

1 Laurence M. Rosen, Esq. (SBN 219683)
2 **THE ROSEN LAW FIRM, P.A.**
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, CA 90071
5 Telephone: (213) 785-2610
6 Facsimile: (213) 226-4684
7 Email: lrosen@rosenlegal.com

8 Counsel for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 _____, Individually and on behalf of all
12 others similarly situated,

13 Plaintiff,

14 v.

15 PULSE BIOSCIENCES, INC., DARRIN R.
16 UECKER, and BRIAN B. DOW,

17 Defendants.

Case No:

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

18 Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons similarly
19 situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined
20 below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own
21 acts, and information and belief as to all other matters, based upon, inter alia, the investigation
22 conducted by and through Plaintiff’s attorneys, which included, among other things, a review of
23 the defendants’ public documents, conference calls and announcements made by defendants,
24 United States Securities and Exchange Commission (“SEC”) filings, wire and press releases
25 published by and regarding Pulse Biosciences, Inc. (“Pulse” or the “Company”), analysts’ reports
26 and advisories about the Company, and information readily obtainable on the Internet. Plaintiff
27 believes that substantial evidentiary support will exist for the allegations set forth herein after a
28 reasonable opportunity for discovery.

1 **NATURE OF THE ACTION**

2 1. This is a federal securities class action on behalf of a class consisting of all persons
3 and entities other than Defendants who purchased or otherwise acquired the publicly traded
4 securities of Pulse between July 27, 2017 and September 11, 2017, both dates inclusive (the “Class
5 Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the
6 federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities
7 Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.
8

9 **JURISDICTION AND VENUE**

10 2. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the
11 Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC
12 (17 C.F.R. §240.10b-5).

13 3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C.
14 §1331 and §27 of the Exchange Act.

15 4. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act (15
16 U.S.C. §78aa) and 28 U.S.C. §1391(b) as Defendants conduct business and is headquartered in this
17 Judicial District.

18 5. In connection with the acts, conduct and other wrongs alleged in this Complaint,
19 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
20 including but not limited to, the United States mail, interstate telephone communications and the
21 facilities of the national securities exchange.
22

23 **PARTIES**

24 6. Plaintiff, as set forth in the accompanying Certification, purchased Pulse securities at
25 artificially inflated prices during the Class Period and was damaged upon the revelation of the
26 alleged corrective disclosures.

27 7. Defendant Pulse is a development-stage medical device company using a novel and
28 proprietary platform technology called Nano-Pulse Stimulation (“NPS”). The Company is

1 incorporated in Nevada and its principal executive offices are located at 3957 Point Eden Way,
2 Hayward, California 94545. Pulse’s common stock is traded on the NASDAQ under the ticker
3 symbol “PLSE.”

4 8. Defendant Darrin R. Uecker (“Uecker”) has been the Company’s Chief Executive
5 Officer (“CEO”) since September 2015.

6 9. Defendant Brian B. Dow (“Dow”) has been the Company’s Chief Financial Officer
7 (“CFO”), Senior Vice President, Treasure, and Secretary since November 2015.

8 10. Defendants Uecker and Dow are sometimes referred to herein as the “Individual
9 Defendants.”

10 11. Each of the Individual Defendants:

- 11 (a) directly participated in the management of the Company;
- 12 (b) was directly involved in the day-to-day operations of the Company at the highest
13 levels;
- 14 (c) was privy to confidential proprietary information concerning the Company and its
15 business and operations;
- 16 (d) was directly or indirectly involved in drafting, producing, reviewing and/or
17 disseminating the false and misleading statements and information alleged herein;
- 18 (e) was directly or indirectly involved in the oversight or implementation of the
19 Company’s internal controls;
- 20 (f) was aware of or recklessly disregarded the fact that the false and misleading
21 statements were being issued concerning the Company; and/or
- 22 (g) approved or ratified these statements in violation of the federal securities laws.

23 12. The Company is liable for the acts of the Individual Defendants and its employees
24 under the doctrine of *respondeat superior* and common law principles of agency because all of the
25 wrongful acts complained of herein were carried out within the scope of their employment.
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1 the PulseTx System in March of this year. In May, we reported that we were in
2 the substantive review process.

3 Substantive review is, when the lead FDA reviewer conducts a comprehensive
4 review of the 510k submission. It is common for the FDA to request additional
5 information or further clarifications based on the substantive review. And as
6 expected, we received an additional information request or AI letter from FDA.
7 This letter is a typical part of the agency's review process and included a number
8 of questions and comments regarding our 510k submission. ***We have responded
9 to the AI letter and our responses are being reviewed by FDA.***

10 (Emphasis added).

11 19. The statements referenced in ¶18 above were materially false and/or misleading
12 because they misrepresented and failed to disclose the following adverse facts pertaining to the
13 Company's business, operational and financial results, which were known to Defendants or
14 recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements
15 and/or failed to disclose that: (1) the Company's response to the FDA's additional information
16 request regarding the 510(k) submission of PulseTx System was deficient; and (2) as a result,
17 Defendants' public statements were materially false and misleading at all relevant times.

18 **The Truth Emerges**

19 20. On September 11, 2017, the Company issued a press release disclosing its decision
20 to withdraw of its 510(k) application for the PulseTx System, stating in pertinent part:

21 **PULSE BIOSCIENCES ANNOUNCES WITHDRAWAL AND PLANNED
22 RESUBMISSION OF 510(K) APPLICATION FOR THE PULSETXTM
23 SYSTEM**

24 HAYWARD, Calif.--(BUSINESS WIRE)--Sep. 11, 2017-- Pulse Biosciences,
25 Inc. (Nasdaq:PLSE), a medical technology company developing a proprietary
26 therapeutic tissue treatment based on its Nano-Pulse Stimulation (NPS) platform,
27 ***announced today that it has withdrawn its initial application to the United
28 States Food and Drug Administration (FDA) for 510(k) clearance of its
PulseTx™ System.***

***The voluntary withdrawal on September 8, 2017, was the result of the FDA's
appropriate request for additional data that could not be provided within the
Agency's 90-day review period that would have otherwise ended on September
10, 2017.*** Pulse Biosciences is committed to generating the requested data and

1 analysis, and the company plans to submit the supplemental information in a
2 subsequent 510(k) application in the coming months.

3 “Over the past several months, we have been engaged in very productive and
4 positive conversations with the FDA staff, and we remain confident in our ability
5 to obtain a 510(k) clearance for the PulseTx System and more broadly for Nano-
6 Pulse Stimulation,” noted Darrin Uecker, Pulse Biosciences President and Chief
7 Executive Officer.

8 (Emphasis added).

9 21. On this news, shares of Pulse fell \$4.11 per share, or over 21%, from its previous
10 closing price to close at \$15.46 per share on September 11, 2017, damaging investors.

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

14 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

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

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

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

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

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

- 10 • whether the federal securities laws were violated by Defendants' acts as alleged
11 herein;
- 12 • whether statements made by Defendants to the investing public during the Class
13 Period misrepresented material facts about the financial condition, business,
14 operations, and management of the Company;
- 15 • whether Defendants' public statements to the investing public during the Class
16 Period omitted material facts necessary to make the statements made, in light of the
17 circumstances under which they were made, not misleading;
- 18 • whether the Individual Defendants caused the Company to issue false and misleading
19 SEC filings and public statements during the Class Period;
- 20 • whether Defendants acted knowingly or recklessly in issuing false and misleading
21 SEC filings and public statements during the Class Period;
- 22 • whether the prices of Pulse securities during the Class Period were artificially
23 inflated because of the Defendants' conduct complained of herein; and
- 24 • whether the members of the Class have sustained damages and, if so, what is the
25 proper measure of damages.

26 28. A class action is superior to all other available methods for the fair and efficient
27 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
28 damages suffered by individual Class members may be relatively small, the expense and burden of

1 individual litigation make it impossible for members of the Class to individually redress the wrongs
2 done to them. There will be no difficulty in the management of this action as a class action.

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

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

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

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

24 **COUNT I**

25 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**
26 **Against All Defendants**

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

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

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

9 35. The Company and the Individual Defendants violated §10(b) of the 1934 Act and
10 Rule 10b-5 in that they:

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

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

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1 43. During the Class Period, the Individual Defendants participated in the operation and
2 management of the Company, and conducted and participated, directly and indirectly, in the
3 conduct of the Company’s business affairs. Because of their senior positions, they knew the adverse
4 non-public information regarding the Company’s business practices.

5 44. As officers and/or directors of a publicly owned company, the Individual Defendants
6 had a duty to disseminate accurate and truthful information with respect to the Company’s financial
7 condition and results of operations, and to correct promptly any public statements issued by the
8 Company which had become materially false or misleading.

9 45. Because of their positions of control and authority as senior officers, the Individual
10 Defendants were able to, and did, control the contents of the various reports, press releases and
11 public filings which the Company disseminated in the marketplace during the Class Period.
12 Throughout the Class Period, the Individual Defendants exercised their power and authority to
13 cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants
14 therefore, were “controlling persons” of the Company within the meaning of Section 20(a) of the
15 Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially
16 inflated the market price of Pulse securities.

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

24 47. By reason of the above conduct, the Individual Defendants are liable pursuant to
25 Section 20(a) of the Exchange Act for the violations committed by the Company.
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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 their 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 M. Rosen, Esq. (SBN 219683)
355 S. Grand Avenue, Suite 2450
Los Angeles, CA 90071
Telephone: (213) 785-2610
Facsimile: (213) 226-4684
Email: lrosen@rosenlegal.com

Counsel for Plaintiff