

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PLAINTIFF, Individually and on
behalf of all others similarly situated,

Plaintiff

vs.

FLUX POWER HOLDINGS, INC.,
RONALD F. DUTT, and CHARLES A.
SCHEIWE,

Defendants

Case No.:

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

CLASS ACTION

JURY TRIAL DEMANDED

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

CLASS ACTION COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAW

other things, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the Defendants' public documents, public filings, wire and press releases published by and regarding Flux Power Holdings, Inc. ("Flux Power" 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 publicly traded Flux Power securities between November 11, 2022 and September 30, 2024, inclusive (the "Class Period"). Plaintiff seeks to recover compensable damages caused by Defendants' 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 (defined below), 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.

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PARTIES

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

7. Defendant Flux Power "designs, manufactures, and sells advanced lithium-ion energy storage solutions for electrification of a range of industrial and commercial sectors including material handling, airport ground support equipment (GSE), and stationary energy storage."

8. Flux Power is incorporated in Nevada and its principal executive offices are located at 2685 S. Melrose Drive, Vista, California 24011. The Company's common stock trades on the NASDAQ exchange under the ticker symbol "FLUX."

9. Defendant Ronald F. Dutt ("Dutt") was the Company's Chief Executive Officer ("CEO") throughout the Class Period.

10. Defendant Charles Scheiwe ("Scheiwe") was Chief Financial Officer ("CFO") until March 1, 2024.

11. On February 23, 2024, the Company filed with the SEC a current report on form 8-K which stated that "[o]n February 16, 2024, the Company and Mr. Charles Scheiwe agreed to the stepping down of Mr. Scheiwe as the Company's Chief Financial Officer and Secretary, including all positions with the Company and Flux Power, Inc., a wholly-owned subsidiary of the Company ("Flux") and transitioning to a consultant for the Company, effective March 1, 2024 (the "Separation Date")." Upon information and belief, Scheiwe's departure from the Company was as a result of the misconduct outlined in this complaint.

12. Defendants Dutt and Scheiwe 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. The Company 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 Flux Power under *respondeat superior* and agency principles.

16. Defendant Flux Power 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 November 10, 2022, Flux Power filed with the SEC its quarterly report on Form 10-Q for the period ended September 30, 2022 (the "1Q23 Report"). Attached to the 1Q23 Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") signed by Defendants Dutt and Scheiwe 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 stated the following regarding the Company's internal controls: Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, as of the end of the period covered by this report, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Act of 1934. Our disclosure controls and procedures are designed to provide reasonable assurance that the

information required to be included in our SEC reports is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, relating to the Company, including our consolidated subsidiaries, and was made known to them by others within those entities, particularly during the period when this report was being prepared. Based upon that evaluation, ***our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were not effective as of September 30, 2022 because of the material weaknesses identified in our internal controls over financial reporting.***

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control over financial reporting is a process designed under the supervision of the Company's principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurances with respect to financial statement preparation and presentation. Additionally, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

As described in the Company's 10-K for the fiscal year ended June 30, 2022, management assessed the effectiveness of the Company's internal control over financial reporting and based on such assessment, ***management concluded that as of June 30, 2022, our internal control over financial reporting was not effective due to material weakness related to ineffective oversight of the Company's internal control over financial reporting and lack of sufficient review and approval of the underlying data used in the calculation of warranty reserve.*** During the quarter ended September 30, 2022, we have implemented additional control procedures ***to strengthen the oversight of the Company's internal control over financial reporting through review and sign off by the senior management of all significant assumptions and estimates being used and the underlying data used in producing financial schedules/estimates and financial reporting.*** We have also added a second level of review and approval for all manual journal entries for significant estimates and assumptions made by management. We plan to continue to assess our internal controls and control procedures and intend to take further action as necessary or appropriate to address any other matters we identify or are brought to our attention.

(Emphasis added).

19. The statement in ¶ 18 was materially false and misleading at the time it was made because the Company understated its issues with its internal controls.

20. The 1Q23 Report provided the following, in pertinent part, regarding the Company's financials:

FLUX POWER HOLDINGS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS

	September 30, 2022
	(Unaudited)
ASSETS	
Current assets:	
Cash	\$ 306,000
Accounts receivable	11,396,000
Inventories, net	18,878,000
Other current assets	1,308,000
Total current assets	32,088,000
Right of use asset	2,558,000
Property, plant and equipment, net	1,758,000
Other assets	42,000
Total assets	\$ 36,446,000
LIABILITIES AND STOCKHOLDERS' EQUITY	
Current liabilities:	
Accounts payable	\$ 13,505,000
Accrued expenses	2,228,000
Line of credit	5,651,000
Deferred revenue	347,000
Customer deposits	10,000
Vehicle lease payable, current portion	13,000
Office lease payable, current portion	523,000
Accrued interest	2,000
Total current liabilities	22,279,000
Office lease payable, less current portion	2,222,000
Vehicle lease payable, less current portion	55,000
Total liabilities	24,556,000
Stockholders' equity:	
Preferred stock, \$0.001 par value; 500,000 shares authorized; none issued and outstanding	-
Common stock, \$0.001 par value; 30,000,000 shares authorized; 15,998,336 and 15,996,658 shares issued and outstanding at September 30, 2022 and June 30, 2022, respectively	16,000
Additional paid-in capital	95,827,000
Accumulated deficit	(83,953,000)
Total stockholders' equity	11,890,000
Total liabilities and stockholders' equity	\$ 36,446,000

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

FLUX POWER HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended
	September 30, 2022
Revenues	\$ 17,840,000
Cost of sales	13,892,000
Gross profit	3,948,000
Operating expenses:	
Selling and administrative	4,536,000
Research and development	1,223,000
Total operating expenses	5,759,000
Operating loss	(1,811,000)
Interest expense	(328,000)
Net loss	\$ (2,139,000)
Net loss per share - basic and diluted	\$ (0.13)
Weighted average number of common shares outstanding - basic and diluted	15,997,296

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

21. The financial figures provided in ¶ 20 were materially false and misleading because, among other things, the Company overstated its inventory, gross profit, current assets, and total assets, and understated cost of sales and net loss.

22. On February 9, 2023, Flux Power filed with the SEC its quarterly report on Form 10-Q for the period ended December 31, 2022 (the "2Q23 Report"). Attached to the 2Q23 Report were certifications pursuant to SOX signed by Defendants Dutt and Scheiwe 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 stated the following regarding the Company's internal controls: Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, as of the end of the period covered by this report, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Act of 1934. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be included in our SEC reports is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, relating to the Company, including our consolidated subsidiaries, and was made known to them by others within those entities, particularly during the period when this report was being prepared. ***Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of December 31, 2022.***

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control over financial reporting is a process designed under the supervision of the Company's principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurances with respect to financial statement preparation and presentation. Additionally, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

As described in the Company's 10-K for the fiscal year ended June 30, 2022, management assessed the effectiveness of the Company's internal control over financial reporting and based on such assessment, management concluded that as of June 30, 2022, our internal control over financial reporting was not effective due to material weakness related to ineffective oversight of the Company's internal control over financial reporting and lack of sufficient review and approval of the underlying data used in the calculation of warranty reserve. During the six months ended December 31, 2022, we have implemented additional control procedures to strengthen the oversight of the Company's internal control over financial reporting through review and sign off by the senior management of all significant assumptions and estimates being used and the underlying data used in producing financial schedules/estimates and financial reporting. We have also added a second level of review and approval for all manual journal entries for significant estimates and assumptions made by management. ***Based on the foregoing, we believe we have remediated the material weaknesses. We plan to continue to assess our internal controls and control procedures and intend to take further action as necessary or***

appropriate to address any other matters we identify or are brought to our attention.

(Emphasis added).

24. The statement in ¶ 23 was materially false and misleading at the time it was made because the Company had inadequate internal controls and had not remediated all issues with its internal controls.

25. The 2Q23 Report provided the following, in pertinent part, regarding the Company's financials:

FLUX POWER HOLDINGS, INC. CONDENSED CONSOLIDATED BALANCE SHEETS	
December 31, 2022	
(Unaudited)	
ASSETS	
Current assets:	
Cash	\$ 157,000
Accounts receivable	10,467,000
Inventories, net	19,507,000
Other current assets	884,000
Total current assets	31,015,000
Right of use assets	2,601,000
Property, plant and equipment, net	1,561,000
Other assets	115,000
Total assets	\$ 35,292,000
LIABILITIES AND STOCKHOLDERS' EQUITY	
Current liabilities:	
Accounts payable	\$ 12,797,000
Accrued expenses	2,298,000
Line of credit	6,811,000
Deferred revenue	81,000
Customer deposits	29,000
Finance lease payable, current portion	64,000
Office lease payable, current portion	542,000
Accrued interest	1,000
Total current liabilities	22,623,000
Office lease payable, less current portion	2,079,000
Finance lease payable, less current portion	172,000
Total liabilities	24,874,000
Stockholders' equity:	
Preferred stock, \$0.001 par value; 500,000 shares authorized; none issued and outstanding	-
Common stock, \$0.001 par value; 30,000,000 shares authorized; 16,029,478 and 15,996,658 shares issued and outstanding at December 31, 2022 and June 30, 2022, respectively	16,000
Additional paid-in capital	96,036,000
Accumulated deficit	(85,634,000)
Total stockholders' equity	10,418,000
Total liabilities and stockholders' equity	\$ 35,292,000

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

FLUX POWER HOLDINGS, INC. CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)			
Three Months Ended December 31,			
	2022	2021	
Revenues	\$ 17,158,000	\$ 7,690,000	\$
Cost of sales	13,050,000	6,648,000	
Gross profit	4,108,000	1,042,000	
Operating expenses:			
Selling and administrative	4,250,000	4,000,000	
Research and development	1,162,000	2,088,000	
Total operating expenses	5,412,000	6,088,000	
Operating loss	(1,304,000)	(5,046,000)	
Other income	8,000	-	
Interest expense	(385,000)	(31,000)	
Net loss	\$ (1,681,000)	\$ (5,077,000)	\$
Net loss per share - basic and diluted	\$ (0.10)	\$ (0.32)	\$
Weighted average number of common shares outstanding - basic and diluted	16,020,183	15,987,502	

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

CLASS ACTION COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAW

26. The financial figures provided in ¶ 25 were materially false and misleading because, among other things, the Company overstated its inventory, gross profit, current assets, and total assets, and understated cost of sales and net loss.

27. On May 11, 2023, Flux Power filed with the SEC its quarterly report on Form 10-Q for the period ended March 31, 2023 (the "3Q23 Report"). Attached to the 2Q23 Report were certifications pursuant to SOX signed by Defendants Dutt and Scheiwe 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 stated the following regarding the Company's internal controls: Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, as of the end of the period covered by this report, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Act of 1934. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be included in our SEC reports is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, relating to the Company, including our consolidated subsidiaries, and was made known to them by others within those entities, particularly during the period when this report was being prepared. ***Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of March 31, 2023.***

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control over financial reporting is a process designed under the supervision of the Company's principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurances with respect to financial statement preparation and presentation. Additionally, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

As described in the Company's 10-K for the fiscal year ended June 30, 2022, management assessed the effectiveness of the Company's internal control over financial reporting and based on such assessment, management concluded that as of June 30, 2022, our internal control over financial reporting was not effective due to material weakness related to ineffective oversight of the Company's internal control over financial reporting and lack of sufficient review and

approval of the underlying data used in the calculation of warranty reserve. *We believe we have remediated the material weaknesses. We plan to continue to assess our internal controls and control procedures and intend to take further action as necessary or appropriate to address any other matters we identify or are brought to our attention.*

(Emphasis added).

29. The statement in ¶ 28 was materially false and misleading at the time it was made because the Company had inadequate internal controls and had not remediated all issues with its internal controls.

30. The 3Q23 Report provided the following, in pertinent part, regarding the Company's financials:

FLUX POWER HOLDINGS, INC. CONDENSED CONSOLIDATED BALANCE SHEETS		March 31, 2023 (Unaudited)
ASSETS		
Current assets:		
Cash	\$	790,000
Accounts receivable		9,853,000
Inventories, net		20,959,000
Other current assets		775,000
Total current assets		32,377,000
Right of use assets		3,035,000
Property, plant and equipment, net		1,724,000
Other assets		119,000
Total assets	\$	37,255,000
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$	10,827,000
Accrued expenses		2,604,000
Line of credit		10,491,000
Deferred revenue		-
Customer deposits		135,000
Finance lease payable, current portion		140,000
Office lease payable, current portion		616,000
Accrued interest		3,000
Total current liabilities		24,816,000
Office lease payable, less current portion		2,223,000
Finance lease payable, less current portion		311,000
Total liabilities		27,350,000
Stockholders' equity:		
Preferred stock, \$0.001 par value; 500,000 shares authorized; none issued and outstanding		-
Common stock, \$0.001 par value; 30,000,000 shares authorized; 16,156,432 and 15,996,658 shares issued and outstanding at March 31, 2023 and June 30, 2022, respectively		16,000
Additional paid-in capital		96,968,000
Accumulated deficit		(87,079,000)
Total stockholders' equity		9,905,000
Total liabilities and stockholders' equity	\$	37,255,000

FLUX POWER HOLDINGS, INC. CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)			
	Three Months Ended March 31,		
	2023	2022	2021
Revenues	\$ 15,087,000	\$ 13,177,000	\$ 13,177,000
Cost of sales	10,368,000	11,257,000	11,257,000
Gross profit	4,719,000	1,920,000	1,920,000
Operating expenses:			
Selling and administrative	4,724,000	3,904,000	3,904,000
Research and development	1,182,000	1,713,000	1,713,000
Total operating expenses	5,906,000	5,617,000	5,617,000
Operating loss	(1,187,000)	(3,697,000)	(3,697,000)
Other income	-	-	-
Interest expense	(258,000)	(52,000)	(52,000)
Net loss	\$ (1,445,000)	\$ (3,749,000)	\$ (3,749,000)
Net loss per share - basic and diluted	\$ (0.09)	\$ (0.23)	\$ (0.23)
Weighted average number of common shares outstanding - basic and diluted	16,048,054	15,988,926	15,988,926

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

31. The financial figures provided in ¶ 30 were materially false and misleading because, among other things, the Company overstated its inventory, gross profit, current assets, and total assets, and understated cost of sales and net loss.

32. On September 21, 2023, Flux Power filed with the SEC its annual report on Form 10-K for the fiscal year ended June 30, 2023 (the "2023 Annual Report"). Attached to the 2023 Annual Report were certifications pursuant to SOX signed by Defendants Dutt and Scheiwe 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 regarding the Company's internal controls:

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, as of the end of the period covered by this report, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Act of 1934. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be included in our SEC reports is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, relating to the Company, including our consolidated subsidiaries, and was made known to them by others within those entities, particularly during the period when this report was being prepared. ***Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were not effective as of June 30, 2023 because of the material weakness identified in our internal controls over financial reporting.***

(Emphasis added).

34. The 2023 Annual Report included a management report on internal control over financial reporting, giving greater detail to the internal control weakness described in ¶ 33. It stated the following:

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control over financial reporting is a process designed under the supervision of the Company's principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurances with respect to financial statement

36. The 2023 Annual Report provided the following, in pertinent part, regarding the Company's financials:

FLUX POWER HOLDINGS, INC. CONSOLIDATED BALANCE SHEETS		June 30, 2023
ASSETS		
Current assets:		
Cash	\$	2,379,000
Accounts receivable		8,649,000
Inventories, net		18,996,000
Other current assets		918,000
Total current assets		30,942,000
Right of use asset		2,854,000
Property, plant and equipment, net		1,789,000
Other assets		120,000
Total assets	\$	35,705,000
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$	9,735,000
Accrued expenses		3,181,000
Revolving line of credit		9,912,000
Deferred revenue		131,000
Customer deposits		82,000
Finance lease payable, current portion		143,000
Office lease payable, current portion		644,000
Accrued interest		2,000
Total current liabilities		23,830,000
Long term liabilities:		
Finance lease payable, less current portion		273,000
Office lease payable, less current portion		2,055,000
Total liabilities		26,158,000
Stockholders' equity:		
Preferred stock, \$0.001 par value; 500,000 shares authorized; none issued and outstanding		-
Common stock, \$0.001 par value; 30,000,000 shares authorized; 16,462,215 and 15,996,658 shares issued and outstanding at June 30, 2023 and June 30, 2022, respectively		16,000
Additional paid-in capital		98,086,000
Accumulated deficit		(88,555,000)
Total stockholders' equity		9,547,000
Total liabilities and stockholders' equity	\$	35,705,000

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

FLUX POWER HOLDINGS, INC. CONSOLIDATED STATEMENTS OF OPERATIONS		Years ended June 30,	
	2023	2022	2021
Revenues	\$	66,337,000	\$
Cost of sales		49,237,000	
Gross profit		17,100,000	
Operating expenses:			
Selling and administrative		17,620,000	
Research and development		4,890,000	
Total operating expenses		22,510,000	
Operating loss		(5,410,000)	
Other income (expense):			
Other income		8,000	
Interest expense		(1,339,000)	
Net loss	\$	(6,741,000)	\$
Net loss per share - basic and diluted	\$	(0.42)	\$
Weighted average number of common shares outstanding - basic and diluted		16,055,256	

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

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37. The financial figures provided in ¶ 36 were materially false and misleading because, among other things, the Company overstated its inventory, gross profit, current assets, and total assets, and understated cost of sales and net loss.

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38. On November 9, 2023, Flux Power filed with the SEC its quarterly report on Form 10-Q for the period ended September 30, 2023 (the "1Q24 Report"). Attached to the 1Q24 Report were certifications pursuant to SOX signed by Defendants Dutt and Scheiwe 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.

39. The 1Q24 Report contained the following statement regarding the Company's internal controls:

Under the supervision of management, including our Chief Executive Officer and our Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and subsequent guidance prepared by the Commission specifically for smaller public companies as of September 30, 2023. ***Based on that evaluation, our management concluded that our internal control over financial reporting was not effective as of September 30, 2023 due to an identified material weakness as a result of not having sufficient personnel resources with technical accounting expertise related to certain aspects of the financial reporting process.*** Management intends to implement measures designed to improve our internal control over financial reporting to remediate material weaknesses, including the use of third-party consultants and accounting experts.

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control over financial reporting is a process designed under the supervision of the Company's principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurances with respect to financial statement preparation and presentation. Additionally, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

As described in the Company's 10-K for the fiscal year ended June 30, 2023, management assessed the effectiveness of the Company's internal control over financial reporting and based on such assessment, management concluded that as of June 30, 2023, our internal control over financial reporting was not effective due to an identified material weakness as a result of not having sufficient personnel resources with technical accounting expertise related to certain aspects of the financial reporting process. We plan to continue to assess our internal controls and control procedures and intend to take further action as

necessary or appropriate to address any other matters we identify or are brought to our attention.

(Emphasis added).

40. The statement in ¶ 39 was materially false and misleading at the time it was made because the Company understated its issues with its internal controls.

41. The 1Q24 Report provided the following, in pertinent part, regarding the Company's financials:

FLUX POWER HOLDINGS, INC. CONDENSED CONSOLIDATED BALANCE SHEETS	
	September 30, 2023 (Unaudited)
ASSETS	
Current assets:	
Cash	\$ 1,139,000
Accounts receivable	10,699,000
Inventories, net	19,495,000
Other current assets	1,053,000
Total current assets	32,386,000
Right of use assets	2,670,000
Property, plant and equipment, net	1,747,000
Other assets	119,000
Total assets	\$ 36,922,000
LIABILITIES AND STOCKHOLDERS' EQUITY	
Current liabilities:	
Accounts payable	\$ 10,065,000
Accrued expenses	3,782,000
Line of credit	11,986,000
Deferred revenue	336,000
Customer deposits	17,000
Finance lease payable, current portion	147,000
Office lease payable, current portion	667,000
Accrued interest	102,000
Total current liabilities	27,102,000
Office lease payable, less current portion	1,880,000
Finance lease payable, less current portion	229,000
Total liabilities	29,211,000
Stockholders' equity:	
Preferred stock, \$0.001 par value; 500,000 shares authorized; none issued and outstanding	-
Common stock, \$0.001 par value; 30,000,000 shares authorized; 16,478,237 and 16,462,215 shares issued and outstanding at September 30, 2023 and June 30, 2023, respectively	16,000
Additional paid-in-capital	98,342,000
Accumulated deficit	(90,667,000)
Total stockholders' equity	7,711,000
Total liabilities and stockholders' equity	\$ 36,922,000

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

FLUX POWER HOLDINGS, INC. CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)	
	Three Months End 2023
Revenues	\$ 14,797,000
Cost of sales	10,486,000
Gross profit	4,311,000
Operating expenses:	
Selling and administrative	4,725,000
Research and development	1,295,000
Total operating expenses	6,020,000
Operating loss	(1,709,000)
Interest income (expense), net	(403,000)
Net loss	\$ (2,112,000)
Net loss per share - basic and diluted	\$ (0.13)
Weighted average number of common shares outstanding - basic and diluted	16,474,754

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

42. The financial figures provided in ¶ 41 were materially false and misleading because, among other things, the Company overstated its inventory, gross profit, current assets, and total assets, and understated cost of sales and net loss.

43. On February 8, 2024, Flux Power filed with the SEC its quarterly report on Form 10-Q for the period ended December 31, 2023 (the "2Q24 Report"). Attached to the 2Q24 Report were certifications pursuant to SOX signed by Defendants Dutt and Scheiwe 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.

44. The 2Q24 Report contained the following statement regarding the Company's internal controls:

Under the supervision of management, including our Chief Executive Officer and our Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and subsequent guidance prepared by the Commission specifically for smaller public companies as of December 31, 2023. ***Based on that evaluation, our management concluded that our internal control over financial reporting was not effective as of December 31, 2023 due to an identified material weakness as a result of not having sufficient personnel resources with technical accounting expertise related to certain aspects of the financial reporting process.*** Management intends to implement measures designed to improve our internal control over financial reporting to remediate material weaknesses, including the use of third-party consultants and accounting experts.

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control over financial reporting is a process designed under the supervision of the Company's principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurances with respect to financial statement preparation and presentation. Additionally, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

As described in the Company's 10-K for the fiscal year ended June 30, 2023, management assessed the effectiveness of the Company's internal control over

financial reporting and based on such assessment, management concluded that as of June 30, 2023, our internal control over financial reporting was not effective due to an identified material weakness as a result of not having sufficient personnel resources with technical accounting expertise related to certain aspects of the financial reporting process. We plan to continue to assess our internal controls and control procedures and intend to take further action as necessary or appropriate to address any other matters we identify or are brought to our attention.

(Emphasis added).

45. The statement in ¶ 44 was materially false and misleading at the time it was made because the Company understated its issues with its internal controls.

46. The 2Q24 Report provided the following, in pertinent part, regarding the Company's financials:

FLUX POWER HOLDINGS, INC. CONDENSED CONSOLIDATED BALANCE SHEETS		December 31, 2023 (Unaudited)
ASSETS		
Current assets:		
Cash	\$	1,584,000
Accounts receivable		12,579,000
Inventories, net		18,283,000
Other current assets		942,000
Total current assets		33,388,000
Right of use assets		2,482,000
Property, plant and equipment, net		1,690,000
Other assets		119,000
Total assets	\$	37,669,000
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$	10,021,000
Accrued expenses		3,290,000
Line of credit		13,575,000
Deferred revenue		310,000
Customer deposits		232,000
Finance lease payable, current portion		150,000
Office lease payable, current portion		689,000
Accrued interest		130,000
Total current liabilities		28,397,000
Office lease payable, less current portion		1,698,000
Finance lease payable, less current portion		191,000
Total liabilities		30,286,000
Stockholders' equity:		
Preferred stock, \$0.001 par value; 500,000 shares authorized; none issued and outstanding		-
Common stock, \$0.001 par value; 30,000,000 shares authorized; 16,532,275 and 16,462,215 shares issued and outstanding at December 31, 2023 and June 30, 2023, respectively		17,000
Additional paid-in-capital		98,847,000
Accumulated deficit		(91,481,000)
Total stockholders' equity		7,383,000
Total liabilities and stockholders' equity	\$	37,669,000

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

FLUX POWER HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended December 31,	
	2023	2022
Revenues	\$ 18,344,000	\$ 17,158,000
Cost of sales	12,676,000	13,050,000
Gross profit	5,668,000	4,108,000
Operating expenses:		
Selling and administrative	4,593,000	4,250,000
Research and development	1,440,000	1,162,000
Total operating expenses	6,033,000	5,412,000
Operating loss	(365,000)	(1,304,000)
Other income	-	8,000
Interest income (expense), net	(449,000)	(385,000)
Net loss	\$ (814,000)	\$ (1,681,000)
Net loss per share - basic and diluted	\$ (0.05)	\$ (0.10)
Weighted average number of common shares outstanding - basic and diluted	16,516,700	16,020,183

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

47. The financial statement provided in ¶ 46 were materially false and misleading because, among other things, the Company overstated its inventory, gross profit, current assets, and total assets, and understated cost of sales and net loss.

48. On May 13, 2024, Flux Power filed with the SEC its quarterly report on Form 10-Q for the period ended March 31, 2024 (the "3Q24 Report"). Attached to the 3Q24 Report was a certification pursuant to SOX signed by Defendant Dutt 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.

49. The 3Q24 Report contained the following statement regarding the Company's internal controls:

Under the supervision of management, including our Chief Executive Officer and our Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and subsequent guidance prepared by the Commission specifically for smaller public companies as of March 31, 2024. ***Based on that evaluation, our management concluded that our internal control over financial reporting was not effective as of March 31, 2024 due to previously identified material weaknesses as a result of not having sufficient personnel resources with technical accounting expertise related to certain aspects of the financial reporting process.*** Management engaged a financial consultant during the quarter ended March 31, 2024 with extensive technical accounting expertise in order to provide the technical advice needed. Management has also strengthened the Company's financial expertise by recently hiring an experienced chief financial officer in early March 2024. Management believes that such staff and consultant additions have improved our

51. The 3Q24 Report provided the following, in pertinent part, regarding the Company's financials:

FLUX POWER HOLDINGS, INC. CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited)		March 31, 2024
ASSETS		
Current assets:		
Cash	\$	1,250,000
Accounts receivable		10,404,000
Inventories, net		20,174,000
Other current assets		840,000
Total current assets		32,668,000
Right of use assets		2,291,000
Property, plant and equipment, net		1,705,000
Other assets		118,000
Total assets	\$	36,782,000
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$	11,050,000
Accrued expenses		3,645,000
Line of credit		13,645,000
Deferred revenue		343,000
Customer deposits		18,000
Finance lease payable, current portion		153,000
Office lease payable, current portion		712,000
Accrued interest		136,000
Total current liabilities		29,702,000
Office lease payable, less current portion		1,511,000
Finance lease payable, less current portion		153,000
Total liabilities		31,366,000
Stockholders' equity:		
Preferred stock, \$0.001 par value; 500,000 shares authorized; none issued and outstanding		-
Common stock, \$0.001 par value; 30,000,000 shares authorized; 16,599,683 and 16,462,215 shares issued and outstanding at March 31, 2024 and June 30, 2023, respectively		17,000
Additional paid-in-capital		99,520,000
Accumulated deficit		(94,121,000)
Total stockholders' equity		5,416,000
Total liabilities and stockholders' equity	\$	36,782,000

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

FLUX POWER HOLDINGS, INC. CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)		Three Months Ended March 31,	
	2024	2023	
Revenues	\$ 14,457,000	\$ 15,087,000	\$
Cost of sales	10,067,000	10,368,000	\$
Gross profit	4,390,000	4,719,000	-
Operating expenses:			
Selling and administrative	5,311,000	4,724,000	-
Research and development	1,286,000	1,182,000	-
Total operating expenses	6,597,000	5,906,000	-
Operating loss	(2,207,000)	(1,187,000)	-
Other income	-	-	-
Interest income (expense), net	(433,000)	(258,000)	-
Net loss	\$ (2,640,000)	\$ (1,445,000)	\$
Net loss per share - basic and diluted	\$ (0.16)	\$ (0.09)	\$
Weighted average number of common shares outstanding - basic and diluted	16,538,998	16,048,054	-

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

52. The financial statement provided in ¶ 51 were materially false and misleading because, among other things, the Company overstated its inventory, gross profit, current assets, and total assets, and understated cost of sales and net loss.

53. The statements contained in ¶¶ 18, 20, 23, 25, 28, 30, 34, 36, 39, 41, 44, 46, 49, and 51 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) Flux Power's financial statements from November 10, 2022 to the present included, among other things, overstated inventory, gross profit current assets, and total assets; (2) Flux understated cost of sales, net loss; (3) as a result, Flux Power would need to restate its previously filed financial statements from November 10, 2022 to the present; (4) Flux Power understated internal control weaknesses or stated that it had adequate internal controls when in fact it did not; and (5) 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

54. On September 5, 2024, after the market closed, Flux Power filed with the SEC a current report on Form 8-K announcing it would need to restate certain of its previous financial statements (the "Restatement Announcement"). The Restatement Announcement disclosed misstatements relating to the Company's inventory, but stated that the Company was assessing whether other financial figures and prior financial statements might need to be restated as well as the Prior Financial Statements (as defined in the Restatement Announcement).

55. The Restatement Announcement stated the following:

*On August 30, 2024, the Board of Directors of Flux Power Holdings, Inc. (the "Company") including its audit committee members, concluded that the previously issued audited consolidated financial statements **as of and for the fiscal year ended June 30, 2023 and the unaudited consolidated financial statements as of and for the quarters ended September 30, 2023, December 31, 2023, and March 31, 2024 (collectively, the "Prior Financial Statements"), which were filed with the Securities and Exchange Commission ("SEC") on September 21, 2023, November 9, 2023, February 8, 2024 and May 13, 2024, respectively, should no longer be relied upon because of errors in such financial statements relating to the improper accounting for inventory and a restatement should be undertaken.** During the Company's preparation of financial statements for the year ended June 30, 2024, it became aware that (i) **approximately \$1.2 million of excess and obsolete inventory, primarily as a result of a change in battery cells from a new supplier, was not properly reserved or written-off in earlier periods resulting in an overstatement of inventory,** and (ii) certain loaner service packs were improperly accounted for as finished goods inventory as of June 30, 2023 **resulting in an overstatement of***

inventory of approximately \$0.5 million. As a result, the Company concluded that the errors resulted in (i) an **overstatement of inventory, current assets, total assets and accumulated deficit on its balance sheet, and (ii) an understatement of cost of sales and net loss, and overstatement of gross profit on its statement of operations in the Prior Financial Statements.** The Company is also evaluating the impact that improper accounting for inventory had on other historical financial statements for previous quarterly and fiscal periods which also could include the audited consolidated financial statements as of and for the years ended June 30, 2022 and 2021, as well as the quarterly unaudited consolidated financial statements within the years ended June 30, 2022, 2021 and 2020.

Based upon the foregoing, the Company's Board of Directors is evaluating the impact of these matters on previous fiscal years and quarters to determine which financial statements in addition to the Prior Financial Statements may need to be restated and, as a part of this evaluation, may include additional revisions and/or adjustments to the Prior Financial Statements other than inventory that may be identified during the restatement process. Based on the results of the Board's evaluation, the Company intends to file with the SEC one or more amended periodic reports covering the impacted financial statements as soon as practicable.

Management previously concluded that the Company's disclosure controls and procedures and internal control over financial reporting were not effective during the periods covered by the Prior Financial Statements due to previously identified material weaknesses resulting from having insufficient personnel resources with technical accounting expertise related to certain aspects of the financial reporting process. As part of its ongoing remedial efforts to strengthen controls and procedures, the Company engaged an external financial consultant with extensive technical accounting expertise during the quarter ended March 31, 2024. In addition, in early March of 2024, the Company strengthened its internal financial expertise by hiring a new Chief Financial Officer with over 20 years of experience with publicly traded companies and finance and accounting and who also served as an auditor for 10 years with Ernst & Young LLP, where he became a certified public accountant.

After re-evaluation, the Company's management has concluded that considering the errors described above, this represents an additional material weakness in the Company's disclosure controls and procedures and the Company's internal control over financial reporting. To address this material weakness, management plans to continue to devote significant effort and resources to the remediation and improvement of the Company's internal control over financial reporting. While the Company has processes to account for its inventory, under the leadership of the Company's new Chief Financial Officer, the Company intends to strengthen its internal processes and procedures over inventory management and reporting. The Company has begun updating its processes and controls around inventory obsolescence, the timing of its internal inventory audits and implementation of other measures. In addition, the Company has also recently engaged an external financial consultant with extensive technical accounting expertise to assist with the analysis of prior periods, along with an independent law firm to conduct an internal review of the events and activities leading to errors in the financial statements.

(Emphasis added).

56. The Restatement Announcement further disclosed the following:

In addition, the inventory error discussed above led to non-compliance with certain requirements under the Company's Loan and Security Agreement with Gibraltar Business Capital, LLC, a Delaware limited liability company ("GBC") (the "Loan Agreement"). The Loan Agreement provides the Company with a revolving credit facility for up to \$16 million. Under the Loan Agreement, upon an occurrence of an event of default, GBC may, at its option, declare its commitments to the Company to be terminated and all obligations to be immediately due and payable, all without demand, notice or further action of any kind required on the part of GBC, and/or exercise other remedies available to it among other things including its rights as a secured party. On August 29, 2024, GBC agreed to waive the Company's non-compliance with, and the effects of its non-compliance under, various representations, financial covenants and non-financial covenants relating to the Company's financial statements and inventory contained in the Loan Agreement arising from the inventory error described under "Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review" of this Current Report (the "Waiver"). As a result of the Waiver, the Company expects that its revolving credit facility remains available subject to meeting certain lending criteria under the Loan Agreement.

(Emphasis added).

57. On this news, the price of Flux Power common stock fell by \$0.17, or 5.36%, to close at \$3.00 on September 6, 2024. The next trading day, it fell a further \$0.12, or 4%, to close at \$2.88 on September 9, 2024.

58. On September 30, 2024, after the market closed, the Company filed with the SEC a notification of late filing on Form 12b-25 (the "Late Filing Notice"). The Late Filing Notice stated the following:

The registrant is unable to file its Annual Report on Form 10-K for the fiscal period year ended June 30, 2024 (the "Form 10-K"), within the prescribed time period without unreasonable effort or expense. On September 5, 2024, and as previously disclosed, the Board of Directors, including its audit committee members, concluded that the previously issued audited consolidated financial statements as of and for the fiscal year ended June 30, 2023 and the unaudited consolidated financial statements as of and for the quarters ended September 30, 2023, December 31, 2023, and March 31, 2024 (collectively, the "Prior Financial Statements"), which were filed with the Securities and Exchange Commission ("SEC") on September 21, 2023, November 9, 2023, February 8, 2024 and May 13, 2024, respectively, should no longer be relied upon because of errors in such financial statements relating to the improper accounting for inventory and a restatement should be undertaken.

* * *

The registrant is also evaluating the impact that improper accounting for inventory had on other historical consolidated financial statements for previous quarterly and fiscal periods which also could include the audited

consolidated financial statements as of and for the years ended June 30, 2022 and 2021, as well as the quarterly unaudited consolidated financial statements within the years ended June 30, 2022, 2021 and 2020.

Based upon the foregoing, the registrant's Board of Directors is evaluating the impact of these matters on previous fiscal years and quarters to determine which financial statements in addition to the Prior Financial Statements may need to be restated and, as a part of this evaluation, may include additional revisions and/or adjustments to the Prior Financial Statements other than inventory that may be identified during the restatement process.

The registrant has commenced the restatement process. The registrant currently intends to present the restatement in its Form 10-K. However, in light of restatement of Prior Financial Statements and the filing due date for the Form 10-K, the registrant requires additional time to prepare and review the consolidated financial statements for the Form 10-K. The registrant is currently unable to estimate the timing for the filing of the Form 10-K but hopes to file the Form 10-K before the next quarterly report on Form 10-Q is due, or as soon as practicable.

59. On this news, the price of Flux Power common stock fell by \$0.18 per share, or 5.9%, to close at \$2.86 on October 1, 2024.

60. 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 other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

61. 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 other than defendants who acquired the Company's securities publicly traded on NASDAQ 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.

62. 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 NASDAQ. 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.

63. 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.

64. 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.

65. 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 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.

66. 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.

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

- the Company's shares met the requirements for listing, and were listed and actively traded on NASDAQ, an efficient market;
- as a public issuer, the Company filed periodic public reports;
- the Company regularly 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.

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

69. 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.

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COUNT I
For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder
Against All Defendants

70. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

71. This Count is asserted against Defendants is based upon Section 10(b) of the Exchange

Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

72. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

73. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of the Company's securities during the Class Period.

74. 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

privity to confidential proprietary information concerning the Company, participated in the fraudulent scheme alleged herein.

75. Individual Defendants, who are the senior officers 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 any other of the Company's personnel to members of the investing public, including Plaintiff and the Class.

76. 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.

77. 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.

78. 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.

79. 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.

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

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

81. 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 false financial statements.

82. As officers of a publicly owned company, 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.

83. Because of their positions of control and authority as senior officers, 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 the Company's securities.

84. 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.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself 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.