

THE ROSEN LAW FIRM, P.A.  
Laurence Rosen, Esq.  
609 W. South Orange Avenue, Suite 2P  
South Orange, NJ 07079  
Tel: (973) 313-1887  
Fax: (973) 833-0399  
Email: lrosen@rosenlegal.com

Counsel for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

\_\_\_\_\_, Individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

ABILITY INC., ANATOLY HURGIN,  
and AVI LEVIN,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS

JURY TRIAL DEMANDED

Plaintiff \_\_\_\_\_ (“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 upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of U.S. Securities and Exchange Commission (“SEC”) filings by Ability Inc. (“Ability” or

the “Company”), press releases, as well as media and analyst reports about the Company. 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 federal securities class action on behalf of a class consisting of all persons other than Defendants who purchased Ability securities from December 24, 2015 through April 29, 2016, both dates inclusive (the “Class Period”), seeking to recover compensable damages caused by Defendants’ violations of federal securities laws and pursue remedies 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 (17 C.F.R. §240.10b-5).

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

4. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b) as a significant portion of the Defendants’ actions, and the subsequent damages, took place within this 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 Ability securities at artificially inflated prices during the Class Period and has been damaged thereby.

7. Defendant Ability is incorporated in Israel. The Company provides tactical communications intelligence solutions for government agencies, military forces, and law enforcement and homeland security agencies worldwide. Ability's ordinary shares trade on NASDAQ under the ticker symbol "ABIL."

8. Defendant Anatoly Hurgin ("Hurgin") has served as the Company's Chief Executive Officer and the Chairman of our Board at all relevant times.

9. Defendant Avi Levin ("Levin") served as the Company's Chief Financial Officer at all relevant times.

10. Defendants Hurgin and Levin are sometimes referred to herein as the "Individual Defendants."

11. Defendant Ability and the Individual Defendants are referred to herein, collectively, as the “Defendants.”

12. 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 involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- e. was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and
- f. approved or ratified these statements in violation of the federal securities laws.

13. As officers, directors, and controlling persons of a publicly-held company whose securities are and were registered with the SEC pursuant to the Exchange Act, and was traded on NASDAQ and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate accurate and truthful information promptly with respect to the

Company's business prospects and operations, and to correct any previously-issued statements that had become materially misleading or untrue to allow the market price of the Company's publicly-traded stock to reflect truthful and accurate information.

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

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

### **RELEVANT NON-PARTIES**

16. Cambridge Capital Acquisition Corporation ("Cambridge") was incorporated under the laws of Delaware on October 1, 2013. Cambridge was a blank check company formed for the purpose of entering into a merger, share exchange, asset acquisition, stock purchase, recapitalization, reorganization or other similar business combination. Cambridge's common stock was listed on NASDAQ under the ticker symbol "CAMB."

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

17. A reverse merger takeover is the acquisition of a public company by a private company so that the private company can bypass the lengthy and complex process of going public.

18. A blank check company is a development-stage company that either does not have an established business plan or its business plan is based around a merger or acquisition with another company or companies.

19. On December 23, 2015, Ability completed a \$192 million reverse merger takeover of Cambridge.

20. On December 24, 2015, shares of Ability began on NASDAQ under the ticker symbol "ABIL."

### **Materially False And Misleading Statements**

21. On December 2, 2015, Cambridge filed a Proxy Statement/Prospectus in connection with reverse merger takeover by Ability, which was signed by Defendant Hurgin and contained the following pro forma financial statements:

**CAMBRIDGE HOLDCO CORP.**  
**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**  
**September 30, 2015**  
**(dollars in thousands, except share and per share amounts)**

	Cambridge Capital Acquisition Corp. Note 1	Ability Computer Software Industries Ltd. Note 2	Pro Forma Adjustments				Pro Forma As Adjusted (assuming no conversion)	Pro Forma Adjustments with Maximum Conversion				Pro Forma As Adjusted (assuming maximum conversion)
			Debit	Note	Credit	Note		Debit	Note	Credit	Note	
<b>ASSETS</b>												
Current assets:												
Cash and cash equivalents	\$ 48	\$ 16,011	\$81,311	3	\$ 868	5	\$ 45,459	\$—	\$30,448	12	\$ 15,011	
					9,143	6						
					30,000	7						
					900	8						
					11,000	10						
Restricted deposits	—	1,402	—		—		1,402	—	—		1,402	
Accounts receivable	—	7,322	—		—		7,322	—	—		7,322	
Due from related party	—	703	—		—		703	—	—		703	
Due from shareholder	—	520	—		—		520	—	—		520	
Inventory	—	112	—		—		112	—	—		112	
Prepaid expenses and other current assets	—	450	—		—		450	—	—		450	
Total current assets	48	26,520	81,311		51,911		55,968	—	30,448		25,520	
Property and equipment, net	—	690	—		—		690	—	—		690	
Restricted cash and cash equivalents held in trust account	81,311	—	—		81,311	3	—	—	—		—	
Restricted deposits, long-term	—	—	11,850	7	—		11,850	—	—		11,850	
Other long term assets	—	260	—		—		260	—	—		260	
Total assets	\$ 81,359	\$ 27,470	\$93,161		\$133,222		\$ 68,768	\$—	\$30,448		\$ 38,320	

	Cambridge Capital Acquisition Corp. Note 1	Ability Computer Software Industries Ltd. Note 2	Pro Forma Adjustments				Pro Forma As Adjusted (assuming no conversion)	Pro Forma Adjustments with Maximum Conversion				Pro Forma As Adjusted (assuming maximum conversion)
			Debit	Note	Credit	Note		Debit	Note	Credit	Note	
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>												
Current liabilities:												
Accrued payroll and other compensation	\$ —	\$ 86	\$ —		\$ —		\$ 86	\$ —		\$ —		\$ 86
Accounts payable and accrued expenses	868	448	868	5	—		448	—		—		448
Income taxes payable	—	4,078	—		—		4,078	—		—		4,078
Deferred income taxes	—	551	—		—		551	—		—		551
Accounts payable and accrued expenses — project related	—	7,324	—		—		7,324	—		—		7,324
Note payable, stockholder	350	—	350	5	—		—	—		—		—
Progress payments in excess of accumulated costs — project related	—	1,058	—		—		1,058	—		—		1,058
Total current liabilities	1,218	13,545	1,218		—		13,545	—		—		13,545
Accrued severance pay	—	155	—		—		155	—		—		155
Other long-term liabilities	—	260	—		—		260	—		—		260
Put option liability	—	—	—		11,850	7	11,850	—		—		11,850
Total long-term liabilities	—	415	—		11,850		12,265	—		—		12,265
Total liabilities	1,218	13,960	1,218		11,850		25,810	—		—		25,810
Common stock, subject to possible conversion or tender	75,141	—	75,141	4	—		—	—		—		—
Shareholders' equity:												
Ordinary shares	—	35	35	11	3	7	3	1	12	—		2
Additional paid-in capital	6,935	—	30,003	7	75,141	4	40,480	30,447	12	—		10,033
			9,143	6	350	5						
			900	8	35	11						
			1,935	9	—							
Retained (deficit) earnings	(1,935)	13,475	11,000	10	1,935	9	2,475	—		—		2,475
Total shareholders' equity	5,000	13,510	53,016		77,464		42,958	30,448		—		12,510
Total liabilities and shareholders equity	\$ 81,359	\$ 27,470	\$ 129,373		\$ 89,314		\$ 68,768	\$ 30,448		\$ —		\$ 38,320

\* \* \*

**CAMBRIDGE HOLDCO CORP.**  
**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**  
**NINE MONTHS ENDED SEPTEMBER 30, 2015**  
(dollars in thousands, except share and per share amounts)

	Cambridge Capital Acquisition Corp. Note A	Ability Computer Software Industries Ltd. Note B	Pro Forma Adjustments		Pro forma As Adjusted (no conversion)	Pro Forma Adjustments (assuming maximum conversion)		Pro forma As Adjusted (assuming maximum conversion)
			Adjustment	Note		Adjustment	Note	
Revenues	\$ —	\$ 51,689	\$ —		\$ 51,689	\$ —		\$ 51,689
Cost of revenues		27,609	536	C	28,145			28,145
Gross Profit		24,080	(536)		23,544			23,544
Operating expenses:								
Selling and marketing		2,420			2,420			2,420
General and administrative	1,025	1,058	329	C	2,412			2,412
Total operating expenses	1,025	3,478	329		4,832			4,832
(Loss) income from operations	(1,025)	20,602	(865)		18,712			18,712
Finance income (expense), net	12	(42)	(12)	E	(42)			(42)
Income (loss) before income taxes	(1,013)	20,560	(877)		18,670			18,670
Income tax expense		3,277	(290)	D	2,987			2,987
Net (loss) income	\$ (1,013)	\$ 17,283	\$ (587)		\$ 15,863	\$ —		\$ 15,683
Weighted average shares outstanding								
Basic	3,026,916		23,692,709	F	26,719,625	(3,014,653)	G	23,704,972
Diluted	3,026,916		23,692,709	F	26,719,625	(3,014,653)	G	23,704,972
Earnings per share								
Basic	\$ (0.33)				\$ 0.59			\$ 0.66
Diluted	\$ (0.33)				\$ 0.59			\$ 0.66

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**CAMBRIDGE HOLDCO CORP.**  
**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**  
**FOR THE YEAR ENDED DECEMBER 31, 2014**  
(dollars in thousands, except share and per share amounts)

	Cambridge Capital Acquisition Corp. Note H	Ability Computer Software Industries Ltd. Note I	Pro Forma Adjustments		Pro forma As Adjusted (no conversion)	Pro Forma Adjustments (assuming maximum conversion)		Pro forma As Adjusted (assuming maximum conversion)
			Adjustment	Note		Adjustment	Note	
Revenues	\$ —	\$ 22,134	\$ —		\$ 22,134	\$ —		\$ 22,134
Cost of revenues		14,654	723	J	15,377			15,377
Gross Profit		7,480	(723)		6,757			6,757
Operating expenses:								
Selling and marketing		2,387			2,387			2,387
General and administrative	949	469	450	J	1,868			1,868
Total operating expenses	949	2,856	450		4,255			4,255
(Loss) income from operations	(949)	4,624	(1,173)		2,502			2,502
Finance income, net	34	269	(34)	L	269			269
Income (loss) before income taxes	(915)	4,893	(1,207)		2,771			2,771
Income tax expense		1,260	(817)	K	443			443
Net (loss) income	\$ (915)	\$ 3,633	\$ (390)		\$ 2,328	\$ —		\$ 2,328
Weighted average shares outstanding								
Basic		2,937,744	23,781,881	M	26,719,625	(3,014,653)	N	23,704,972
Diluted		2,937,744	23,781,881	M	26,719,625	(3,014,653)	N	23,704,972
Earnings per share								
Basic	\$ (0.31)				\$ 0.09			\$ 0.10
Diluted	\$ (0.31)				\$ 0.09			\$ 0.10

22. On December 30, 2015, Ability filed a Form 8-K with the SEC, which was signed by Defendant Hurgin and stated in part:

**Item 9.01. Financial Statement and Exhibits.**

(a)-(b) Financial Statements.

Information responsive to Item 9.01(a) and (b) of Form 8-K is set forth in the financial statements included in the Proxy Statement/Prospectus beginning on page F-1 which information is incorporated herein by reference. The unaudited Pro Forma Condensed Combined Financial Statements of Ability Inc. as of and for the nine months ended September 30, 2015 and, for the year ended December 31, 2014, are filed as Exhibit 99.2 to this Form 8-K and are incorporated herein by reference.

23. Exhibit 99.2 of the Form 8-K contained the following unaudited Pro Forma Condensed Combined Financial Statements of Ability:

**CAMBRIDGE HOLDCO CORP.**  
**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**  
**September 30, 2015**  
**(dollars in thousands, except share and per share amounts)**

	Cambridge Capital Acquisition Corp. Note 1	Ability Computer Software Industries Ltd. Note 2	Pro Forma Adjustments				Pro Forma As Adjusted
			Debit	Note	Credit	Note	
<b>ASSETS</b>							
Current assets:							
Cash and cash equivalents	\$ 48	\$ 16,011	\$ 81,311	3	\$ 868	5	\$ 23,231
			-		9,790	6	
			-		30,000	7	
			-		900	8	
			-		11,000	10	
			-		21,581	12	
Restricted deposits	-	1,402	-		-		1,402
Accounts receivable	-	7,322	-		-		7,322
Due from related party	-	703	-		-		703
Due from shareholder	-	520	-		-		520
Inventory	-	112	-		-		112
Prepaid expenses and other current assets	-	450	-		-		450
Total current assets	48	26,520	81,311		74,139		33,740
Property and equipment, net	-	690	-		-		690
Restricted cash and cash equivalents held in trust account	81,311	-	-		81,311	3	-
Restricted deposits, long-term	-	-	11,850	7	-		11,850
Other long term assets	-	260	-		-		260
Total assets	\$ 81,359	\$ 27,470	\$ 93,161		\$ 155,450		\$ 46,540
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>							
Current liabilities:							
Accrued payroll and other compensation	\$ -	\$ 86	\$ -		\$ -		\$ 86
Accounts payable and accrued expenses	868	448	868	5	-		448
Income taxes payable	-	4,078	-		-		4,078
Deferred income taxes	-	551	-		-		551
Accounts payable and accrued expenses - project related	-	7,324	-		-		7,324
Note payable, stockholder	350	-	350	5	-		-
Progress payments in excess of accumulated costs - project related	-	1,058	-		-		1,058
Total current liabilities	1,218	13,545	1,218		-		13,545
Accrued severance pay	-	155	-		-		155
Other long-term liabilities	-	260	-		-		260
Put option liability	-	-	-		11,850	7	11,850
Total long-term liabilities	-	415	-		11,850		12,265
Total liabilities	1,218	13,960	1,218		11,850		25,810
Common stock, subject to possible conversion or tender	75,141	-	75,141	4	-		-
Shareholders' equity:							
Ordinary shares	-	35	35	11	3	7	3
Additional paid-in capital	6,935	-	30,003	7	75,141	4	18,252
			9,790	6	350	5	
			900	8	35	11	
			1,935	9	-		
			21,581	12	-		
Retained (deficit) earnings	(1,935)	13,475	11,000	10	1,935	9	2,475
Total shareholders' equity	5,000	13,510	75,244		77,464		20,730
Total liabilities and shareholders equity	\$ 81,359	\$ 27,470	\$ 151,603		\$ 89,314		\$ 46,540

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**CAMBRIDGE HOLDCO CORP.**  
**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**  
**NINE MONTHS ENDED SEPTEMBER 30, 2015**  
(dollars in thousands, except share and per share amounts)

	Cambridge Capital Acquisition Corp.	Ability Computer Software Industries Ltd.	Pro Forma Adjustments		Pro forma As Adjusted
	Note A	Note B	Adjustment	Note	
Revenues	\$ -	\$ 51,689	\$ -		\$ 51,689
Cost of revenues	-	27,609	536	C	28,145
Gross Profit	-	24,080	(536)		23,544
<b>Operating expenses:</b>					
Selling and marketing	-	2,420	-		2,420
General and administrative	1,025	1,058	329	C	2,412
Total operating expenses	1,025	3,478	329		4,832
(Loss) income from operations	(1,025)	20,602	(865)		18,712
Finance income (expense), net	12	(42)	(12)	E	(42)
Income (loss) before income taxes	(1,013)	20,560	(877)		18,670
Income tax expense	-	3,277	(290)	D	2,987
Net (loss) income	<u>\$ (1,013)</u>	<u>\$ 17,283</u>	<u>\$ (587)</u>		<u>\$ 15,683</u>
<b>Weighted average shares outstanding</b>					
Basic	<u>3,026,916</u>		<u>21,555,958</u>	F	<u>24,582,874</u>
Diluted	<u>3,026,916</u>		<u>21,555,958</u>	F	<u>24,582,874</u>
<b>Earnings per share</b>					
Basic	<u>\$ (0.33)</u>				<u>\$ 0.64</u>
Diluted	<u>\$ (0.33)</u>				<u>\$ 0.64</u>

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**CAMBRIDGE HOLDCO CORP.**  
**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**  
**FOR THE YEAR ENDED DECEMBER 31, 2014**  
(dollars in thousands, except share and per share amounts)

	Cambridge Capital Acquisition Corp. Note G	Ability Computer Software Industries Ltd. Note H	Pro Forma Adjustments		Pro forma As Adjusted
			Adjustment	Note	
Revenues	\$ -	\$ 22,134	\$ -		\$ 22,134
Cost of revenues	-	14,654	723	I	15,377
Gross Profit	-	7,480	(723)		6,757
<b>Operating expenses:</b>					
Selling and marketing	-	2,387	-		2,387
General and administrative	949	469	450	I	1,868
Total operating expenses	949	2,856	450		4,255
(Loss) income from operations	(949)	4,624	(1,173)		2,502
Finance income, net	34	269	(34)	K	269
Income (loss) before income taxes	(915)	4,893	(1,207)		2,771
Income tax expense	-	1,260	(817)	J	443
Net (loss) income	<u>\$ (915)</u>	<u>\$ 3,633</u>	<u>\$ (390)</u>		<u>\$ 2,328</u>
<b>Weighted average shares outstanding</b>					
Basic	<u>2,937,744</u>		<u>21,645,130</u>	L	<u>24,582,874</u>
Diluted	<u>2,937,744</u>		<u>21,645,130</u>	L	<u>24,582,874</u>
<b>Earnings per share</b>					
Basic	<u>\$ (0.31)</u>				<u>\$ 0.09</u>
Diluted	<u>\$ (0.31)</u>				<u>\$ 0.09</u>

24. The above statements contained in ¶¶21-23 were false and/or misleading, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, these statements were false and/or misleading and/or failed to disclose: (1) errors with respect to previously unrecognized commissions due to a vendor on revenues that were recognized in 2015, 2014, 2013 and 2012; (2) improper allocation and timing of revenue recognition from connection to supportive infrastructure in multiple

element sale transactions recognized in 2015, 2014, 2013 and 2012; (3) errors with respect to previously unrecognized commissions due to a third party on cost of revenues that were recognized in 2015 and 2014; and that (4) as a result, Defendants' statements about Ability's business, operations, and prospects, were false and misleading and/or lacked a reasonable basis.

### **The Truth Emerges**

25. On May 2, 2016, the Company issued a press release entitled, "Ability Inc. Reports Fourth Quarter and Full-Year 2015 Financial Results." The press release revealed that the Company had to restate its previous financial statements, stating in relevant part:

#### **Restatement of Previous Financial Statements**

Our consolidated financial statements as of December 31, 2014 and for the two years in the period then ended and as of June 30 and September 30 in 2015 and 2014 and for the six and nine month periods then ended, respectively, have been restated to reflect corrections of errors with respect to previously unrecognized commissions due to a vendor on revenues that were recognized in 2015, 2014, 2013 and 2012; improper allocation and timing of revenue recognition from connection to supportive infrastructure in multiple element sale transactions recognized in 2015, 2014, 2013 and 2012; and previously unrecognized commissions due to a third party on cost of revenues that were recognized in 2015 and 2014. We have authorized an internal investigation, to be overseen by our audit committee, into the facts and circumstances surrounding the restatement, and we expect to engage external consultants to assist us with conducting the investigation following the filing of our Annual Report on Form 20-F for the year ended December 31, 2015.

26. On this news, shares of Ability fell \$2.42 per share or over 33% from its previous closing price to close at \$4.90 per share on May 2, 2016, damaging investors.

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

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

28. 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 those who purchased or otherwise acquired Ability securities during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosure. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

29. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Ability securities were actively traded on the 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 or thousands of members in

the proposed Class. Record owners and other members of the Class may be identified from records maintained by Ability or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

30. 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.

31. 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.

32. 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 federal securities laws were 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, operations and management of Ability;

- whether the Individual Defendants caused Ability to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Ability 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.

33. 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.

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

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

- the omissions and misrepresentations were material;
- Ability securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Ability securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

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

36. 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, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

## COUNT I

### **Violations of Section 10(b) of The Exchange Act and Rule 10b-5 Against All Defendants**

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

38. This Count is asserted against Defendants and 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.

39. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and 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; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Ability securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Ability securities at artificially inflated prices. In furtherance of this unlawful

scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

40. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Ability securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Ability's disclosure controls and procedures.

41. By virtue of their positions at Ability, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.

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

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

44. During the Class Period, Ability securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Ability securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Ability securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Ability securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

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

46. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities

during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

## **COUNT II**

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

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

48. During the Class Period, the Individual Defendants participated in the operation and management of Ability, and conducted and participated, directly and indirectly, in the conduct of Ability's business affairs. Because of their senior positions, they knew the adverse non-public information about Ability's operations, current financial position and future business prospects.

49. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Ability's business practices, and to correct promptly any public statements issued by Ability which had become materially false or misleading.

50. 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 Ability disseminated in the marketplace during the Class Period concerning the Company's disclosure controls and procedures. Throughout the Class Period, the Individual Defendants

exercised their power and authority to cause Ability to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Ability 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 Ability securities.

51. Each of the Individual Defendants, therefore, acted as a controlling person of Ability. By reason of their senior management positions and/or being directors of Ability, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Ability to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Ability and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

52. 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 Ability.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as her reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

Dated: \_\_\_\_\_

Respectfully submitted,

**THE ROSEN LAW FIRM, P.A.**

By: \_\_\_\_\_

Laurence Rosen, Esq.  
609 W. South Orange Avenue, Suite 2P  
South Orange, NJ 07079  
Tel: (973) 313-1887  
Fax: (973) 833-0399  
Email: lrosen@rosenlegal.com

Counsel for Plaintiff