
2 weaknesses” in the Company’s internal controls:

3           In accordance with Section 404 of the Sarbanes-Oxley Act of 2002, the  
4 Company’s management has been assessing the effectiveness of the  
5 Company’s internal controls over financial reporting and disclosure  
6 controls. Based on this assessment, the Company *expects to report material  
7 weaknesses in the Company’s internal controls and therefore conclude that  
8 internal controls over financial reporting and disclosure controls are not  
9 effective.*

10           58. The press release additionally revealed that, effective March 29, 2015,  
11 Defendant O’Donnell had resigned from his position as the Company’s CFO.

12           59. As a result of the April 1, 2015 revelations, AudioEye’s stock price  
13 plummeted 26% on unusually heavy trading volume, falling from a close of 41 cents  
14 per share on March 31, 2015, to a close of 30.5 cents per share on April 1, 2015,  
15 causing millions of dollars in investor losses. In the days that followed, AudioEye  
16 stock continued to decline, sinking to less than 10 cents per share on April 21, 2015.

17           **E. The Company’s Post-Class Period Admissions**

18           60. On May 18, 2015, the Company filed amended Form 10-Qs for the first,  
19 second, and third quarters of 2014, restating those quarters’ financial statements. As  
20 anticipated, the restatements erased all \$8.1 million of the revenues previously reported  
21 by the Company in connection with the nonmonetary licensing transactions.

22           61. The restatements additionally admitted the reason for those revenues’  
23 removal – specifically, that there was a complete “absence of documentation to support  
24 [the] transactions” upon which the Company’s purported fair value determinations were  
25 based, including a “failure to trace the delivery of services.”

26           62. In other words, the Company had no evidence or backup documentation  
27 supporting the supposed “standard” rates and prices which the Company had used to  
28 determine fair value, or that any third-party transactions had even occurred. Apparently,  
those values simply had been contrived by the Company and its counterparties for

1 purposes of reporting inflated revenues. Hence, at no time during the Class Period were  
 2 the fair values of the services or licenses that the Company received “determinable  
 3 within reasonable limits.” Consequently, GAAP required the transactions to be  
 4 recorded at the book values of the Company’s own licenses, which were zero.

5 63. Furthermore, the scheme had continued for three quarters of unaudited  
 6 financial statements until the SEC demanded backup documentation which the  
 7 Company did not have and which did not exist, finally putting an end to the ruse.

8 64. Specifically, the restated financials admitted that:

9 The Company has restated its consolidated balance sheet as of September  
 10 30, 2014, and its consolidated statement of operations and consolidated  
 11 statement of cash flows for the three and nine months ended September 30,  
 12 2014.

12 \* \* \*

13 To recognize revenue on a non-monetary exchange of a license of its  
 14 patents for services or licenses to be provided by a counterparty, . . . the  
 15 Company applied ASC 845-10-30-1, holding that fair value of the services  
 16 or licenses it would receive in each transaction was more clearly evident  
 17 than the fair value of the asset surrendered. . . .

18 *Under ASC 845, fair value in a license-for-services or license-for-license*  
 19 *contract in which the cost of the asset being surrendered is not*  
 20 *determinable can rely on the fair value of the asset received if it is*  
 21 *determinable. . . . However, the Company has now determined following*  
 22 *its Internal Review that in applying this methodology it did not have*  
 23 *sufficient support to establish the value of the services or licenses provided*  
 24 *under the subsequent license-for-services or license-for-license*  
 25 *transactions, did not adequately track the consulting services provided by*  
 26 *the various counterparties, and did not have sufficient support to establish*  
 27 *such services were actually provided as per the terms of the contracts.*

28 Following its Internal Review, the Company has determined that these  
 errors resulted from material weakness in internal control over financial  
 reporting . . . . In particular, the Company concluded that there was a  
 misapplication of relevant accounting guidance and *the absence of*  
*documentation to support transactions including the failure to trace the*  
*delivery of services.*

65. The restated financials also admitted to “material weaknesses” in the  
 Company’s internal controls:

1 We have concluded that there are *material weaknesses in our internal*  
2 *control over financial reporting*, as we did not maintain effective controls  
3 over the selection and application of accounting principles generally  
4 accepted in the United States (“GAAP”) related to revenue recognition for  
5 certain nonmonetary transactions. . . . One material weakness related to our  
6 failure to maintain effective internal controls over the accounting for  
7 revenue recognition. Our Quarterly Reports on Form 10-Q have been  
8 amended . . . to reflect the restatement of our financial statements for the  
9 restated periods and the change in management’s conclusion regarding the  
10 effectiveness of our disclosure controls and procedures and internal control  
11 over financial reporting . . . .

## 7 V. DEFENDANTS’ FALSE AND MISLEADING STATEMENTS

8 66. On May 14, 2014, Defendants filed the Company’s 10-Q report for the  
9 first quarter of 2014 with the SEC. The report, which was signed by Defendants  
10 Bradley and O’Donnell, reported revenues of \$1.03 million for the three months ended  
11 March 31, 2014, including \$900,000 from four licensing transactions, three of which  
12 constituted “noncash exchanges” which the Company claimed “were determined to  
13 meet” the GAAP criteria for revenue, including that “[t]he fair value of the technology  
14 or products exchanged or received is determinable within reasonable limits.”  
15 Specifically, the report stated in pertinent part:

16 In transactions where the Company engages in a non-cash exchange for a  
17 license of the Company for the license of the Company’s customer, the  
18 Company follows . . . ASC 958-845-10 [sic]. . . . *The fair value of the*  
19 *technology or products exchanged or received is determinable within*  
20 *reasonable limits* . . . . For the three months ended March 31, 2014, the  
21 Company sold one license for cash of \$225,000 and exchanged the same  
22 license to three other customers for licenses to their intellectual property.  
23 The three licenses exchanged [sic] were determined to meet the  
24 aforementioned criteria and were each recognized as revenue and intangible  
25 assets for \$225,000 each for a total of \$675,000.

26 67. The report additionally represented that:

27 The accompanying unaudited interim financial statements of AudioEye, Inc.  
28 and its wholly-owned subsidiary (collectively, the “Company”) have been  
prepared in accordance with accounting principles generally accepted in the  
United States of America and the rules of the Securities and Exchange  
Commission . . . .

In the opinion of management, all adjustments, consisting of normal  
recurring adjustments, necessary for a fair presentation of financial position

1 and the results of operations for the interim periods presented have been  
reflected herein.

2 68. The report also set forth the Company's revenue recognition policies,  
3 which included the statement that "[r]evenue is recognized when all applicable  
4 recognition criteria have been met, which generally include . . . *a fixed or determinable*  
5 *price . . . .*"

6 69. The report additionally included signed certifications by each of the  
7 Individual Defendants pursuant to the Sarbanes-Oxley Act of 2002 ("SOX"), attesting  
8 that the report did "not contain any untrue statement of a material fact or omit to state a  
9 material fact necessary to make the statements made, in light of the circumstances  
10 under which such statements were made, not misleading with respect to the period[s]  
11 covered by" those reports.

12 70. The SOX certifications also attested that the "financial statements and  
13 other financial information included in this report, fairly present in all material respects  
14 the financial condition, results of operations and cash flows of the registrant as of, and  
15 for, the periods presented in this report."

16 71. The SOX certifications additionally attested that the Individual  
17 Defendants were:

18 Responsible for establishing and maintaining disclosure controls and  
19 procedures (as defined in Exchange Act Rules 13a-15(e) and 15-d-15(e))  
20 and internal control over financial reporting (as defined in Exchange Act  
Rules 13a-15(f) and 15d- 15(f)) for the registrant and have:

- 21 a) Designed such disclosure controls and procedures, or caused such  
22 disclosure controls and procedures to be designed under our  
23 supervision, to ensure that material information relating to the  
24 registrant, including its consolidated subsidiaries, is made known to  
25 us by others within those entities, particularly during the period in  
26 which this report is being prepared; [and]  
27 b) Designed such internal control over financial reporting, or caused  
such internal control over financial reporting to be designed under  
our supervision, to provide reasonable assurance regarding the  
reliability of financial reporting and the preparation of financial  
statements for external purposes in accordance with generally  
accepted accounting principles . . . .

1  
2 72. The statements referenced above in ¶¶66-71 were each materially false  
3 and misleading because, *inter alia*,

4 a. As Defendants would later admit, the fair values of the technology  
5 and products exchanged or received in the transactions were not “determinable within  
6 reasonable limits,” and, hence, the criteria for recognizing revenue in connection with  
7 such transactions were not “met.” Moreover, the Company recognized revenue in  
8 connection with the subject transactions despite the fact that there was no “fixed or  
9 determinable price . . . .”

10 b. The revenue numbers set forth above were materially false, as the  
11 Company later admitted. Specifically, the Company did not have \$1.03 million in  
12 revenues in the first quarter of 2014, but only \$45,652 because the nonmonetary  
13 licensing transactions did not generate \$225,000 apiece in revenue, but, instead, zero  
14 dollars.

15 c. As Defendants would later admit, the financial statements were not  
16 “prepared in accordance with [GAAP],” did not comprise a “fair presentation” of the  
17 Company’s financial position and results, and contained material misstatements in that  
18 they overstated the Company’s revenues by \$900,000 and were required to be restated.

19 d. As Defendants would later admit, the Company’s internal controls  
20 were “not effective,” and resulted in material overstatements of the Company’s  
21 revenues.

22 73. The next day, on May 15, 2014, Defendants issued a press release  
23 regarding the Company’s first quarter 2014 financial results, stating in pertinent part:

24 **AudioEye, Inc. Reports First Quarter Revenue of \$1.032 Million vs.**  
25 **\$0.2 Million in Prior-Year Period**

26 **Annualized Revenue "Run Rate" Approximates \$4.1 Million in Most**  
27 **Recent Quarter**

1 TUCSON, AZ--(Marketwired - May 15, 2014) - AudioEye®, Inc.  
2 (OTCQB: AEYE) (“AudioEye”), creator of the Audio Internet® patented  
3 audio browsing and automated publishing technology platform, today  
4 announced that its revenue for the first quarter of 2014 totaled \$1,032,886.  
5 This represented an increase in recognizable revenue of approximately  
6 360% when compared with first quarter 2013 revenue of \$224,297.

7 On a sequential basis, first quarter 2014 revenue increased 37% relative to  
8 fourth quarter 2013 revenue of \$752,092. In addition to this quarter over-  
9 quarter revenue growth, AudioEye increased its gross profit margin from  
10 76% of sales in the fourth quarter to 96% of sales in the most recent quarter.

11 The Company's annualized revenue “run rate” in the first quarter of 2014  
12 approximated \$4.1 million.

13 74. The release also quoted Defendant Bradley as stating: “Our annualized  
14 revenue ‘run rate’ in the first quarter exceeded \$4 million, and we believe AudioEye  
15 has the potential to achieve an annualized revenue ‘run rate’ of \$8 million or higher  
16 within the next two quarters.”

17 75. The statements referenced above in ¶¶73-74 were each materially false  
18 and misleading because, *inter alia*, the revenue figures set forth above were materially  
19 false, as the Company later admitted. Specifically, the Company did not have \$1.03  
20 million in revenues in the first quarter of 2014, but only \$45,652. Hence, Defendants’  
21 statements regarding the Company’s revenues and its “annualized revenue ‘run rate’”  
22 were materially false.

23 76. On July 2, 2014, Defendants issued a preliminary release with respect to  
24 the Company’s financial results for the second quarter of 2014, stating in pertinent part:

25 ***AudioEye to Report Profitable Second Quarter on Record Revenue of***  
26 ***Approximately \$3.0 Million***

27 ***Second Quarter Revenue Increases Approximately 200% vs. \$1.0***  
28 ***Million in First Quarter Revenue***

TUCSON, Arizona - July 2, 2014 - AudioEye®, Inc. (OTCQB: AEYE)  
 (“AudioEye”), creator of the Audio Internet® patented audio browsing and  
 automated publishing technology platform, today announced that the  
 Company expects to report record operating results for the second quarter  
 of 2014. The highlights of AudioEye’s record-breaking quarter are  
 reviewed below:

1 • The Company expects to report approximately \$3.0 million in  
2 recognizable revenue for the three months ended June 30, 2014. This  
3 compares with approximately \$0.2 million in the prior-year quarter and  
4 represents an approximate 200% increase relative to revenue of \$1.0  
5 million in the quarter ended March 31, 2014.

6 • The annualized revenue “run rate” for the most recent quarter  
7 approximated \$12 million.

8 • Revenue for the first half of 2014 and 2013 approximated \$4.0 million  
9 and \$0.4 million, respectively.

10 • Management expects revenue to exceed the Company’s previous guidance  
11 of \$8 million for the year ending December 31, 2014.

12 77. The release also quoted Defendant Bradley as stating: “Revenue growth  
13 is an indicator that we are achieving our mission as a team. The Company is on pace to  
14 exceed our previous revenue guidance of \$8 million for the full year . . . .”

15 78. The statements referenced above in ¶¶76-77 were each materially false  
16 and misleading because, *inter alia*, the revenue numbers set forth above were materially  
17 false, as the Company later admitted. Specifically, the Company did not expect to have  
18 \$3.01 million in revenues in the second quarter of 2014, but only \$51,320. Hence,  
19 Defendants’ statements regarding the Company’s anticipated revenues, revenue  
20 comparisons to prior quarters, “annualized revenue ‘run rate,’” and revenue “guidance”  
21 were materially false.

22 79. On August 8, 2014, the Company filed a Prospectus on Form 424B3 with  
23 the SEC covering the sale by participants of a June 2014 private placement of shares of  
24 the Company’s common stock from which the Company had received gross proceeds of  
25 \$830,000. The Prospectus annexed the Company’s financial statements for the first  
26 quarter of 2014 as an exhibit.

27 80. The financial statements annexed to the Prospectus referred to the  
28 foregoing paragraph were materially false and misleading for the reasons set forth  
above in ¶¶72, 75.

1           81. On August 11, 2014, Defendants filed the Company’s 10-Q for the  
2 second quarter of 2014 with the SEC, reporting financial results similar to those  
3 indicated in the July 2, 2014 release. The report, which was signed by Defendants  
4 Bradley and O’Donnell, reported revenues of \$3 million for the three months ended  
5 June 30, 2014, which included \$2.9 million in revenues from thirteen nonmonetary  
6 licensing transactions. The report also made the same claims as the Company’s first  
7 quarter 2014 report regarding the Company’s compliance with GAAP and  
8 determination of fair value “within reasonable limits.” The report stated in pertinent  
9 part:

10           In transactions where the Company engages in a non-cash exchange of a  
11 license of the Company for the services of the Company’s customer, the  
12 Company follows Accounting Standards Codification (“ASC”) . . . ASC  
13 985-845-10 [sic]. *The fair value of the technology or services exchanged  
14 or received is determined within reasonable limits . . . .*

15           For the three . . . months ended June 30, 2014, the Company sold an  
16 aggregate of thirteen . . . licenses . . . for \$225,000 per license and  
17 exchanged the license with its customers for either a license to their  
18 intellectual property or prepaid services. The thirteen . . . licenses  
19 exchanged [sic] were determined to meet the aforementioned criteria.  
20 During the three . . . months ended June 30, 2014, nonmonetary revenue  
21 of \$2,925,000 . . . was recognized.

22           82. Like the Company’s prior quarterly report, as alleged above in ¶¶67-68,  
23 the report asserted that the financial statements constituted a “fair presentation” of the  
24 Company’s financial position, and that the Company’s had a policy of only recognizing  
25 revenue when there was a “fixed or determinable price . . . .”

26           83. The report additionally included statements regarding the effectiveness of  
27 the Company’s internal controls for the quarter in question:

28           Our management carried out an evaluation of the effectiveness of the  
design and operation of our disclosure controls and procedures. Based on  
that evaluation, our Principal Executive Officer and Principal Financial  
Officer have concluded that our disclosure controls and procedures were  
*effective . . . in accordance with generally accepted accounting principles.*



1           84. The report additionally included signed certifications by each of the  
2 Individual Defendants pursuant to SOX, containing the same attestations as set forth  
3 above in ¶¶69-71.

4           85. The statements referenced above in ¶¶81-84 were each materially false  
5 and misleading because, *inter alia*,

6           a. As Defendants would later admit, the fair values of the technology  
7 and products exchanged or received in the transactions were not “determinable within  
8 reasonable limits,” and, hence, those transactions did not “meet” the GAAP criteria  
9 for recognizing revenue. Moreover, the Company recognized revenue in connection  
10 with the subject transactions despite the fact that there was no “fixed or determinable  
11 price . . . .”

12           b. The revenue numbers set forth above were materially false, as the  
13 Company later admitted. Specifically, the Company did not have \$3.01 million in  
14 revenues in the second quarter of 2014, but only \$51,320 because the nonmonetary  
15 licensing transactions did not generate \$225,000 apiece in revenue, but, instead, zero  
16 dollars.

17           c. As Defendants would later admit, the financial statements were not  
18 “prepared in accordance with [GAAP],” did not comprise a “fair presentation” of the  
19 Company’s financial position and results, and contained material misstatements in that  
20 they overstated the Company’s revenues by \$2.96 million and were required to be  
21 restated.

22           d. As Defendants would later admit, the Company’s internal controls  
23 were “not effective,” and resulted in material overstatements of the Company’s  
24 revenues.

1 86. That same day, August 11, 2014, Defendants issued a press release  
2 regarding the Company's financial results for the second quarter of 2014, stating in  
3 pertinent part:

4  
5 **AudioEye, Inc. Reports Net Income of \$1.0 Million on Revenue of \$3.0  
Million for Second Quarter of 2014**

6 **Company Increases Revenue Guidance From \$8 Million to \$12 Million  
7 for Fiscal Year Ending December 31, 2014**

8 TUCSON, AZ--(Marketwired - Aug 11, 2014) - AudioEye®, Inc.  
9 (OTCQB: AEYE) ("AudioEye"), creator of the Audio Internet® patented  
10 audio browsing and automated publishing technology platform, today  
11 announced its operating results for the second quarter and first half of  
12 2014. . . .

13 Revenue for the three months ended June 30, 2014 totaled \$3,013,033,  
14 which represented a 1,405% increase when compared with revenue of  
15 \$200,232 in the second quarter of 2013. On a sequential basis, revenue for  
16 the second quarter of 2014 increased 192% when compared with revenue of  
17 \$1,032,886 in the first quarter of 2014.

18 The Company's annualized revenue "run rate" in the second quarter of  
19 2014 approximated \$12 million.

20 87. The release also quoted Defendant Bradley as stating: "Based upon the  
21 Company's financial performance during the first half of 2014 . . . , we have increased  
22 our revenue guidance from \$8 million previously to \$12 million for the full year ending  
23 December 31, 2014."

24 88. The statements referenced above in ¶¶86-87 were each materially false  
25 and misleading because, *inter alia*, the revenue numbers set forth above were materially  
26 false, as the Company later admitted. Specifically, the Company did not have \$3.01  
27 million in revenues in the second quarter of 2014, but only \$51,320. Accordingly,  
28 Defendants' statements regarding the Company's revenues, "annualized revenue "run  
rate," and comparisons to prior quarters were materially false.

89. On October 6, 2014, Defendants issued a preliminary release with respect  
to the Company's financial results for the third quarter of 2014, stating in pertinent part:

1  
2 **AudioEye to Report Profitable Third Quarter on Record Revenue of  
Approximately \$4.7 Million**

3 **Third Quarter Revenue Increases More Than 55% vs. \$3.0 Million in  
Second Quarter Revenue**

4  
5 TUCSON, AZ--(Marketwired - Oct 6, 2014) - AudioEye®, Inc. (OTCQB:  
6 AEYE) (“AudioEye”), creator of the Audio Internet® patented audio  
7 browsing and automated publishing technology platform, today announced  
8 that the Company expects to report record operating results for the third  
9 quarter of 2014, which ended September 30, 2014. The highlights of  
10 AudioEye’s), record-breaking quarter are reviewed below:

11 • The Company expects to report approximately \$4.7 million in revenue for  
12 the three months ended September 30, 2014. This compares with  
13 approximately \$0.4 million in the prior-year quarter and represents an  
14 increase of more than 55% relative to revenue of approximately \$3.0  
15 million in the quarter ended June 30, 2014.

16 • The annualized revenue “run rate” for the most recent quarter  
17 approximated \$19 million.

18 • Revenue for the first nine months of 2014 and 2013 approximated \$8.7  
19 million and \$0.8 million, respectively.

20 • Management expects revenue to exceed the Company's previous guidance  
21 of \$12 million for the year ending December 31, 2014.

22 \* \* \*

23 • Cross-license related revenue in the most recent quarter amounted to  
24 approximately \$4.1 million . . . .

25  
26 90. The statements referenced above in ¶89 were each materially false and  
27 misleading because, *inter alia*,

28 a. The revenue numbers set forth above were materially false, as the  
Company later admitted. Specifically, the Company did not expect \$4.8 million in  
revenues in the third quarter of 2014, but only \$187,766. Hence, Defendants’  
statements regarding revenues, comparisons to prior quarters, and “annualized  
revenue ‘run rate’” were materially false.

1           b. The Company had no “cross-license related revenues” for the  
2 reasons set forth above in ¶¶53-65.

3           91. On November 7, 2014, Defendants filed the Company’s 10-Q for the  
4 third quarter of 2014 with the SEC, reporting financial results consistent with those  
5 indicated in the October 6, 2014 release. The report, which was signed by Defendants  
6 Bradley and O’Donnell, reported revenues of \$4.8 million for the three months ended  
7 September 30, 2014, including \$4.2 million in revenues from nineteen nonmonetary  
8 licensing transactions. As in the two prior quarters, the report also stated that the  
9 Company complied with GAAP and that fair value was determined “within reasonable  
10 limits”:

11           In transactions where the Company engages in a non-cash exchange of a  
12 license of the Company for the services of the Company’s customer, the  
13 Company follows . . . ASC 985-845-10. *The fair value of the technology or  
services exchanged or received is determined within reasonable limits . . . .*

14           For the three . . . months ended September 30, 2014, the Company sold an  
15 aggregate of nineteen . . . licenses . . . with a fair value of \$225,000 per  
16 license, in exchange for either a license to their intellectual property or  
17 prepaid services. The licenses exchanged were determined to meet the  
18 aforementioned criteria. During the three and nine months ended  
19 September 30, 2014, nonmonetary revenue of \$4,275,000 . . . was  
20 recognized.

21           92. Like the Company’s two prior quarterly reports, as alleged above in ¶¶67-  
22 68 and ¶82, the report asserted that the financial statements constituted a “fair  
23 presentation” of the Company’s financial position, and that the Company’s had a policy  
24 of only recognizing revenue when there was a “fixed or determinable price . . . .”

25           93. The report additionally included statements regarding the effectiveness of  
26 the Company’s internal controls which were identical to those set forth by the Company  
27 in its prior quarterly report as set forth above in ¶83.

28           94. The report additionally included signed certifications by each of the  
Individual Defendants pursuant to SOX, containing the same attestations as set forth  
above in ¶¶69-71.

1 95. The statements referenced above in ¶¶91-94 were each materially false  
2 and misleading because, *inter alia*,

3 a. As Defendants would later admit, the fair values of the technology  
4 and products exchanged or received in the transactions were not “determinable within  
5 reasonable limits,” and, hence, those transactions did not “meet” the GAAP criteria  
6 for recognizing revenue. Moreover, the Company recognized revenue in connection  
7 with the subject transactions despite the fact that there was no “fixed or determinable  
8 price . . . .”

9 b. The revenue numbers set forth above were materially false, as the  
10 Company later admitted. Specifically, the Company did not have \$4.8 million in  
11 revenues in the third quarter of 2014, but only \$187,766 because the nonmonetary  
12 licensing transactions did not generate \$225,000 apiece in revenue, but, instead, zero  
13 dollars.

14 c. As Defendants would later admit, the financial statements were not  
15 “prepared in accordance with [GAAP],” did not comprise a “fair presentation” of the  
16 Company’s financial position and results, and contained material misstatements in that  
17 they overstated the Company’s revenues by \$4.6 million and were required to be  
18 restated.

19 d. As Defendants would later admit, the Company’s internal controls  
20 were “not effective,” and resulted in material overstatements of the Company’s  
21 revenues.

22 96. On November 10, 2014, Defendants issued a press release regarding the  
23 Company’s 2014 financial results to date, stating in pertinent part:

24 **Revenue of \$8.8 Million and Net Income of \$0.9 Million Recorded in**  
25 **First Nine Months of 2014**

26 TUCSON, AZ--(Marketwired - Nov 10, 2014) - AudioEye®, Inc.  
27 (OTCQB: AEYE) (“AudioEye”) (the “Company”), creator of the Audio  
Internet® patented audio browsing and automated publishing technology

1 platform, today announced its operating results for the third quarter and  
first nine months of 2014. . . .

2 Revenue for the three months ended September 30, 2014 totaled  
3 \$4,837,411, which represented a 1,168% increase when compared with  
4 revenue of \$381,539 in the third quarter of 2013. On a sequential basis,  
revenue for the third quarter of 2014 increased 61% when compared with  
revenue of \$3,013,033 in the second quarter of 2014.

5 The Company’s annualized revenue “run rate” in the third quarter of 2014  
6 approximated \$19.3 million.

7 \* \* \*

8 On a sequential basis, intellectual property (“IP”) licensing revenue totaled  
\$4,275,000 in the third quarter of 2014, for an increase of 46% when  
9 compared with IP revenue of \$2,925,000 in the second quarter of 2014.

10 97. The statements referenced above in ¶96 were each materially false and  
11 misleading because, *inter alia*, the revenue numbers set forth above were materially  
12 false, as the Company later admitted. Specifically, the Company did not have \$4.8  
13 million in revenues in the third quarter of 2014, but only \$187,766. Accordingly,  
14 Defendants’ statements regarding the Company’s revenues, comparisons to prior  
15 quarters, and “annualized revenue ‘run rate’” were materially false.

16 98. On November 13, 2014, the Company filed a Form S-8 Registration  
17 Statement covering five million shares of the Company’s stock issuable under the  
18 Company’s 2015 Incentive Compensation Plan, incorporating by reference the  
19 Company’s quarterly reports for the first, second, and third quarters of 2014.

20 99. The financial statements annexed to the Registration Statement referred to  
21 the foregoing paragraph were materially false and misleading for the reasons set forth  
22 above in ¶¶53-65, 72, 85, 95.

23 100. On December 15, 2014, Defendants filed on EDGAR their response to the  
24 SEC’s letter of December 3, 2014 (*see* ¶45 above). The response, signed by Defendant  
25 O’Donnell, stated that the Company utilized fair value to account for the nonmonetary  
26

1 licensing transactions because, *inter alia*, “[t]he fair value of the technology or services  
2 exchanged or received is determined within reasonable limits . . . .”

3 101. The statement referenced in the foregoing paragraph was each materially  
4 false and misleading because, *inter alia*, the fair values of the technology and products  
5 exchanged or received in the transactions were not “determinable within reasonable  
6 limits,” and, hence, GAAP prohibited the use of those values for revenue recognition.

7 102. On February 6, 2015, the Company filed on EDGAR their response to the  
8 SEC’s letter of January 16, 2015 (*see* ¶48 above), further purporting to explain the  
9 Company’s fair value determinations. The response, signed by Defendant O’Donnell,  
10 stated in pertinent part:

11 The prices for each transaction are fixed at the time of the agreement. In  
12 the case of the Company’s nonmonetary transactions . . . , *the price is*  
13 *defined in terms of, for example, number of hours of consulting or other*  
14 *services to be provided by the counter-parties, priced at those entities’*  
15 *standard billing rates* for similar services provided to third-party customers  
16 they have, none of which involve the Company, and all of which are  
17 substantive and in the normal course of business that these Company  
18 customers conduct with their respective customers.

19 103. The response also set forth specific examples of the nonmonetary  
20 arrangements:

21 Customer 3 . . . will provide introductions to prospective new Company  
22 customers for a base fee of \$225,000, with a promise of performing 45 of  
23 such introductions over the course of a year from the inception of the  
24 arrangement, with the per introduction fee being *substantially similar to*  
25 *that charged to Customer 3’s unrelated customers.*

26 \* \* \*

27 In the second and third quarters of 2014, additional license and services  
28 non-monetary transactions were booked to the following customers:

Using the value the Company previously established for the licensing of its  
patents, the Company provided a patent license to Customer 8 for website  
and other development services at Customer 8’s standard client rate of \$125  
per hour for 1,800 hours in total, for a total value of \$225,000. *Other*  
*clients of this service provider have paid \$125 per hour in cash for the*

1           *same or similar services, thus supporting the Company's assertions on fair*  
2           *value. . . .*

3           The Company provided a patent license to Customer 9 for consulting,  
4           geographic and location setup services . . . at Customer 9's standard client  
5           rate of \$200 per hour for 1,125 hours in total, for a total value of \$225,000.  
6           *Other clients of this service provider have paid \$200 per hour in cash,*  
7           *supporting the Company's assertions on fair value. . . .*

8           In the other service transactions with service providers through September  
9           30, 2014, services from each are received for \$225,000, *which would be the*  
10           *same price associated with services provided by each to a third party. . . .*

11           104. The statements referenced above in ¶¶102-03 were each materially false  
12           and misleading because, *inter alia*, the Company had no evidence or backup  
13           documentation supporting the supposed "rates" and "prices" cited, and no such  
14           evidence or documentation existed. Rather, the values simply had been contrived by  
15           the Company and its counterparties for purposes of reporting inflated revenues.

16           105. The fact that the Company issued restatements was itself an admission  
17           that those financial statements as originally issued were false and not consistent with  
18           GAAP, and, additionally, that the overstatements of revenue were material.

19           106. As alleged above, GAAP consists of a hierarchy of authoritative literature  
20           promulgated by FASB the AICPA. The highest authority is the Accounting Standards  
21           Codification, or ASC.

22           107. The ASC Glossary defines a restatement as "[t]he process of revising  
23           previously issued financial statements to reflect the correction of an error in those  
24           financial statements." Glossary, ASC 250-10-20. Under GAAP, a restatement is  
25           necessary when "[a]n error in recognition, measurement, presentation, or disclosure in  
26           financial statements resulting from mathematical mistakes, mistakes in the application  
27           of generally accepted accounting principles (GAAP), or oversight or *misuse of facts*  
28           *that existed at the time the financial statements were prepared.*" Glossary, ASC 250-  
29           10-20.



1           108. Accordingly, by issuing the restatements, the Company admitted that the  
2 original financial statements were not issued in compliance with GAAP and contained  
3 materially false statements.

4           109. Moreover, the admitted reason for the restatements – *i.e.*, the complete  
5 “absence of documentation to support [the] transactions” upon which the Company’s  
6 purported fair value determinations were based, including a “failure to trace the  
7 delivery of services” –existed at the time the erroneous financial statements were  
8 prepared.

9 **VI. LOSS CAUSATION**

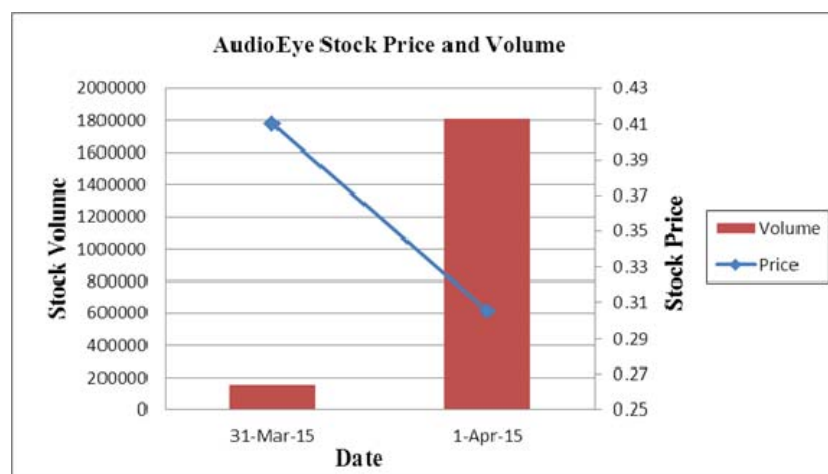
10           110. As detailed throughout and further herein, Defendants’ fraudulent scheme  
11 artificially inflated AudioEye’s stock price by overstating the Company’s revenues  
12 during the Class Period. Defendants’ false and misleading statements and omissions,  
13 individually and collectively, concealed the true business prospects of the Company,  
14 resulting in AudioEye’s stock being artificially inflated until, as indicated herein, the  
15 truth about the lack of support for purported revenues associated with the nonmonetary  
16 license transactions was revealed. While each of these misrepresentations and  
17 omissions was independently fraudulent, they were all motivated by Defendants’ desire  
18 to artificially inflate AudioEye’s stock price and the image of its future business  
19 prospects to give the market the false notion that revenue growth was accelerating.  
20 These false and misleading statements and omissions, among others, had the intended  
21 effect of preventing the market from learning the full truth and keeping the Company’s  
22 stock price artificially inflated throughout the Class Period.

23           111. Defendants’ false and misleading statements and omissions had the  
24 intended effect and caused, or were a substantial contributing cause of, AudioEye’s  
25 stock trading at artificially inflated levels during the Class Period, reaching as high as  
26 \$1.18 per share on July 22, 2014.

1            112. The truth was revealed on April 1, 2015, when, as alleged above, the  
 2 Company issued a press release announcing that (i) investors should no longer rely on  
 3 the Company's financial statements for the first three quarters of 2014; (ii) the  
 4 Company anticipated restating those quarters' financial statements to remove all \$8.1  
 5 million of revenue associated with the nonmonetary licensing transactions; (iii)  
 6 defendant O'Donnell had resigned as CFO of the Company as of March 29, 2015; and  
 7 (iv) the Company expected to report "material weaknesses" in the Company's internal  
 8 controls.

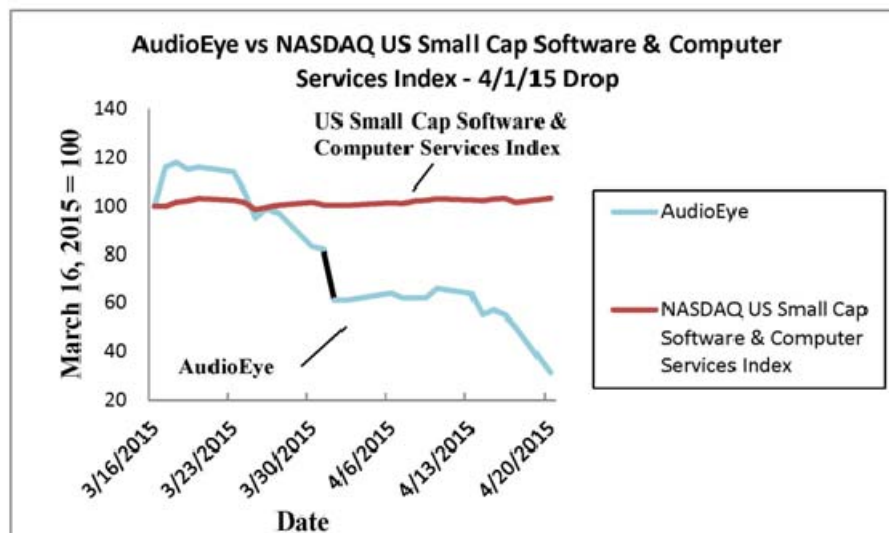
9            113. As a result of the Company's April 1, 2015, revelations, AudioEye's  
 10 stock price plummeted 26% on unusually heavy trading volume, falling from a close of  
 11 41 cents per share on March 31, 2015, to a close of 30.5 cents per share on April 1,  
 12 2015, causing millions of dollars in investor losses. In the days that followed,  
 13 AudioEye stock continued to decline, sinking to less than 10 cents per share on April 21,  
 14 2015.

15            114. The market's negative reaction to AudioEye's April 1, 2015 revelations is  
 16 demonstrated by the following chart:



1            115. The rapid decline in AudioEye's stock price was the direct result of the  
 2 nature and extent of the revelations made to investors and the market regarding the  
 3 necessity for the \$8.1 million in restatements, which had been concealed or  
 4 misrepresented by Defendants' scheme and misstatements during the Class Period.

5            116. The timing and magnitude of AudioEye's stock price decline from March  
 6 31, 2015 through April 1, 2015 negates any inference that the losses suffered by  
 7 Plaintiffs were caused by changed market conditions, macroeconomic or industry  
 8 factors, or by Company-specific facts unrelated to Defendants' fraudulent conduct.  
 9 This point is evidenced by the chart below, which demonstrates the clear divergence of  
 10 AudioEye's stock price from the NASDAQ US Small Cap Software & Computer  
 11 Services Index, which is comprised of peer companies, as the revelation of the truth  
 12 became known to the market:



23            117. AudioEye's stock price plunged significantly in relation to the NASDAQ  
 24 US Small Cap Software & Computer Services Index. This decline in stock price  
 25 following the Company's April 1, 2015 disclosures was the direct result of the nature  
 26 and extent of the revelations made to investors and the market regarding the required

1 financial restatements and the removal of the \$8.1 million in revenue, and their  
2 resulting financial impact, which had been concealed or misrepresented by Defendants'  
3 scheme and misstatements during the Class Period. Thus, the revelations of truth, as  
4 well as the resulting clear market reactions, indicate that the market understood that  
5 Defendants' prior statements were false and misleading. In short, as the truth about  
6 Defendants' prior misrepresentations and concealments were revealed, the Company's  
7 stock price quickly sank, the artificial inflation came out of the stock, and Plaintiffs  
8 were damaged, suffering economic losses.

9 118. Accordingly, the economic loss suffered by Plaintiffs on April 1, 2015  
10 was a direct and proximate result of Defendants' scheme and misrepresentations and  
11 omissions that artificially inflated the price of AudioEye's stock during the Class Period,  
12 and the subsequent significant decline in the value of AudioEye's stock when the truth  
13 concerning Defendants' prior misrepresentations and fraudulent conduct entered the  
14 marketplace.

## 15 **VII. ADDITIONAL *SCIENTER* ALLEGATIONS**

16 119. At all times during the Class Period Defendants acted with *scienter* in that  
17 they knew or recklessly disregarded that the public documents and statements issued or  
18 disseminated in the name of the Company were materially false and misleading, and  
19 knowingly or recklessly substantially participated or acquiesced in the issuance or  
20 dissemination of such statements or documents as primary violators of the federal  
21 securities laws.

22 120. Numerous factors, considered collectively, raise a compelling inference  
23 that Defendants' misstatements and omissions were intentional or deliberately reckless,  
24 including, inter alia, the following:

1           **A.     The Magnitude of the Restatements and the Simplicity of the**  
2           **Accounting Principles Violated**

3           121. As alleged in detail above, the restatements were not the result of a few  
4 transactions or mistakes during a single quarter. The Company restated three quarters  
5 of financial statements to correct its accounting for thirty-six independent transactions.  
6 The restatements erased 100% of the aggregate \$8.1 million in revenues that the  
7 Company had reported for those transactions.

8           122. Furthermore, the revenues associated with the nonmonetary licensing  
9 transactions were highly material, comprising virtually all of the Company's reported  
10 revenues in the first three quarters of 2014, as alleged above in ¶¶66, 81, 91. In the  
11 aggregate, the \$8.1 million in revenues from the nonmonetary licensing transactions for  
12 the first three quarters of 2014 constituted 92% of the Company's total \$8.9 million in  
13 revenues reported for those quarters. Put differently, Defendants overstated the  
14 Company's revenues during the Class Period by more than 3,000%.

15           123. The restatements also had a colossal impact on the Company's gross  
16 profits and operating income. Defendants had reported \$7.4 million in gross profits,  
17 and \$914,830 in operating income, for the nine months ended September 30, 2014.  
18 Under the restatements, gross profits were reduced by \$7.8 million to become a gross  
19 *loss* of -\$355,185. Similarly, operating income was reduced by \$7.4 million to become  
20 an operating *loss* of -\$6.5 million.

21           124. The restatements also had a dramatic impact on the Company's balance  
22 sheet. The Company's balance sheet had reflected prepaid assets of \$5.2 million and  
23 total assets of \$14 million as of September 30, 2014. The restatement reduced prepaid  
24 assets 97% to only \$167,873, and slashed total assets by *more than half* to only \$6.8  
25 million.

26           125. Accordingly, the magnitude of Defendants' false accounting in this case  
27 was enormous. Defendants' fraudulent accounting practices literally transformed the

1 entire financial condition of the Company, misled investors about the success of its  
2 business, and masked significant losses and the weakness in the Company's balance  
3 sheet.

4 126. Furthermore, the accounting principles violated by Defendants were  
5 simple and straightforward. As alleged above, ASC 845-10-30-3 permitted Defendants  
6 to account for the nonmonetary licensing transactions using fair value provided that fair  
7 value was "determinable within reasonable limits."

8 127. As Defendants admitted after the conclusion of the Class Period, however,  
9 there was a complete "absence of documentation to support [the] transactions" upon  
10 which the Company's purported fair value measurements were based. The Company  
11 had not observed any prices generated by market transactions to ascribe fair value.  
12 Instead, the Company and its counterparties apparently contrived the numbers out of  
13 thin air to report inflated revenues. Hence, fair value was not "determinable within  
14 reasonable limits," and GAAP required the transactions to be recorded at the book  
15 values of the Company's own licenses, which were zero.

16 128. Furthermore, the fact that the restatements erased 100% of the Company's  
17 revenues from the nonmonetary licensing transactions confirms that Defendants booked  
18 those revenues despite the fact that they never received *any* backup or support for the  
19 supposed fair value measurements. Were the case otherwise, the Company would only  
20 have needed to restate revenue from some of those transactions or only a portion of  
21 revenues from certain transactions.

22 129. Accordingly, the accounting violations in this case did not arise from  
23 mathematical errors or honest misapplications of standards or oversight, but, deliberate  
24 booking of revenue based on fair values without *any* factual support.

1           130. Under the circumstances, given the size and nature of the restatements,  
2 the pervasiveness and repetitiveness of the fraudulent accounting, and the simplicity of  
3 the accounting principles violated, a compelling inference of *scienter* is raised.

4  
5           **B. Defendant O’Donnell’s Role in Responding to the SEC, His  
6 Resignation, and the Claw-Back of His Incentive Compensation**

7           131. As alleged above, the SEC issued letters to the Company on December 3,  
8 2014 and January 16, 2015 questioning the Company’s accounting of the nonmonetary  
9 licensing transactions. Notably, the SEC specifically addressed those letters to  
10 Defendant O’Donnell, as CFO.

11           132. Furthermore, Defendant O’Donnell personally prepared the Company’s  
12 responses to the SEC dated December 15, 2014 and February 6, 2015, which contained  
13 the misrepresentations and omissions alleged above in ¶¶100-03. This is indicated by  
14 the fact that Defendant O’Donnell not only signed each response on behalf of the  
15 Company, but also concluded each by stating: “If there are any questions regarding the  
16 responses included herein, please call me at 917-819-6990 or email me at  
[todonnell@audioeye.com](mailto:todonnell@audioeye.com).”

17           133. The responses to the SEC also evinced a high degree of familiarity with  
18 the nonmonetary licensing transactions. They comprised an aggregate of *twenty-six*  
19 single spaced pages of purported explanation about the Company’s accounting therefor.

20           134. Additionally, as alleged above, Defendant O’Donnell resigned from his  
21 position as CFO of the Company as of March 29, 2015 — two days before the  
22 Company issued its April 1, 2015 release announcing the forthcoming restatements.  
23 Notably, that release also disclosed Defendant O’Donnell’s resignation.

24           135. These circumstances raise a compelling inference that Defendant  
25 O’Donnell, the *scienter* of whom as a member of senior management is imputed to the  
26 Company, was directly involved with the accounting for the nonmonetary licensing  
27

1 transactions, had detailed, first-hand knowledge of the facts pertaining to those  
2 transactions, and personally affected the fraudulent booking of revenues. Defendant  
3 O'Donnell's abrupt resignation from the Company is otherwise unexplained. There is  
4 no question that O'Donnell's departure was related to, and prompted by, the  
5 restatements. Furthermore, Defendant O'Donnell undertook the affirmative obligation  
6 to obtain knowledge in order to ensure the Company's disclosures to the market were  
7 truthful by executing SOX certifications, as alleged above in ¶¶69-71, 84, 94.

8       136. This compelling inference of *scienter* on the part of Defendant O'Donnell  
9 is bolstered by the fact that, upon his resignation, the Company clawed back from him  
10 millions of dollars in previously awarded incentive compensation pursuant to his  
11 Employment Agreement with the Company dated August 7, 2013. Under that  
12 agreement, the Company was entitled to claw back any and all incentive compensation  
13 granted to Defendant O'Donnell in the event of any "restatement . . . of any financial  
14 results . . . resulting from material non-compliance of the Company with any financial  
15 reporting requirement under the federal securities laws . . . ."

16       137. Pursuant to such provision, under Defendant O'Donnell's Separation  
17 Agreement with the Company, effective March 28, 2015, the Company compelled  
18 Defendant O'Donnell to surrender back to the Company (i) warrants to purchase  
19 Company stock issued on September 30, 2013; (ii) 150,000 Incentive Stock Options  
20 granted under the Company's 2012 Incentive Compensation Plan issued July 29, 2013;  
21 and (iii) 330,000 Incentive Stock Options granted under the Company's 2014 Incentive  
22 Compensation Plan issued March 24, 2014.

23       138. The Company's clawback of incentive compensation from Defendant  
24 O'Donnell contributes to a compelling inference of *scienter* because it suggests that the  
25 Company sought to penalize Defendant O'Donnell for causing the Company's non-  
26 compliance with the federal securities laws.



1                   **C.     The Timing of the Restatement**

2           139. *Scienter* is also supported by the timing of the restatement —  
3 immediately after SEC demanded backup for the nonmonetary licensing transactions  
4 which Defendants did not have.

5                   **D.     The Company's Small Number of Employees**

6           140. The *scienter* of the Individual Defendants is additionally supported by  
7 the fact that, as disclosed in the Company's Form 10-K annual report for 2013, the  
8 Company had only 18 employees as of March 26, 2014. This raises a strong inference  
9 that the Individual Defendants, who were senior managers of the Company, were  
10 intimately familiar with all material aspects of the Company's operations and financial  
11 reporting. Furthermore, as alleged above in ¶¶131-38, the circumstances suggest that  
12 Defendant O'Donnell, as CFO, personally affected the fraudulent booking of revenues.  
13 Accordingly, this is *not* a case where a fraud occurred at a distant subsidiary or was  
14 committed by lower-level employees who did not report directly to senior management.

15           141. Furthermore, the transactions that generated the phantom revenue  
16 accounted for 92% of the Company's total reported revenues during the first three  
17 quarters of 2014. Additionally, the Individual Defendants held themselves out to the  
18 SEC and the public as having knowledge of the details of those transactions (*see* ¶¶8,  
19 46, 48, 52, 71, 74, 77, 87, 102, 131-38, 140 above).

20           142. The foregoing supports the inference that the Individual Defendants and  
21 other senior executives of AudioEye were aware of the lack of support for the  
22 valuations of the technology and services received in the nonmonetary licensing  
23 transactions.

24                   **E.     Defendants Were Motivated to Continue to Attract Capital from  
25 Accredited and Institutional Investors**

26           143. At all times during the Class Period the Company had meager revenues  
27 and negative net income and profits, and depended on continued access to the capital

1 markets for liquidity. Notably, at the commencement of the Class Period, the Company  
2 reported cash assets of only \$492,718.

3 144. Defendants seized upon the advantage of the Company's inflated stock  
4 price during the Class Period to raise \$4.4 million in proceeds from accredited and  
5 institutional investors in four separate private placements of the Company's securities,  
6 and an additional \$3.7 million in proceeds from holders of warrants on the Company's  
7 stock in two separate warrant exercise offers.

8 145. The private placements consisted of the following transactions:

9 a. On June 30, 2014, the Company sold 2,766,667 units to three  
10 accredited investors for gross proceeds of \$830,000 in a private placement. The units  
11 consisted of 2,766,667 shares of common stock and warrants to purchase an additional  
12 2,766,667 shares of common stock.

13 b. On September 30, 2014, the Company sold 700,000 units to two  
14 accredited investors for gross proceeds of \$350,000 in a private placement. The units  
15 consisted of 700,000 shares of common stock and warrants to purchase an additional  
16 175,000 shares of common stock.

17 c. On December 31, 2014, the Company sold an aggregate of  
18 6,687,500 units to 11 accredited investors for gross proceeds of \$2,675,000 in a  
19 private placement. The units consisted of 6,687,500 shares of common stock and  
20 warrants to purchase an additional 2,507,812 shares of common stock.

21 d. On January 15, 2015, the Company sold an additional 812,500  
22 units under the December 2014 private placement to one institutional investor for  
23 gross proceeds of \$325,000. Each unit consisted of one share of the Company's  
24 common stock and warrants to purchase  $\frac{1}{4}$  of a share for every common share  
25 purchased.

26 146. The warrant exchange offers consisted of the following:  
27

1           a.       On July 2014, the Company offered holders of a series of warrants  
2       the opportunity to exercise their warrants for a 10% discount to the stated exercise  
3       price in exchange for their agreement to exercise their warrants in full and for cash on  
4       or before July 31, 2014. Under the warrant exercise offer, in July 2014 the Company  
5       issued 10,027,002 shares of common stock pursuant to exercise of warrants for gross  
6       proceeds of \$3,632,801.

7           b.       In December 2014, the Company offered holders of a series of  
8       warrants the opportunity to exercise their warrants for a 10% discount to the stated  
9       exercise price in exchange for their agreement to exercise their warrants in full and for  
10      cash on or before December 31, 2014. Under the warrant exercise offer, in December  
11      2014 the Company issued 331,804 shares of common stock pursuant to exercise of  
12      warrants for gross proceeds of \$119,449.

13           147. Without the capital raised by these transactions, the Company would have  
14      faced severe liquidity issues during the Class Period. Furthermore, without the artificial  
15      inflation of the Company's stock, the Company would have been unable to attract such  
16      capital investment. For example, the warrant exchange offers only made sense to the  
17      holders of the warrants because the Company's stock price was significantly higher  
18      than those warrants' strike prices.

19           148. Defendants were motivated artificially to inflate the value of AudioEye  
20      stock during the Class Period in order to consummate these private placements and  
21      warrant exchange offers, thereby raising much-needed capital for the Company.

22      **VIII. PLAINTIFFS' CLASS ACTION ALLEGATIONS**

23           149. Plaintiffs bring this action as a class action pursuant to Federal Rule of  
24      Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all those who  
25      acquired the publicly traded common stock of AudioEye during the period from May  
26      14, 2014 through April 1, 2015, and who were damaged thereby. Excluded from the  
27

1 Class are Defendants, the officers and directors of the Company, at all relevant times,  
2 members of their immediate families and their legal representatives, heirs, successors,  
3 or assigns, and any entity in which Defendants have or had a controlling interest.

4 150. Because AudioEye has tens of millions of shares of stock outstanding and  
5 because the Company's shares were actively traded on the OTC, members of the Class  
6 are so numerous that joinder of all members is impracticable. According to AudioEye's  
7 SEC filings, as of the close of the Class Period, AudioEye had approximately 55.5  
8 million shares outstanding. While the exact number of Class members can only be  
9 determined by appropriate discovery, Plaintiffs believe that Class members number at  
10 least in the thousands and that they are geographically dispersed.

11 151. Plaintiffs' claims are typical of the claims of the members of the Class  
12 because Plaintiffs and all of the Class members sustained damages arising out of  
13 Defendants' wrongful conduct complained of herein.

14 152. Plaintiffs will fairly and adequately protect the interests of the Class  
15 members and have retained counsel experienced and competent in class actions and  
16 securities litigation. Plaintiffs have no interests that are contrary to, or in conflict with,  
17 the members of the Class they seek to represent.

18 153. A class action is superior to all other available methods for the fair and  
19 efficient adjudication of this controversy since joinder of all members is impracticable.

20 154. Furthermore, as the damages suffered by individual members of the Class  
21 may be relatively small, the expense and burden of individual litigation make it  
22 impossible for the members of the Class to individually redress the wrongs done to  
23 them. There will be no difficulty in the management of this action as a class action.

24 155. Questions of law and fact common to the members of the Class  
25 predominate over any questions that may affect only individual members in that  
26

1 Defendants have acted on grounds generally applicable to the entire Class. Among the  
2 questions of law and fact common to the Class are:

3 a. whether Defendants violated the federal securities laws as alleged  
4 herein;

5 b. whether Defendants' publicly disseminated SEC filings, press  
6 releases and statements during the Class Period omitted and/or misrepresented  
7 material facts;

8 c. whether Defendants failed to convey material facts or to correct  
9 material facts previously disseminated;

10 d. whether Defendants participated in and pursued the fraudulent  
11 scheme or course of business complained of herein;

12 e. whether Defendants acted willfully, with knowledge or severe  
13 recklessness, in omitting and/or misrepresenting material facts;

14 f. whether the market prices of AudioEye's securities during the  
15 Class Period were artificially inflated due to the material nondisclosures and/or  
16 misrepresentations complained of herein; and,

17 g. whether the members of the Class have sustained damages as a  
18 result of the decline in value of AudioEye's stock when the truth was revealed and the  
19 artificial inflation came out, and, if so, what is the appropriate measure of damages.

20  
21 **COUNT I**

22 **FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT**  
23 **AND RULE 10b-5 PROMULGATED THEREUNDER**  
**AGAINST ALL DEFENDANTS**

24 156. Plaintiffs repeat and reallege the allegations set forth above as though  
25 fully set forth herein. This claim is asserted against all Defendants.

1           157. During the Class Period, AudioEye, the Individual Defendants, and each  
2 of them, carried out a plan, scheme and course of conduct which was intended to and,  
3 throughout the Class Period, did: (i) deceive the investing public, Plaintiffs, and the  
4 other Class members, as alleged herein; (ii) artificially inflate and maintain the market  
5 price of AudioEye's publicly traded securities; and (iii) cause Plaintiffs and the other  
6 members of the Class to purchase AudioEye's publicly traded securities at artificially  
7 inflated prices. In furtherance of this unlawful scheme, plan, and course of conduct,  
8 AudioEye and the Individual Defendants, and each of them, took the actions set forth  
9 herein.

10           158. Defendants: (i) employed devices, schemes, and artifices to defraud; (ii)  
11 made untrue statements of material fact and/or omitted to state material facts necessary  
12 to make the statements not misleading; and (iii) engaged in acts, practices, and a course  
13 of business which operated as a fraud and deceit upon the purchasers of the Company's  
14 securities in an effort to maintain artificially high market prices for Company's  
15 securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. These  
16 Defendants are sued as primary participants in the wrongful and illegal conduct charged  
17 herein. The Individual Defendants are also sued as controlling persons of AudioEye, as  
18 alleged below.

19           159. In addition to the duties of full disclosure imposed on Defendants as a  
20 result of their making affirmative statements and reports, or participating in the making  
21 of affirmative statements and reports to the investing public, they each had a duty to  
22 promptly disseminate truthful information that would be material to investors in  
23 compliance with the integrated disclosure provisions of the SEC as embodied in SEC  
24 Regulation S-X (17 C.F.R. §210.01, *et seq.*) and S-K (17 C.F.R. §229.10, *et seq.*) and  
25 other SEC regulations, including accurate and truthful information with respect to the  
26 Company's operations, sales, financial condition, and operational performance so that  
27

1 the market prices of the Company's publicly traded securities would be based on  
2 truthful, complete, and accurate information.

3 160. AudioEye and the Individual Defendants, individually and in concert,  
4 directly and indirectly, by the use, means, or instrumentalities of interstate commerce  
5 and/or of the mails, engaged and participated in a continuous course of conduct to  
6 conceal adverse material information about AudioEye's operations and the Company's  
7 growth prospects, as specified herein.

8 161. These Defendants each employed devices, schemes, and artifices to  
9 defraud, while in possession of material adverse non-public information and engaged in  
10 acts, practices, and a course of conduct as alleged herein in an effort to assure investors  
11 of AudioEye's value, performance and continued substantial sales and financial growth,  
12 which included the making of, or the participation in the making of, untrue statements  
13 of material facts about the noncash licensing transactions and omitting to state material  
14 facts necessary in order to make the statements made about the noncash licensing  
15 transactions not misleading in light of the circumstances under which they were made,  
16 as set forth more particularly herein, and engaged in transactions, practices, and a  
17 course of business which operated as a fraud and deceit upon the purchasers of  
18 AudioEye's securities during the Class Period.

19 162. The Individual Defendants' primary liability and controlling person  
20 liability arise from the following facts, among others: (i) the Individual Defendants  
21 were high-level executives at the Company during the Class Period; (ii) the Individual  
22 Defendants, by virtue of their responsibilities and activities as senior executive officers,  
23 were privy to, and participated in, the creation, development, and reporting of the  
24 Company's sales, marketing, projections, and/or reports; (iii) the Individual Defendants  
25 enjoyed significant personal contact and familiarity with, were advised of, and had  
26 access to other members of the Company's management team, internal reports, and  
27

1 other data and information about the noncash licensing transactions at all relevant  
2 times; and (iv) the Individual Defendants were aware of the Company's dissemination  
3 of information to the investing public which they knew or recklessly disregarded was  
4 materially false and misleading.

5 163. Each of the Defendants had actual knowledge of the misrepresentations  
6 and omissions of material facts set forth herein, or acted with severely reckless  
7 disregard for the truth, in that each failed to ascertain and disclose such facts, even  
8 though such facts were available to each of them. Such Defendants' material  
9 misrepresentations and/or omissions were done knowingly or with deliberate  
10 recklessness and for the purpose and effect of concealing information regarding  
11 AudioEye from the investing public and supporting the artificially inflated price of its  
12 securities. As demonstrated by the Individual Defendants' misstatements and  
13 omissions throughout the Class Period regarding the noncash licensing transactions, the  
14 Individual Defendants, if they did not have actual knowledge of the misrepresentations  
15 and omissions alleged, were reckless in failing to obtain such knowledge by  
16 deliberately refraining from taking those steps necessary to discover whether those  
17 statements were false or misleading.

18 164. As a result of the dissemination of the materially false and misleading  
19 information and failure to disclose material facts, as set forth above, the market prices  
20 of AudioEye's securities were artificially inflated during the Class Period. In ignorance  
21 of the fact that market prices of AudioEye's publicly traded securities were artificially  
22 inflated, and relying directly or indirectly on the false and misleading statements made  
23 by Defendants, or upon the integrity of the market in which the securities trade, and/or  
24 on the absence of material adverse information that was known to, or disregarded with  
25 deliberate recklessness by, Defendants but not disclosed in public statements by  
26 Defendants during the Class Period, Plaintiffs and the other members of the Class  
27



1 acquired AudioEye's securities during the Class Period at artificially high prices and  
2 were damaged thereby, as evidenced by, among others, the stock price declines above.

3 165. At the time of said misrepresentations and omissions, Plaintiffs and the  
4 other members of the Class were ignorant of their falsity and believed them to be true.  
5 Had Plaintiffs and the other members of the Class and the marketplace known of  
6 AudioEye's fraudulent practices, the true nature of the noncash licensing transactions,  
7 or AudioEye's true intrinsic value, which were not disclosed by Defendants, Plaintiffs  
8 and the other members of the Class would not have purchased or otherwise acquired  
9 their AudioEye publicly traded securities during the Class Period; or, if they had  
10 acquired such securities during the Class Period, they would not have done so at the  
11 artificially inflated prices which they paid.

12 166. By virtue of the foregoing, AudioEye and the Individual Defendants have  
13 each violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated  
14 thereunder.

15 167. As a direct and proximate result of Defendants' wrongful conduct,  
16 Plaintiffs and the other members of the Class suffered damages in connection with their  
17 respective purchases and sales of the Company's securities during the Class Period, as  
18 evidenced by, among others, the stock price declines discussed above, when the  
19 artificial inflation was released from AudioEye's stock.

20  
21 **COUNT II**

22 **FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT**  
23 **AGAINST THE INDIVIDUAL DEFENDANTS**

24 168. Plaintiffs repeat and reallege the allegations set forth above as though  
25 fully set forth herein. This claim is asserted against the Individual Defendants.

26 169. The Individual Defendants acted as controlling persons of AudioEye  
27 within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue

1 of their high level positions with the Company, participation in, and/or awareness of,  
2 the Company's operations, and/or intimate knowledge of the Company's fraudulent  
3 practices and the Company's actual results and future prospects, the Individual  
4 Defendants had the power to influence and control, and did influence and control,  
5 directly or indirectly, the decision making of the Company, including the content and  
6 dissemination of the various statements which Plaintiffs contend are false and  
7 misleading. The Individual Defendants were provided with, or had unlimited access to,  
8 copies of the Company's reports, press releases, public filings, and other statements  
9 alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were  
10 issued and had the ability to prevent the issuance of the statements or cause the  
11 statements to be corrected.

12 170. In addition, the Individual Defendants had direct involvement in the day-  
13 to-day operations of the Company and, therefore, are presumed to have had the power  
14 to control or influence the particular transactions giving rise to the securities violations  
15 as alleged herein and exercised the same.

16 171. As set forth above, AudioEye and the Individual Defendants each violated  
17 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.  
18 By virtue of their controlling positions, the Individual Defendants are liable pursuant to  
19 Section 20(a) of the Exchange Act. As a direct and proximate result of the Individual  
20 Defendants' wrongful conduct, Plaintiffs and other members of the Class suffered  
21 damages in connection with their purchases of the Company's securities during the  
22 Class Period, as evidenced by, among others, the stock price declines discussed above,  
23 when the artificial inflation was released from AudioEye's stock.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray  
26 for relief and judgment, as follows:

1 A. Declaring that this action is a proper class action and certifying Plaintiffs  
2 as class representatives pursuant to Rule 23 of the Federal Rules of Civil Procedure and  
3 Plaintiffs' counsel as Class Counsel for the proposed Class;

4 B. Awarding compensatory damages in favor of Plaintiffs and the other  
5 Class members against all Defendants, jointly and severally, for all damages sustained  
6 as a result of Defendants' wrongdoing, in an amount to be proven at trial, including  
7 interest thereon;

8 C. Awarding Plaintiffs and the Class their reasonable costs and expenses  
9 incurred in this action, including attorneys' fees and expert fees; and

10 D. Such other and further relief as the Court deems appropriate.

11 **JURY TRIAL DEMANDED**

12 Plaintiffs hereby demand a trial by jury.

13 Dated: November 30, 2015

14 Respectfully submitted,

15 KIRBY McINERNEY LLP

16 By: /s/ Mark A. Strauss  
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26 *Liaison Counsel for Lead Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 30 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 30, 2015.

By: /s/ Mark A. Strauss  
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