

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

PLAINTIFF, Individually and on
Behalf of all Others Similarly Situated,

Plaintiff,

v.

PARAGON 28, INC., ALBERT DACOSTA,
STEPHEN M. DEITSCH, and KRISTINA
WRIGHT,

Defendants.

**PLAINTIFF'S CLASS ACTION COMPLAINT
FOR VIOLATION OF THE FEDERAL SECURITIES LAWS**

Plaintiff, individually and on behalf of all other persons similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants (defined below), 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, among other things, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants' public documents, public filings, wire and press releases published by and regarding Paragon 28, Inc. ("Paragon 28" or the "Company"), and information readily obtainable

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

NATURE OF THE ACTION

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired Paragon 28 common stock between May 5, 2023 and August 8, 2024, both dates inclusive (the "Class Period") and those who purchased Paragon 28 call options or sold put options during the Class Period. Plaintiff seeks to recover compensable damages caused by Defendant's violations of the federal securities laws under the Securities Exchange Act of 1934 (the "Exchange Act")

JURISDICTION AND VENUE

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

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

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district.

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

PARTIES

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased Paragon 28 securities during the Class Period and was economically damaged thereby.

7. Defendant Paragon 28 states that it "develops, distributes, and sells medical devices in the foot and ankle segment of the orthopedic implant marketplace."

8. Paragon 28 is incorporated in Delaware and its head office is located at 14445 Grasslands Drive, Englewood, Colorado 80112. Paragon 28's common stock trades on the New York Stock Exchange (the "NYSE") under the ticker symbol "FNA."

9. Defendant Albert DaCosta ("DaCosta") served as the Company's Chief Executive Officer ("CEO") throughout the Class Period.

10. Defendant Stephen M. Deitsch ("Deitsch") served as the Company's Chief Financial Officer ("CFO") from the beginning of the Class Period until April 5, 2024.

11. Defendant Kristina Wright ("Wright") served as the Company's interim CFO from April 3, 2024 through August 5, 2024.

12. Defendants DaCosta, Deitsch, and Wright are collectively referred to herein as the "Individual Defendants."

13. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;

- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or
- (g) approved or ratified these statements in violation of the federal securities laws.

14. Paragon 28 is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

15. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

16. Paragon 28 and the Individual Defendants are collectively referred to herein as "Defendants."

**SUBSTANTIVE ALLEGATIONS Materially
False and Misleading Statements
Issued During the Class Period**

17. On May 4, 2023, after market hours, the Company filed with the SEC its Quarterly Report on Form 10-Q for the period ended March 31, 2023 (the "1Q23 Report").

Attached to the 1Q23 Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") signed by Defendants DaCosta and Deitsch attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

18. The 1Q23 Report contained the following statement about the Company's internal controls:

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, **our disclosure controls and procedures were effective at the reasonable assurance level.**

(Emphasis added).

19. The statement in ¶ 18 was materially false and misleading at the time it was made because the Company lacked effective controls.

20. The 1Q23 Report contained the following tables listing the Company's financials:

Item 1. Financial Statements.

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)
(unaudited)

	<u>March 31, 2023</u>	<u>December 31, 2022</u>
<u>ASSETS</u>		
Current assets:		
Cash	\$ 85,883	\$ 38,468
Trade receivables	37,262	37,687
Inventories, net	69,174	60,948
Income taxes receivable	596	615
Other current assets	4,167	4,658
Total current assets	<u>197,082</u>	<u>142,376</u>
Property and equipment, net	66,810	61,938
Intangible assets, net	22,137	22,387
Goodwill	25,465	25,465
Deferred income taxes	354	148
Other assets	1,697	1,795
Total assets	<u>\$ 313,545</u>	<u>\$ 254,109</u>
<u>LIABILITIES & STOCKHOLDERS' EQUITY</u>		
Current liabilities:		
Accounts payable	\$ 20,538	\$ 14,939
Accrued expenses	25,446	26,807
Accrued legal settlement	13,000	22,000
Other current liabilities	3,772	3,844
Current maturities of long-term debt	690	728
Income taxes payable	208	184
Total current liabilities	<u>63,654</u>	<u>68,502</u>
Long-term liabilities:		
Long-term debt net, less current maturities	42,204	42,182
Other long-term liabilities	1,523	1,628
Deferred income taxes	377	342
Income taxes payable	635	527
Total liabilities	<u>108,393</u>	<u>113,181</u>

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND
COMPREHENSIVE LOSS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended March 31,	
	2023	2022
Net revenue	\$ 52,036	\$ 41,371
Cost of goods sold	8,906	6,791
Gross profit	43,130	34,580
Operating expenses:		
Research and development costs	7,049	5,773
Selling, general, and administrative	43,820	37,242
Total operating expenses	50,869	43,015
Operating loss	(7,739)	(8,435)
Other expense:		
Other expense	(179)	(101)
Interest expense, net	(1,205)	(668)
Total other expense	(1,384)	(769)
Loss before income taxes	(9,123)	(9,204)
Income tax (benefit) expense	(71)	32
Net loss	\$ (9,052)	\$ (9,236)
Foreign currency translation adjustment	(99)	(324)
Comprehensive loss	\$ (9,151)	\$ (9,560)
Weighted average number of shares of common stock outstanding:		
Basic	80,681,715	76,447,454
Diluted	80,681,715	76,447,454
Net loss per share attributable to common stockholders:		
Basic	\$ (0.11)	(0.12)
Diluted	\$ (0.11)	(0.12)

The accompanying notes are an integral part of these condensed consolidated financial statements.

21. The figures in ¶ 20 were materially false and misleading at the time they were made because the Company understated its cost of goods sold and overstated its inventories.

22. On August 2, 2023, the Company filed with the SEC its Quarterly Report on Form 10-Q for the period ended June 30, 2023 (the "2Q23 Report"). Attached to the 2Q23 Report were certifications pursuant to SOX signed by Defendants DaCosta and Deitsch attesting to the accuracy of financial reporting, the disclosure of any material changes to

the Company's internal control over financial reporting and the disclosure of all fraud.

23. The 2Q23 Report contained the following statement about the Company's internal controls:

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, **our disclosure controls and procedures were effective at the reasonable assurance level.**

(Emphasis added).

24. The statement in ¶ 23 was materially false and misleading at the time it was made because the Company lacked effective controls.

25. The 2Q23 Report contained the following tables listing the Company's financials:

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)
(unaudited)

	June 30, 2023
<u>ASSETS</u>	
Current assets:	
Cash	\$ 56,747
Trade receivables	34,331
Inventories, net	85,225
Income taxes receivable	870
Other current assets	3,257
Total current assets	180,430
Property and equipment, net	70,936
Intangible assets, net	21,921
Goodwill	25,465
Deferred income taxes	319
Other assets	1,766
Total assets	\$ 300,837
<u>LIABILITIES & STOCKHOLDERS' EQUITY</u>	
Current liabilities:	
Accounts payable	\$ 29,681
Accrued expenses	24,390
Accrued legal settlement	—
Other current liabilities	1,700
Current maturities of long-term debt	652
Income taxes payable	20
Total current liabilities	56,443
Long-term liabilities:	
Long-term debt net, less current maturities	42,259
Other long-term liabilities	1,842
Deferred income taxes	620
Income taxes payable	635
Total liabilities	101,799

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND
COMPREHENSIVE LOSS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net revenue	\$ 51,009	\$ 42,498	\$ 103,045	\$ 83,869
Cost of goods sold	8,858	7,638	17,764	14,429
Gross profit	<u>42,151</u>	<u>34,860</u>	<u>85,281</u>	<u>69,440</u>
Operating expenses:				
Research and development costs	7,683	5,990	14,732	11,763
Selling, general, and administrative	43,827	37,948	87,647	75,190
Total operating expenses	<u>51,510</u>	<u>43,938</u>	<u>102,379</u>	<u>86,953</u>
Operating loss	<u>(9,359)</u>	<u>(9,078)</u>	<u>(17,098)</u>	<u>(17,513)</u>
Other (expense) income :				
Other (expense) income	(467)	652	(646)	551
Interest expense, net	(803)	(1,104)	(2,008)	(1,772)
Total other expense, net	<u>(1,270)</u>	<u>(452)</u>	<u>(2,654)</u>	<u>(1,221)</u>
Loss before income taxes	<u>(10,629)</u>	<u>(9,530)</u>	<u>(19,752)</u>	<u>(18,734)</u>
Income tax expense	269	73	198	105
Net loss	<u>\$ (10,898)</u>	<u>\$ (9,603)</u>	<u>\$ (19,950)</u>	<u>\$ (18,839)</u>
Foreign currency translation adjustment	(283)	(593)	(382)	(917)
Comprehensive loss	<u>\$ (11,181)</u>	<u>\$ (10,196)</u>	<u>\$ (20,332)</u>	<u>\$ (19,756)</u>
Weighted average number of shares of common stock outstanding:				
Basic	<u>82,373,441</u>	<u>76,481,709</u>	<u>81,536,607</u>	<u>76,465,082</u>
Diluted	<u>82,373,441</u>	<u>76,481,709</u>	<u>81,536,607</u>	<u>76,465,082</u>
Net loss per share attributable to common stockholders:				
Basic	<u>\$ (0.13)</u>	<u>(0.13)</u>	<u>\$ (0.24)</u>	<u>\$ (0.25)</u>
Diluted	<u>\$ (0.13)</u>	<u>(0.13)</u>	<u>\$ (0.24)</u>	<u>\$ (0.25)</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

26. The figures in ¶ 25 were materially false and misleading at the time they were made because the Company understated its cost of goods sold and overstated its inventories.

27. On November 8, 2023, the Company filed with the SEC its Quarterly Report on Form 10-Q for the period ended September 30, 2023 (the "3Q23 Report"). Attached to the 3Q23 Report were certifications pursuant to SOX signed by Defendants DaCosta and Deitsch attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

28. The 3Q23 Report contained the following statement about the Company's internal controls:

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, have evaluated the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of the end of the period covered by this Quarterly Report on Form 10-Q. **Based on such evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were not effective at the reasonable assurance level.**

During the quarter ended September 30, 2023, we identified an interest rate swap agreement associated with our Zions Facility, entered into during the quarter ended March 31, 2022, that had not been appropriately evaluated for accounting and disclosure considerations. **This resulted in an immaterial error related to the recognition and disclosure of the interest rate swap in prior reporting periods, which is an indication that a material weakness existed within our internal controls for those prior periods.** The immaterial error and disclosure considerations were corrected in this Quarterly Report on Form 10-Q for the period ended September 30, 2023.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. This control deficiency did not result in a material misstatement of our prior period condensed consolidated annual or interim financial statements. We have determined that amending previously filed reports to correct the immaterial error is not required. However, the control deficiency could have resulted in material misstatements that may not have been prevented or detected. We have implemented enhanced internal controls that helped to identify this deficiency; however, those controls have not yet operated for a sufficient period of time to conclude the matter has been fully remediated.

(Emphasis added).

29. The statement in ¶ 28 was materially false and misleading at the time it was made because the Company the Company understated its internal control weaknesses.

30. The 3Q23 Report contained the following tables listing the Company's financials:

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

**PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)
(unaudited)**

	September 30, 2023
<u>ASSETS</u>	
Current assets:	
Cash	\$ 34,949
Trade receivables	33,615
Inventories, net	94,380
Income taxes receivable	1,022
Other current assets	4,826
Total current assets	168,792
Property and equipment, net	73,530
Intangible assets, net	21,802
Goodwill	25,465
Deferred income taxes	132
Other assets	3,634
Total assets	\$ 293,355
<u>LIABILITIES & STOCKHOLDERS' EQUITY</u>	
Current liabilities:	
Accounts payable	\$ 27,395
Accrued expenses	24,966
Accrued legal settlement	—
Other current liabilities	1,893
Current maturities of long-term debt	640
Income taxes payable	—
Total current liabilities	54,894
Long-term liabilities:	
Long-term debt net, less current maturities	42,288
Other long-term liabilities	1,467
Deferred income taxes	327
Income taxes payable	635
Total liabilities	99,611

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND
COMPREHENSIVE LOSS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net revenue	\$ 52,783	\$ 46,006	\$ 155,828	\$ 129,875
Cost of goods sold	10,394	8,491	28,158	22,920
Gross profit	<u>42,389</u>	<u>37,515</u>	<u>127,670</u>	<u>106,955</u>
Operating expenses:				
Research and development costs	7,244	6,337	21,976	18,100
Selling, general, and administrative	44,126	39,667	131,773	114,857
Total operating expenses	<u>51,370</u>	<u>46,004</u>	<u>153,749</u>	<u>132,957</u>
Operating loss	<u>(8,981)</u>	<u>(8,489)</u>	<u>(26,079)</u>	<u>(26,002)</u>
Other income (expense):				
Other income, net	1,660	59	1,014	610
Interest expense, net	(1,119)	(1,093)	(3,127)	(2,865)
Total other income (expense)	<u>541</u>	<u>(1,034)</u>	<u>(2,113)</u>	<u>(2,255)</u>
Loss before income taxes	<u>(8,440)</u>	<u>(9,523)</u>	<u>(28,192)</u>	<u>(28,257)</u>
Income tax (benefit) expense	(108)	201	90	306
Net loss	<u>\$ (8,332)</u>	<u>\$ (9,724)</u>	<u>\$ (28,282)</u>	<u>\$ (28,563)</u>
Foreign currency translation adjustment	(630)	(588)	(1,012)	(1,505)
Comprehensive loss	<u>\$ (8,962)</u>	<u>\$ (10,312)</u>	<u>\$ (29,294)</u>	<u>\$ (30,068)</u>
Weighted average number of shares of common stock outstanding:				
Basic	<u>82,548,892</u>	<u>76,850,949</u>	<u>81,878,814</u>	<u>76,595,118</u>
Diluted	<u>82,548,892</u>	<u>76,850,949</u>	<u>81,878,814</u>	<u>76,595,118</u>
Net loss per share attributable to common stockholders:				
Basic	<u>\$ (0.10)</u>	<u>(0.13)</u>	<u>\$ (0.35)</u>	<u>\$ (0.37)</u>
Diluted	<u>\$ (0.10)</u>	<u>(0.13)</u>	<u>\$ (0.35)</u>	<u>\$ (0.37)</u>

31. The figures in ¶ 30 were materially false and misleading at the time they were made because the Company understated its cost of goods sold and overstated its inventories.

32. On February 29, 2024, the Company filed with the SEC its Annual Report on Form 10-K for the period ended December 31, 2023 (the "2023 Annual Report"). Attached to the 2023 Annual Report were certifications pursuant to SOX signed by Defendants DaCosta and Deitsch attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

33. The 2023 Annual Report contained the following statement about the Company's internal controls:

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Annual Report on Form 10-K. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that, as of the end of the period covered by this Annual Report on Form 10-K, **our disclosure controls and procedures were effective at the reasonable assurance level.**

(Emphasis added).

34. The statement in ¶ 33 was materially false and misleading at the time it was made because the Company lacked effective controls.

35. The 2023 Annual Report contained the following management report on the Company's internal control over financial reporting:

Management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal control over financial reporting is designed 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. Internal control over financial reporting has inherent limitations. Because of such limitations, there is a risk that material misstatements will not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design safeguards into the process to reduce, though not eliminate, this risk.

Under the supervision and with the participation of our management, including our CEO and CFO, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2023, based on the framework in "Internal Control - Integrated Framework" (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2023.

(Emphasis added).

36. The statement in ¶ 35 was materially false and misleading at the time it was made because the Company lacked adequate internal control over financial reporting.

37. The 2023 Annual Report contained the following statement about remediation of previously reported internal control weaknesses (as disclosed in the 3Q23 Report):

In connection with the preparation of our financial statements for the quarter ended September 30, 2023, management identified an indication of a material weakness in our internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. The indication of material weakness identified related to the identification of an interest rate swap agreement associated with our Zions Facility, entered into during the quarter ended March 31, 2022, that had not been appropriately evaluated for accounting and disclosure considerations. This indication of material weakness did not result in a material misstatement of our prior period consolidated annual or interim financial statements. We determined that amending previously filed reports to correct the immaterial error was not required. However, the indication of material weakness could have resulted in material misstatements that may not have been prevented or detected. During the quarter ended December 31, 2023, management took steps to remediate the indication of material weakness by:

- hiring additional legal personnel with significant knowledge and experience with contracts;
- enhancing existing controls; and
- designing and maintaining formal processes and controls to analyze, account for and disclose contracts.

Management has determined that the Company's controls were designed and have operated effectively for a sufficient period of time and concluded that the indication of material weakness has been remediated as of December 31, 2023.

(Emphasis added).

38. The statement in ¶ 37 was materially false and misleading at the time it was made because the Company had not fully remediated its weaknesses in internal control over financial reporting. Specifically, the Company had material weaknesses which were wholly unrelated to the interest rate swap agreement associated with the Zions facility.

39. The 2023 Annual Report contained the following tables listing the Company's financials:

PARAGON 28, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	<u>December 31, 2023</u>
ASSETS	
Current assets:	
Cash	\$ 75,639
Trade receivables	37,323
Inventories, net	98,062
Income taxes receivable	794
Other current assets	3,997
Total current assets	215,815
Property and equipment, net	74,122
Intangible assets, net	21,674
Goodwill	25,465
Deferred income taxes	705
Other assets	2,918
Total assets	\$ 340,699
LIABILITIES & STOCKHOLDERS' EQUITY	
Current liabilities:	
Accounts payable	\$ 21,696
Accrued expenses	27,781
Accrued legal settlement	—
Other current liabilities	883
Current maturities of long-term debt	640
Income taxes payable	243
Total current liabilities	51,243
Long-term liabilities:	
Long-term debt net, less current maturities	109,799
Other long-term liabilities	1,048
Deferred income taxes	233
Income taxes payable	635
Total liabilities	162,958

PARAGON 28, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except share and per share data)

	Year Ended December 31,		
	2023	2022	2021
Net revenue	\$ 216,389	\$ 181,383	\$ 200,000
Cost of goods sold	43,598	32,457	32,457
Gross profit	172,791	148,926	167,543
Operating expenses:			
Research and development costs	30,078	24,650	24,650
Selling, general, and administrative	180,022	159,323	159,323
Legal settlement	—	27,000	—
Total operating expenses	210,100	210,973	210,973
Operating loss	(37,309)	(62,047)	(43,430)
Other income (expense):			
Other income (expense)	154	(1,214)	—
Loss on early extinguishment of debt	(5,308)	—	—
Interest expense, net	(5,165)	(4,129)	(4,129)
Total other expense	(10,319)	(5,343)	(4,129)
Loss before income taxes	(47,628)	(67,390)	(47,559)
Income tax expense (benefit)	213	(64)	—
Net loss	\$ (47,841)	\$ (67,326)	\$ (47,559)
Foreign currency translation adjustment	165	(41)	—
Comprehensive loss	\$ (47,676)	\$ (67,367)	\$ (47,559)
Weighted average number of shares of common stock outstanding:			
Basic	82,087,329	76,766,100	52,000,000
Diluted	82,087,329	76,766,100	52,000,000
Net loss per share attributable to common stockholders:			
Basic	\$ (0.58)	\$ (0.88)	\$ (0.91)
Diluted	\$ (0.58)	\$ (0.88)	\$ (0.91)

The accompanying notes are an integral part of these consolidated financial statements.

40. The figures in ¶ 39 were materially false and misleading at the time they were made because the Company understated its cost of goods sold and overstated its inventories.

41. On May 8, 2024, the Company filed with the SEC its Annual Report on Form 10-K for the period ended March 31, 2024 (the "1Q24 Report"). Attached to the 1Q24 Report were certifications pursuant to SOX signed by Defendants DaCosta and Wright attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

42. The 1Q24 Report contained the following statement about the Company's internal controls:

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our principal executive officer and principal financial officer have concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, **our disclosure controls and procedures were effective at the reasonable assurance level.**

(Emphasis added).

43. The statement in ¶ 42 was materially false and misleading at the time it was made because the Company lacked effective controls.

44. The 1Q24 Report contained the following tables listing the Company's financials:

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)
(unaudited)

	March 31, 2024
ASSETS	
Current assets:	
Cash	\$ 58,222
Trade receivables, net of allowance for doubtful accounts of \$1,701 and \$1,339, respectively	40,262
Inventories, net	104,298
Income taxes receivable	597
Other current assets	4,013
Total current assets	207,392
Property and equipment, net	75,701
Intangible assets, net	21,458
Goodwill	25,465
Deferred income taxes	678
Other assets	3,900
Total assets	\$ 334,594
LIABILITIES & STOCKHOLDERS' EQUITY	
Current liabilities:	
Accounts payable	\$ 29,224
Accrued expenses	26,823
Other current liabilities	909
Current maturities of long-term debt	640
Income taxes payable	450
Total current liabilities	58,046
Long-term liabilities:	
Long-term debt net, less current maturities	109,847
Other long-term liabilities	1,356
Deferred income taxes	231
Income taxes payable	638
Total liabilities	170,118

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended March 31,	
	2024	2023
Net revenue	\$ 61,082	\$ 52,036
Cost of goods sold	12,186	8,906
Gross profit	48,896	43,130
Operating expenses:		
Research and development costs	7,584	7,049
Selling, general, and administrative	54,215	43,820
Total operating expenses	61,799	50,869
Operating loss	(12,903)	(7,739)
Other income (expense):		
Other income (expense), net	515	(179)
Interest expense, net	(2,622)	(1,205)
Total other expense, net	(2,107)	(1,384)
Loss before income taxes	(15,010)	(9,123)
Income tax expense (benefit)	224	(71)
Net loss	\$ (15,234)	\$ (9,052)
Foreign currency translation adjustment	(1,097)	(99)
Comprehensive loss	\$ (16,331)	\$ (9,151)
Weighted average number of shares of common stock outstanding:		
Basic	82,854,334	80,681,715
Diluted	82,854,334	80,681,715
Net loss per share attributable to common stockholders:		
Basic	\$ (0.18)	\$ (0.11)
Diluted	\$ (0.18)	\$ (0.11)

The accompanying notes are an integral part of these condensed consolidated financial statements.

45. The figures in ¶ 44 were materially false and misleading at the time they were made because the Company understated its cost of goods sold and overstated its inventories.

46. The statements contained in ¶¶ 18, 20, 23, 25, 28, 30, 33, 35, 37, 39, 42, and 44 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations, and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) Paragon 28's financial statements were misstated; (2) Paragon 28 lacked adequate internal controls and at times understated the extent of the issues with its internal controls; and (3) as a result, Defendants' statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all times.

THE TRUTH BEGINS TO EMERGE

47. On July 30, 2024, after the market closed, Paragon 28 filed with the SEC a current report on Form 8-K (the "Restatement Announcement"). The Restatement Announcement contained, in pertinent part, the following disclosure:

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.

On July 30, 2024, the Audit Committee of the Board of Directors (the "Audit Committee") of Paragon 28, Inc. (the "Company"), in consultation with management, **concluded that the Company's previously issued audited consolidated financial statements for the fiscal year ended December 31, 2023, contained within the Annual Report on Form 10-K for that year (and the associated audit report of the Company's independent registered accounting firm) and the unaudited condensed consolidated financial statements contained within the Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2023, June 30, 2023, September 30, 2023, and March 31, 2024 should no longer be relied upon due to errors in such financial statements, and therefore a restatement of these prior financial statements is required.** Accordingly, the Company intends to restate the aforementioned financial statements by amending its Annual Report on Form 10-K for the year ended December 31, 2023 and its quarterly report on Form 10-Q for the quarter ended March 31, 2024 (the "Restated Filings") as soon as reasonably practicable.

Subsequent to the issuance of the Company's condensed consolidated financial statements as of and for the three months ended March 31, 2024, **the Company identified errors in the accounting for inventory including the calculation of its excess and obsolete inventory reserve which resulted in an overstatement of inventory as of March 31, 2023, June 30, 2023, September 30, 2023, December 31, 2023 and March 31, 2024 and an understatement in cost of goods sold for the respective interim periods ended on such dates and for the fiscal year ended December 31, 2023.** This identification of errors is preliminary, unaudited and may be subject to change as we complete our procedures and prepare the Restated Filings.

The Audit Committee, along with management, discussed with Deloitte & Touche LLP, the Company's independent public accounting firm, the matters disclosed in this filing pursuant to this Item 4.02(a).

We plan to file amendments to the previously issued consolidated financial statements listed above on Forms 10-K/A and 10-Q/A, respectively, with the SEC. We intend to update at least the following sections within the respective reports:

- Annual Report on Form 10-K for the fiscal year ended December 31, 2023: Special Note Regarding Forward-Looking Statements; Risk Factors Summary; Part I, Item 1A, Risk Factors; Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations; Part II, Item 8, Financial Statements and Supplementary Data; Part II, Item 9A, Controls and Procedures; Part IV, Item 15, Exhibit and Financial Statement Schedules
- Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2024: Part I, Item 1, Financial Statements; Part I, Item 2, Management's Discussion and Analysis of Financial Condition and Results of Operations; Part I, Item 4, Controls and Procedure; Part II, Item 1A, Risk Factors; Part II, Item 6, Exhibits

(Emphasis added).

48. The Restatement Announcement contained the following summary of the estimated impacts of the restatement:

- During the year ended December 31, 2023, **cost of goods sold was understated by \$8.4 million and inventories, net was overstated by \$8.0 million[.]**
- During the three months ended March 31, 2024, **cost of goods sold was understated by \$1.7 million and inventories, net was overstated by \$9.7 million[.]**

(Emphasis added).

49. The Restatement Announcement contained the following disclosure about the Company's internal control over financial reporting:

As a result of the errors described above and the related restatement, the Company has identified one or more material weaknesses in its internal control over financial reporting. As a result, management concluded that our internal control over financial reporting was not effective as of December 31, 2023, and our disclosure controls and procedures were not effective at the reasonable assurance level as of December 31, 2023 and March 31, 2024. Accordingly, the Audit Committee concluded that management's report on internal

control over financial reporting as of December 31, 2023, and Deloitte's opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2023, should no longer be relied upon.

In addition, given that the conclusion to restate occurred subsequent to June 30, 2024, and related remediation actions were not implemented as of June 30, 2024, we will report in our Quarterly Report on Form 10-Q for the second quarter of 2024 that our disclosure controls and procedures were not effective at the reasonable assurance level as of June 30, 2024. The Company will provide management's modified conclusions in the Restated Filings.

(Emphasis added).

50. On this news, the price of Paragon 28 common stock fell by \$1.24 per share, or 13.7%, to close at \$7.79 on July 31, 2024.

51. On August 8, 2024, after the market closed, the Company filed with the SEC an amended annual report on Form 10-K/A for the year ended December 21, 2023 (the "Amended 2023 Annual Report"). The Amended 2023 Annual Report provided restated financial figures for 2023.

52. The Amended 2023 Annual Report contained the following tables listing the Company's financials, including its restated 2023 figures for inventories, net and cost of goods sold:

PARAGON 28, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	<u>December 31, 2023</u>
	(As Restated)
<u>ASSETS</u>	
Current assets:	
Cash and cash equivalents	\$ 75,639
Trade receivables, net of allowance for doubtful accounts of \$1,339 and \$1,688, respectively	37,323
Inventories, net	90,046
Income taxes receivable	794
Other current assets	3,997
Total current assets	207,799
Property and equipment, net	74,122
Intangible assets, net	21,674
Goodwill	25,465
Deferred income taxes	705
Other assets	2,918
Total assets	\$ 332,683
<u>LIABILITIES & STOCKHOLDERS' EQUITY</u>	
Current liabilities:	
Accounts payable	\$ 21,696
Accrued expenses	27,781
Accrued legal settlement	—
Other current liabilities	883
Current maturities of long-term debt	640
Income taxes payable	243
Total current liabilities	51,243
Long-term liabilities:	
Long-term debt net, less current maturities	109,799
Other long-term liabilities	1,048
Deferred income taxes	233
Income taxes payable	635
Total liabilities	162,958

PARAGON 28, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except share and per share data)

	Year Ended December 31,		
	2023	2022	
	(As Restated)	(As Restated)	
Net revenue	\$ 216,389	\$ 181,383	\$
Cost of goods sold	51,954	32,117	
Gross profit	164,435	149,266	
Operating expenses:			
Research and development costs	30,078	24,650	
Selling, general, and administrative	180,022	159,323	
Legal settlement	—	27,000	
Total operating expenses	210,100	210,973	
Operating loss	(45,665)	(61,707)	
Other income (expense):			
Other income (expense), net	(1,183)	123	
Loss on early extinguishment of debt	(5,308)	—	
Interest expense, net	(5,165)	(4,129)	
Total other expense	(11,656)	(4,006)	
Loss before income taxes	(57,321)	(65,713)	
Income tax expense (benefit)	213	(64)	
Net loss	\$ (57,534)	\$ (65,649)	\$
Foreign currency translation adjustment	165	(41)	
Comprehensive loss	\$ (57,369)	\$ (65,690)	\$
Weighted average number of shares of common stock outstanding:			
Basic	82,087,329	76,766,100	
Diluted	82,087,329	76,766,100	
Net loss per share attributable to common stockholders:			
Basic	\$ (0.70)	\$ (0.86)	\$
Diluted	\$ (0.70)	\$ (0.86)	\$

The accompanying notes are an integral part of these consolidated financial statements.

53. Also on August 8, 2024, after the market closed, the Company filed with the SEC an amended Quarterly Report on Form 10-Q/A for the period ended March 31, 2024 (the "Amended 1Q24 Report"). The Amended 1Q24 Report provided restated financial figures for 2023.

54. The Amended 1Q24 Report contained the following tables listing the Company's financials, including its restated 1Q24 figures for inventories, net and cost of goods sold:

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)
(unaudited)

	March 31, 2024
	(As Restated)
<u>ASSETS</u>	
Current assets:	
Cash and cash equivalents	\$ 58,222
Trade receivables, net of allowance for doubtful accounts of \$2,268 and \$1,339, respectively	39,695
Inventories, net	94,626
Income taxes receivable	597
Other current assets	4,013
Total current assets	197,153
Property and equipment, net	75,701
Intangible assets, net	21,458
Goodwill	25,465
Deferred income taxes	690
Other assets	3,900
Total assets	\$ 324,367
<u>LIABILITIES & STOCKHOLDERS' EQUITY</u>	
Current liabilities:	
Accounts payable	\$ 29,224
Accrued expenses	26,823
Other current liabilities	909
Current maturities of long-term debt	640
Income taxes payable	404
Total current liabilities	58,000
Long-term liabilities:	
Long-term debt net, less current maturities	109,847
Other long-term liabilities	1,356
Deferred income taxes	231
Income taxes payable	638
Total liabilities	170,072

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended March 31,	
	2024 (As Restated)	2023 (As Restated)
Net revenue	\$ 61,082	\$ 52,036
Cost of goods sold	13,842	10,229
Gross profit	47,240	41,807
Operating expenses:		
Research and development costs	7,584	7,049
Selling, general, and administrative	54,782	43,820
Total operating expenses	62,366	50,869
Operating loss	(15,126)	(9,062)
Other income (expense):		
Other income (expense), net	515	(616)
Interest expense, net	(2,622)	(1,205)
Total other expense, net	(2,107)	(1,821)
Loss before income taxes	(17,233)	(10,883)
Income tax expense (benefit)	166	(71)
Net loss	\$ (17,399)	\$ (10,812)
Foreign currency translation adjustment	(1,097)	(99)
Comprehensive loss	\$ (18,496)	\$ (10,911)
Weighted average number of shares of common stock outstanding:		
Basic	82,854,334	80,681,715
Diluted	82,854,334	80,681,715
Net loss per share attributable to common stockholders:		
Basic	\$ (0.21)	\$ (0.13)
Diluted	\$ (0.21)	\$ (0.13)

The accompanying notes are an integral part of these condensed consolidated financial statements.

55. On this news, the price of Paragon 28 common stock fell by \$1.67 per share, or 20%, to close at \$6.64 on August 9, 2024.

56. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's common shares, Plaintiff and the other Class members have suffered significant losses and damages.

P L A I N T I F F ' S C L A S S A C T I O N A L L E G A T I O N S

57. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons or entities other

than defendants who purchased Paragon 28's common stock or purchased Paragon 28 call options or sold put options during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

58. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the Company's securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class.

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

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

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

- whether the Exchange Act was violated by Defendants' acts as alleged herein;

- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of the Company;
- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- whether the Defendants caused the Company to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of the Company's securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

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

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

- the Company's securities met the requirements for listing, and were listed and actively traded on the NYSE, an efficient market;
- as a public issuer, the Company filed public reports;
- the Company communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
- the Company's securities were liquid and traded with moderate to heavy volume during the Class Period; and
- the Company was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

64. Based on the foregoing, the market for the Company securities promptly digested current information regarding the Company from all publicly available sources and reflected such information in the prices of the common units, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

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

70. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of the Company, their control over, and/or receipt and/or modification of the Company's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company, participated in the fraudulent scheme alleged herein.

71. Individual Defendants, who are or were senior executives and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Company's personnel to members of the investing public, including Plaintiff and the Class.

72. As a result of the foregoing, the market price of the Company's securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of the Company's securities

during the Class Period in purchasing the Company's securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

73. Had Plaintiff and the other members of the Class been aware that the market price of the Company's securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased the Company's securities at the artificially inflated prices that they did, or at all.

74. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

75. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of the Company's securities during the Class Period.

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

76. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

77. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions, they knew the adverse non-public information about the Company's business practices.

78. As officers of a public business, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to the Company's financial condition and results of operations, and to correct promptly any public statements issued by the Company which had become materially false or misleading.

79. Because of their positions of control and authority as senior executives and/or directors, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period concerning the Company's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Company securities.

80. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by the Company.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and designating plaintiff's counsel as Lead Counsel;

(b) awarding damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;

(c) awarding plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.