

Count One of the Complaint, be and hereby is **DISMISSED WITHOUT PREJUDICE** insofar as it is predicated upon affirmative misrepresentations in violation of Rule 10b-5(b) and insofar as it is predicated upon violations of Rule 10b-5(a) and/or (c); and it is further

ORDERED that the claim for negligent misrepresentation, pled in Count Five of the Complaint, be and hereby is **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED that Defendant's motion to dismiss be and hereby is **DENIED** as to all other claims asserted in the Complaint.

s/Stanley R. Chesler
STANLEY R. CHESLER
United States District Judge