

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK KUSNIER, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

v.

AFFIRM HOLDINGS, INC., MAX LEVCHIN,
and MICHAEL LINFORD,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

Plaintiff Mark Kusnier (“Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States (“U.S.”) Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Affirm Holdings, Inc. (“Affirm” or the “Company”), analysts’ reports and advisories about the Company, and information readily

1 obtainable on the Internet. Plaintiff believes that substantial, additional evidentiary support will exist
2 for the allegations set forth herein after a reasonable opportunity for discovery.

3 **NATURE OF THE ACTION**

4 1. This is a federal securities class action on behalf of a class consisting of all persons and
5 entities other than Defendants that purchased or otherwise acquired Affirm securities between February
6 12, 2021 and December 15, 2021, both dates inclusive (the “Class Period”), seeking to recover damages
7 caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections
8 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5
9 promulgated thereunder, against the Company and certain of its top officials.
10

11 2. Affirm operates a platform for digital and mobile-first commerce in the U.S. and Canada.
12 The Company’s platform includes point-of-sale payment solutions for consumers, merchant commerce
13 solutions, and a consumer-focused app. Particularly, Affirm offers a payment service known as “buy-
14 now, pay-later” (“BNPL”), which allows consumers to purchase a product immediately and pay for it at
15 a later time, usually over a series of installments. According to the Company, “[u]nlike legacy payment
16 options and our competitors’ product offerings, which charge deferred or compounding interest and
17 unexpected costs, we disclose up-front to consumers exactly what they will owe — no hidden fees, no
18 penalties.”
19

20 3. Throughout the Class Period, Defendants made materially false and misleading
21 statements regarding the Company’s business, operations, and compliance policies. Specifically,
22 Defendants made false and/or misleading statements and/or failed to disclose that: (i) Affirm’s BNPL
23 service facilitated excessive consumer debt, regulatory arbitrage, and data harvesting; (ii) the foregoing
24 subjected Affirm to a heightened risk of regulatory scrutiny and enforcement action; and (iii) as a result,
25 the Company’s public statements were materially false and misleading at all relevant times.
26
27
28

1 positive representations being made were then materially false and misleading. The Individual
2 Defendants are liable for the false statements and omissions pleaded herein.

3 **SUBSTANTIVE ALLEGATIONS**

4 **Background**

5 17. Affirm operates a platform for digital and mobile-first commerce in the U.S. and Canada.
6 The Company’s platform includes point-of-sale payment solutions for consumers, merchant commerce
7 solutions, and a consumer-focused app. Particularly, Affirm offers a BNPL payment service, which
8 allows consumers to purchase a product immediately and pay for it at a later time, usually over a series
9 of installments. According to the Company, “[u]nlike legacy payment options and our competitors’
10 product offerings, which charge deferred or compounding interest and unexpected costs, we disclose
11 up-front to consumers exactly what they will owe — no hidden fees, no penalties.”
12

13 **Materially False and Misleading Statements Issued During the Class Period**

14 18. The Class Period begins on February 12, 2021, the day after Affirm issued a post-market
15 press release announcing the Company’s fiscal year 2021 second quarter results. That press release
16 quoted Defendant Levchin, who stated, in relevant part, that Affirm’s “mission has been to build honest
17 financial products that improve lives”; that “[w]e’ve aligned our success with the success of both sides
18 of the commerce ecosystem, winning when our consumers . . . win”; and that “we remain committed to
19 empowering consumers to take control of their finances[.]”
20

21 19. On February 17, 2021, Affirm filed a quarterly report on Form 10-Q with the SEC,
22 reporting the Company’s financial and operational results for the quarter ended December 31, 2020 (the
23 “2Q21 10-Q”). That filing represented, in relevant part:
24

25 Affirm . . . provides consumers with a simpler, more transparent, and flexible alternative
26 to traditional payment options. Our mission is to deliver honest financial products that
27 improve lives Affirm enables consumers to confidently pay for a purchase over time
28

1 Consumers get the flexibility to buy now and make simple monthly payments for their
2 purchases and merchants see . . . an overall more satisfied customer base. Unlike legacy
3 payment options and our competitors’ product offerings, which charge deferred or
4 compounding interest and unexpected costs, we disclose up-front to consumers exactly
5 what they will owe — no hidden fees, no penalties.

6 20. The 2Q21 10-Q also stated that Affirm “ha[d] developed policies and procedures
7 designed to assist in compliance with [various federal and state consumer protection] laws and
8 regulations[.]”

9 21. Appended as exhibits to the 2Q21 10-Q were signed certifications pursuant to the
10 Sarbanes-Oxley Act of 2002 (“SOX”), wherein the Individual Defendants certified that the 2Q21 10-Q
11 “fully complies with the requirements of Section 13(a) or 15(d) of the [Exchange Act] and that
12 information contained in th[e 2Q21 10-Q] fairly presents, in all material respects, the financial condition
13 and results of operations of the issuer.”

14 22. On May 10, 2021, Affirm issued a press release announcing the Company’s fiscal year
15 2021 third quarter results. That press release quoted Defendant Levchin, who represented, in relevant
16 part, that “Affirm’s strong third quarter results reflect continued progress toward building the most . . .
17 transparent financial network for consumers and merchants[.]”

18 23. On May 17, 2021, Affirm filed a quarterly report on Form 10-Q with the SEC, reporting
19 the Company’s financial and operational results for the quarter ended March 31, 2021 (the “3Q21 10-
20 Q”). That filing contained substantively the same statements as referenced in ¶¶ 19-20, *supra*, regarding
21 Affirm’s purportedly transparent, simple, and trustworthy payment solutions for consumers, and policies
22 and procedures designed to assist in compliance with various federal and state consumer protection laws
23 and regulations.

24 24. Appended as exhibits to the 3Q21 10-Q were substantively the same SOX certifications
25 as referenced in ¶ 21, *supra*, signed by the Individual Defendants.
26
27
28

1 25. On September 9, 2021, Affirm issued a press release announcing its fourth quarter and
2 fiscal year 2021 results. That press release quoted Defendant Levchin, who represented, in relevant
3 part:

4 The secular shift toward flexible and transparent financial products continues to accelerate.
5 With our superior technology, Affirm is strongly positioned to build a more valuable two-
6 sided network for consumers and merchants. We remain focused on extending our
7 leadership position with our core products, while capitalizing on our vast opportunities to
empower more people with the new ones we continue to launch.

8 26. On September 17, 2021, Affirm filed an annual report on Form 10-K with the SEC,
9 reporting the Company’s financial and operational results for the quarter and fiscal year ended June 30,
10 2021 (the “2021 10-K”). That filing contained substantively the same statements as referenced in ¶¶
11 19-20, *supra*, regarding Affirm’s purportedly transparent, simple, and trustworthy payment solutions for
12 consumers, and policies and procedures designed to assist in compliance with various federal and state
13 consumer protection laws and regulations.

14 27. Appended as exhibits to the 2021 10-K were substantively the same SOX certifications
15 as referenced in ¶ 21, *supra*, signed by the Individual Defendants.

16 28. On November 10, 2021, Affirm issued a press release announcing the Company’s fiscal
17 year 2022 first quarter results. That press release quoted Defendant Levchin, who represented, in
18 relevant part, that “[o]ur strong quarter once again demonstrates the continued momentum across Affirm
19 as more people embrace the transparency, flexibility and value our solutions provide[.]”
20

21 29. The same November 10, 2021 press release also highlighted an expanded relationship
22 with Amazon, whereby “[c]onsumers will have the option to split the total cost of eligible purchases
23 into monthly payments at checkout with no late or hidden fees, ever[.]” and that, “[a]s part of an amended
24 agreement, Affirm will serve as Amazon’s only third party, non credit card, [BNPL] option in the U.S.”
25
26
27
28

1 Buy now, pay later credit is a type of deferred payment option that generally allows the
2 consumer to split a purchase into smaller installments, typically four or less, often with a
3 down payment of 25 percent due at checkout. The application process is quick, involving
4 relatively little information from the consumer, and the product often comes with no
interest. Lenders have touted BNPL as a safer alternative to credit card debt, along with its
ability to serve consumers with scant or subprime credit histories.

5 * * *

6 The law requires that the CFPB monitor consumer financial markets and enables the
7 agency to require market players to submit information to inform this monitoring. The
8 CFPB expects to publish aggregated findings on insights learned from this inquiry. Today's
9 orders seek to illuminate the range of these consumer credit products and their underlying
business practices. Specifically, the Bureau is concerned about:

- 10 • **Accumulating debt:** Whereas the old-style layaway installment loans were typically
11 used for the occasional big purchase, people can quickly become regular users of BNPL
12 for everyday discretionary buying, especially if they download the easy-to-use apps or
13 install the web browser plugins. If a consumer has multiple purchases on multiple
14 schedules with multiple companies, it may be hard to keep track of when payments are
scheduled. And when there is not enough money in a consumer's bank account, this
15 can potentially result in charges by both the consumer's bank and the BNPL provider.
Because of the ease of getting these loans, consumers can end up spending more than
16 anticipated.
- 17 • **Regulatory arbitrage:** Some BNPL companies may not be adequately evaluating what
18 consumer protection laws apply to their products. For example, some BNPL products
19 do not provide certain disclosures, which could be required by some laws. And while
the BNPL application may look similar to a standard checkout with a credit card,
20 protections that apply to credit cards may not apply to BNPL products. Many BNPL
companies do not provide dispute resolution protections available to users of other
21 forms of credit, like credit cards. And finally, depending on what rules the lender is
following, different late fees and policies apply.
- 22 • **Data harvesting:** BNPL lenders have access to the valuable payment histories of their
23 customers. Some have used this collected data to create closed loop shopping apps with
24 partner merchants, pushing specific brands and products, often geared toward younger
audiences. As competitive forces pressure the merchant discount, lenders will need to
25 find other sources of revenue to maintain growth and profitability. The Bureau would
like to better understand practices around data collection, behavioral targeting, data
26 monetization and the risks they may create for consumers.

27 The BNPL product has seen growth internationally and many other countries are also
28 taking a close examination of its providers. As part of today's inquiry, the Bureau is
working with its international partners in Australia, Sweden, Germany and the UK,

1 specifically the Financial Conduct Authority. The Bureau will also be coordinating with
2 the rest of the Federal Reserve System, as well as its state partners.

3 (Emphases in original.)

4 34. On this news, Affirm’s stock price fell \$11.74 per share, or 10.58%, to close at \$99.24
5 per share on December 16, 2021.

6 35. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in
7 the market value of the Company’s securities, Plaintiff and other Class members have suffered
8 significant losses and damages.

9
10 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

11 36. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure
12 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Affirm
13 securities during the Class Period (the “Class”); and were damaged upon the revelation of the alleged
14 corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the
15 Company, at all relevant times, members of their immediate families and their legal representatives,
16 heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

17
18 37. The members of the Class are so numerous that joinder of all members is impracticable.
19 Throughout the Class Period, Affirm securities were actively traded on the NASDAQ. While the exact
20 number of Class members is unknown to Plaintiff at this time and can be ascertained only through
21 appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the
22 proposed Class. Record owners and other members of the Class may be identified from records
23 maintained by Affirm or its transfer agent and may be notified of the pendency of this action by mail,
24 using the form of notice similar to that customarily used in securities class actions.
25
26
27
28

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

4 39. Plaintiff will fairly and adequately protect the interests of the members of the Class and
5 has retained counsel competent and experienced in class and securities litigation. Plaintiff has no
6 interests antagonistic to or in conflict with those of the Class.

7 40. Common questions of law and fact exist as to all members of the Class and predominate
8 over any questions solely affecting individual members of the Class. Among the questions of law and
9 fact common to the Class are:
10

- 11 • whether the federal securities laws were violated by Defendants' acts as alleged herein;
- 12 • whether statements made by Defendants to the investing public during the Class Period
- 13 misrepresented material facts about the business, operations and management of
- 14 Affirm;
- 15 • whether the Individual Defendants caused Affirm to issue false and misleading
- 16 financial statements during the Class Period;
- 17 • whether Defendants acted knowingly or recklessly in issuing false and misleading
- 18 financial statements;
- 19 • whether the prices of Affirm securities during the Class Period were artificially inflated
- 20 because of the Defendants' conduct complained of herein; and
- 21 • whether the members of the Class have sustained damages and, if so, what is the proper
- 22 measure of damages.

23 41. A class action is superior to all other available methods for the fair and efficient
24 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
25 damages suffered by individual Class members may be relatively small, the expense and burden of
26 individual litigation make it impossible for members of the Class to individually redress the wrongs
27 done to them. There will be no difficulty in the management of this action as a class action.
28

1 42. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-
2 the-market doctrine in that:

- 3 • Defendants made public misrepresentations or failed to disclose material facts during
4 the Class Period;
- 5 • the omissions and misrepresentations were material;
- 6 • Affirm securities are traded in an efficient market;
- 7 • the Company's shares were liquid and traded with moderate to heavy volume during
8 the Class Period;
- 9 • the Company traded on the NASDAQ and was covered by multiple analysts;
- 10 • the misrepresentations and omissions alleged would tend to induce a reasonable
11 investor to misjudge the value of the Company's securities; and
- 12 • Plaintiff and members of the Class purchased, acquired and/or sold Affirm securities
13 between the time the Defendants failed to disclose or misrepresented material facts and
14 the time the true facts were disclosed, without knowledge of the omitted or
15 misrepresented facts.

16 43. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
17 presumption of reliance upon the integrity of the market.

18 44. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of
19 reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*,
20 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period
21 statements in violation of a duty to disclose such information, as detailed above.

22 **COUNT I**

23 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder
24 Against All Defendants)**

25 45. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set
26 forth herein.

1 46. This Count is asserted against Defendants and is based upon Section 10(b) of the
2 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

3 47. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course
4 of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and
5 courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the
6 Class; made various untrue statements of material facts and omitted to state material facts necessary in
7 order to make the statements made, in light of the circumstances under which they were made, not
8 misleading; and employed devices, schemes and artifices to defraud in connection with the purchase
9 and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive
10 the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially
11 inflate and maintain the market price of Affirm securities; and (iii) cause Plaintiff and other members of
12 the Class to purchase or otherwise acquire Affirm securities and options at artificially inflated prices.
13 In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took
14 the actions set forth herein.
15

16 48. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the
17 Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and
18 annual reports, SEC filings, press releases and other statements and documents described above,
19 including statements made to securities analysts and the media that were designed to influence the
20 market for Affirm securities. Such reports, filings, releases and statements were materially false and
21 misleading in that they failed to disclose material adverse information and misrepresented the truth about
22 Affirm's finances and business prospects.
23

24 49. By virtue of their positions at Affirm, Defendants had actual knowledge of the
25 materially false and misleading statements and material omissions alleged herein and intended thereby
26
27
28

1 to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with
2 reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would
3 reveal the materially false and misleading nature of the statements made, although such facts were
4 readily available to Defendants. Said acts and omissions of Defendants were committed willfully or
5 with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that
6 material facts were being misrepresented or omitted as described above.
7

8 50. Information showing that Defendants acted knowingly or with reckless disregard for the
9 truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors
10 of Affirm, the Individual Defendants had knowledge of the details of Affirm's internal affairs.

11 51. The Individual Defendants are liable both directly and indirectly for the wrongs
12 complained of herein. Because of their positions of control and authority, the Individual Defendants
13 were able to and did, directly or indirectly, control the content of the statements of Affirm. As officers
14 and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely,
15 accurate, and truthful information with respect to Affirm's businesses, operations, future financial
16 condition and future prospects. As a result of the dissemination of the aforementioned false and
17 misleading reports, releases and public statements, the market price of Affirm securities was artificially
18 inflated throughout the Class Period. In ignorance of the adverse facts concerning Affirm's business
19 and financial condition which were concealed by Defendants, Plaintiff and the other members of the
20 Class purchased or otherwise acquired Affirm securities at artificially inflated prices and relied upon the
21 price of the securities, the integrity of the market for the securities and/or upon statements disseminated
22 by Defendants, and were damaged thereby.
23
24

25 52. During the Class Period, Affirm securities were traded on an active and efficient market.
26 Plaintiff and the other members of the Class, relying on the materially false and misleading statements
27
28

1 described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the
2 integrity of the market, purchased or otherwise acquired shares of Affirm securities at prices artificially
3 inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the
4 truth, they would not have purchased or otherwise acquired said securities, or would not have purchased
5 or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or
6 acquisitions by Plaintiff and the Class, the true value of Affirm securities was substantially lower than
7 the prices paid by Plaintiff and the other members of the Class. The market price of Affirm securities
8 declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class
9 members.
10

11 53. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or
12 indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.
13

14 54. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other
15 members of the Class suffered damages in connection with their respective purchases, acquisitions and
16 sales of the Company's securities during the Class Period, upon the disclosure that the Company had
17 been disseminating misrepresented financial statements to the investing public.
18

19 **COUNT II**

20 **(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)**

21 55. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
22 paragraphs as if fully set forth herein.

23 56. During the Class Period, the Individual Defendants participated in the operation and
24 management of Affirm, and conducted and participated, directly and indirectly, in the conduct of
25 Affirm's business affairs. Because of their senior positions, they knew the adverse non-public
26 information about Affirm's misstatement of income and expenses and false financial statements.
27
28

