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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 _____, Individually and on Behalf
12 of All Others Similarly Situated,

13 Plaintiff,

14 v.

15 WORKHORSE GROUP, INC.,
16 DUANE HUGHES, and STEVE
17 SCHRADER,

18 Defendants.

No.

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

CLASS ACTION

(DEMAND FOR JURY TRIAL)

19 Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons
20 similarly situated, by Plaintiff’s undersigned attorneys, alleges the following based
21 upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and upon
22 information and belief as to all other matters based on the investigation conducted
23 by and through Plaintiff’s attorneys, which included, among other things, a review
24 of U.S. Securities and Exchange Commission (“SEC”) filings by Workhorse Group,
25 Inc. (“Workhorse” or the “Company”), as well as media and analyst reports about
26 the Company and Company press releases. Plaintiff believes that substantial
27 additional evidentiary support will exist for the allegations set forth herein.
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1 **PARTIES**

2 7. Plaintiff, as set forth in the accompanying Certification, purchased the
3 Company's securities at artificially inflated prices during the Class Period and was
4 damaged upon the revelation of the alleged corrective disclosure.

5 8. Defendant Workhorse is a technology company engaged in the
6 development and manufacturing of electric delivery vehicles. Workhorse is
7 incorporated in Nevada and maintains its principal executive offices at 100
8 Commerce Drive, Loveland, Ohio 45140. The Company's shares are listed on
9 NASDAQ under the ticker symbol "WKHS."

10 9. Defendant Duane Hughes ("Hughes") served as the Chief Executive
11 Officer and President and Director of the Company throughout the Class Period.
12 During the Class Period, Hughes sold over 568,500 shares of his Workhorse stock
13 for proceeds of over \$14 million.

14 10. Defendant Steve Schrader ("Schrader") served as the Chief Financial
15 Officer of the Company throughout the Class Period. During the Class Period,
16 Schrader sold 15,152 shares of his Workhorse stock for proceeds of over \$332,131.

17 11. Defendants Hughes and Schrader are collectively referred to herein as
18 the "Individual Defendants."

19 12. Each of the Individual Defendants:

- 20 (a) directly participated in the management of the Company;
21 (b) was directly involved in the day-to-day operations of the
22 Company at the highest levels;
23 (c) was privy to confidential proprietary information concerning
24 the Company and its business and operations;
25 (d) was directly or indirectly involved in drafting, producing,
26 reviewing and/or disseminating the false and misleading statements
27 and information alleged herein;
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- 1 (e) was directly or indirectly involved in the oversight or
2 implementation of the Company’s internal controls;
3 (f) was aware of or recklessly disregarded the fact that the false
4 and misleading statements were being issued concerning the
5 Company; and/or
6 (g) approved or ratified these statements in violation of the federal
7 securities laws.

8 13. The Company is liable for the acts of the Individual Defendants and its
9 employees under the doctrine of *respondeat superior* and common law principles
10 of agency because all of the wrongful acts complained of herein were carried out
11 within the scope of their employment.

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

15 15. The Company and the Individual Defendants are referred to herein,
16 collectively, as the “Defendants.”

17 **SUBSTANTIVE ALLEGATIONS**

18 **Background**

19 16. In 2016, the United States Postal Service (“USPS”) announced the
20 USPS Next Generation Delivery Vehicle (“NGDV”) project, a competitive
21 multiyear acquisition process for replacing approximately 165,000 package
22 delivery vehicles.

23 17. Workhorse was one of the companies vying for the NGDV contract,
24 which was thought to be worth approximately \$6.3 billion.

25 18. On March 13, 2020, Workhorse filed its annual report on Form 10-K
26 for the year ended December 31, 2019 (the “2019 Annual Report”), which was
27 signed by Defendants Hughes and Schrader. Attached to the 2019 Annual Report
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1 were certifications pursuant to the Sarbanes-Oxley Act of 2000 (SOX) signed by
2 Defendants Hughes and Schrader attesting to the accuracy of the financial
3 statements and the disclosure of all fraud.

4 19. The 2019 Annual Report stated the following about the USPS NGDV
5 project, which was of very high importance to the Company:

6 U.S. Post Office Replenishment Program / Next Generation Delivery
7 Vehicle Project

8 Workhorse was one of the five participants that the United States Postal
9 Service (“USPS”) selected to build prototype vehicles for the USPS
10 Next Generation Delivery Vehicle (“NGDV”) project. The USPS has
11 publicly stated that approximately 165,000 vehicles are to be replaced.
12 In September 2017, Workhorse delivered six vehicles for prototype
13 testing under the NGDV Acquisition Program in compliance with the
14 terms set forth in their USPS prototype contract. In 2019, the vehicles
15 completed the required testing protocol as specified by the USPS.

16 **Materially False and Misleading Statements**

17 20. On July 7, 2020, Workhorse CFO Schrader granted an interview to a
18 staff writer at Benzinga, a financial news publication. The interview appeared in
19 print on the Benzinga website. When asked how Workhorse separates itself from
20 the competition generally, Schrader responded by explaining why Workhorse
21 trucks were advantageous for “postal services:”

22 **BZ:** How does Workhorse separate itself from the competition?

23 **Schrader:** Our trucks don’t have a transmission, so we can save postal
24 services upward of 60% of vehicle costs. Our truck will cost fleets 40
25 cents a mile compared to the current \$1 per mile.

26 21. On July 14, 2020, Workhorse and the other participants submitted their
27 final bids in connection with the USPS NGDV project.

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1 22. On July 21, 2020, CFO Schrader again spoke to a staff writer at
2 Benzinga. According to the Benzinga article:

3
4 Schrader also provided an update on the \$6 billion U.S. Postal Service
5 contract for its next-generation mail trucks. Workhorse is one of four
6 remaining participants bidding for the contract. Schrader said he can't
7 discuss too much about the process at this point, but Workhorse is the
8 only all-electric option.

9 23. The Benzinga article also quotes Schrader directly:

10 ***“What I will say is our all-electric is probably the perfect vehicle for***
11 ***them.*** When you think about what the Post Office does, 70% of their
12 trucks go about 17 to 18 miles a day and make 700 stops--mailbox,
13 mailbox, mailbox. Ours runs more like a golf cart, so that's really what
14 you need. Right now they get five to six miles per gallon. Ours get more
15 than 40 miles per gallon equivalent,” Schrader said.

16 (Emphasis added).

17 24. The article continues:

18 In addition, he said Workhorse vehicles have half the maintenance costs
19 of the current USPS fleet.

20 “I think it's a great opportunity for us. Obviously, if we were to get the
21 full award or a decent-sized award, that would be transforming for the
22 company,” Schrader said.

23 25. On August 6, 2020, Company CEO Hughes granted an interview to
24 the television network, CNBC. CEO Hughes said the following about the USPS
25 contract:

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27 CNBC: What can you tell us about the status of the U.S. Postal
28 Service potential contract? That contract could be worth

1 as much as about five to six billion dollars. You could get
2 a partial award; you could get a full award. You submitted
3 the RFP, I think, mid-July. When will you know? Your
4 CFO recently said that this award would be transformative
5 for the company. I would imagine that would be so, if
6 your cash position right now is about a hundred million; I
7 mean, that contract could be truly changing for your
8 company.

9 HUGHES: Yeah, I would say any contract like that would be
10 changing for any company, virtually. In our case, we're
11 unable to speak about the Post Office at all. I have to say
12 no comment because we're under a gag order not to talk
13 about it. But certainly, to your point, any contract that's
14 worth billions of dollars coming into a company like ours
15 would be a very company-changing experience.

16 26. On October 11, 2020, Workhorse issued a press release, entitled
17 *Workhorse Secures \$200 Million Financing from Institutional Lenders*. The press
18 release explained that the notes would be convertible into common stock
19 at \$36.14 per share, a premium of 35% over the closing price of the common stock
20 on Friday, October 9th, subject to certain potential closing adjustments.

21 27. On October 29, 2020, CFO Schrader sat down for a video-recorded
22 interview with Benzinga. Schrader stated the following about the USPS contract,
23 in pertinent part:

24 BENZINGA: Can you just refresh us on what this deal would
25 mean for Workhorse?

26 SCHRADER: Well, the Post Office is bidding out 165,000
27 vehicles, so it's a huge fleet opportunity. And I
28 think, from our standpoint, it would be
transforming, right, from a standpoint of, just, now
[we're] delivering a few vehicles and getting some
revenues in and we have a backlog of about twelve
hundred orders. But, you know, the Post Office

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would be 165,000 vehicles over a certain time period, too. So it would be transforming. It would be a big opportunity for us.

BENZINGA: Do you expect, when they do award the contract, do you expect to be like the only recipient, the only winners, or do you expect to be one of several, or do you have any expectations there?

SCHRADER: I don't think we have expectations one way or the other. It's, again, we can't comment on it. I think it's up to the Post Office and what they want to do and, at least publicly, they've said that they'll let everybody know by the end of the year.

28. On January 28, 2021, CFO Schrader sat down for an interview with the host of a popular Youtube channel focused on investing in the stock market. The pertinent part of that conversation is as follows:

HOST: So Workhorse has been doing fantastic things as of late, over the last month or so in particular, and there's a few things I really want to speak about today. Now the first one is, Steve, I'd just like to hear your thoughts on Biden saying that the entire federal fleet will be replaced with electric vehicles, specifically American electric vehicles. And I know we can't speak about the USPS contract, even though that's what the entire comment section is probably asking us about, but I'd just like to get your thoughts on his statements and what it could potentially mean for Workhorse going forward.

SCHRADER: *Yeah, I think the President's announcement was huge, for several reasons, right?* It's, one, supportive of the E.V. ("electric vehicle") market. It's, two, all-American, like you said, all-American product buy. And I think he also said a lot about small businesses, and purchasing, whether it be

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parts or final products, from small businesses, too. ***So I think that's huge. I think it's meaningful that he did this his fifth day into his presidency, right? He did it quickly; he didn't really wait and so I think that, putting a move on that was very quick too. I think it's also meaningful that, when you think about it, when the government gets behind things, things happen.***

And in this case, it's, the government actually is maybe somewhat behind the commercial market. As you well know, customers are already demanding these products, right? Investors are already looking at companies that are making these products, so I think everybody sees that E.V.s are kind of the way of the future going forward, and they see – customers see – the savings opportunities and I think what probably has, the only thing that has been missing, to some extent, is that now you've got the government behind it, from a standpoint of environmental, you know, and just – savings opportunities going forward. ***So, yeah, having the government push us and the President come out, like I said, five days after his inauguration, is huge.***

HOST:

It was nice and quick. And as you just said, I think that's exactly what we wanted to see. I mean, we've spoken a few times now and you've made it very evident that a lot of the people who actually want to buy these trucks – I think every fleet manager in the country at this stage is now heavily contemplating E.V. more so than traditional[] vehicles, from a savings point of view. I think the government to an extent were a little bit behind, so they're seeing something like this come from the President himself, that has to be a huge catalyst to pretty much everybody involved, especially the all-American owned ones, which we know you guys stand very heavily for. So that's awesome; that's just

1 awesome. And that, obviously, it's a very good
2 thing.

3 SCHRADER: *Yes. It's a very good thing*

4 (Emphasis added).

5 29. The statements referenced in ¶¶20-28 above were materially false
6 and/or misleading because they misrepresented and failed to disclose the following
7 adverse facts pertaining to the Company's business, operational and financial
8 results, which were known to Defendants or recklessly disregarded by them.
9 Specifically, Defendants made false and/or misleading statements and/or failed to
10 disclose that: (1) the Company was merely hoping that USPS was going to select
11 an electric vehicle as its Next Generation Delivery Vehicle, and had no assurance
12 or indication from USPS that this was the case; (2) the Company had concealed the
13 fact that – as revealed by the postmaster general in explaining the ultimate decision
14 not to select an electric vehicle – electrifying the USPS's entire fleet would be
15 impractical and astronomically expensive; and (3) as a result, Defendants' public
16 statements were materially false and/or misleading at all relevant times.

17 **THE TRUTH EMERGES**

18 38. On February 23, 2021, while the market was open, the USPS issued a
19 press release entitled: *U.S. Postal Service Awards Contract to Launch Multi-*
20 *Billion-Dollar Modernization of Postal Delivery Vehicle Fleet.*

21 39. The press release announced that Oshkosh Defense – not Workhorse –
22 had won the lucrative NGDV contract:

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24 WASHINGTON, DC — The U.S. Postal Service announced today it
25 awarded a 10-year contract to Oshkosh, WI, based Oshkosh Defense,
26 to manufacture a new generation of U.S.-built postal delivery vehicles
27 that will drive the most dramatic modernization of the USPS fleet in
28 three decades.

1 44. On this news, securities of Workhorse fell \$14.88 per share, or 47%,
2 to close at \$16.47 in the regular session on February 23, 2021. The price continued
3 to drop in after-hours trading and opened on February 24, 2021 at a price of \$14.07,
4 a fall of over 50% from the previous open, damaging investors.

5 45. The New York Times published an article on February 24, 2021, entitled:
6 *Losing Bid for Postal Contract Proves Costly for Electric-Vehicle Maker.* The
7 subtitle read: *Workhorse, a small truck maker with big ambitions, was counting on*
8 *the deal for a surge in revenue. Its shares lost \$2 billion in value.*

9 46. The article stated, in pertinent part:

10 The choice of Oshkosh left open the possibility of some electrification.
11 The new vehicles will be equipped with either fuel-efficient gasoline
12 engines or electric batteries, and they will be retrofitted to keep pace
13 with advances in electric-vehicle technology, the Postal Service said.

14 But that rollout could be limited. In response to questioning at a House
15 Oversight and Reform Committee hearing on Wednesday, the
16 postmaster general, Louis DeJoy, said the agency’s plan called for 10
17 percent of its new trucks to be electric.

18 Asked by Representative Jackie Speier, a California Democrat, why
19 that figure was not 90 percent, Mr. DeJoy pointed to cost.

20 *“We don’t have the three or four extra billion dollars in our plan right*
21 *now that it would take to do it,” said Mr. DeJoy[.]*

22 (Emphasis added).

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

26 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

1 48. Plaintiff brings this action as a class action pursuant to Federal Rule of
2 Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other
3 than Defendants who purchased publicly traded Workhorse securities on the
4 NASDAQ during the Class Period, and who were damaged thereby (the “Class”).
5 Excluded from the Class are Defendants, the officers and directors of Workhorse
6 and its subsidiaries, members of the Individual Defendants’ immediate families and
7 their legal representatives, heirs, successors or assigns and any entity in which
8 Defendants have or had a controlling interest.

9 49. The members of the Class are so numerous that joinder of all members
10 is impracticable. Throughout the Class Period, Workhorse securities were actively
11 traded on the NASDAQ. While the exact number of Class members is unknown to
12 Plaintiff at this time and can be ascertained only through appropriate discovery,
13 Plaintiff believes that there are hundreds, if not thousands of members in the
14 proposed Class.

15 50. Plaintiff’s claims are typical of the claims of the members of the Class
16 as all members of the Class are similarly affected by Defendants’ wrongful conduct
17 in violation of federal law that is complained of herein.

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

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

- 25 a) whether the Exchange Act was violated by Defendants’ acts as alleged
26 herein;

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- 1 b) whether statements made by Defendants to the investing public during
2 the Class Period misrepresented material facts about the financial condition
3 and business of the Company;
- 4 c) whether Defendants' public statements to the investing public during
5 the Class Period omitted material facts necessary to make the statements
6 made, in light of the circumstances under which they were made, not
7 misleading;
- 8 d) whether the Defendants caused the Company to issue false and
9 misleading filings during the Class Period;
- 10 e) whether Defendants acted knowingly or recklessly in issuing false
11 filings;
- 12 f) whether the prices of Workhorse securities during the Class Period
13 were artificially inflated because of the Defendants' conduct complained of
14 herein; and
- 15 g) whether the members of the Class have sustained damages and, if so,
16 what is the proper measure of damages.

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

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

- 25 a) Workhorse shares met the requirements for listing, and were listed and
26 actively traded on the NASDAQ, an efficient market;
- 27 b) As a public issuer, the Company filed periodic public reports;

1 c) Workhorse regularly communicated with public investors via
2 established market communication mechanisms, including through the
3 regular dissemination of press releases via major newswire services and
4 through other wide-ranging public disclosures, such as communications with
5 the financial press and other similar reporting services;

6 d) Workhorse's securities were liquid and traded with moderate to heavy
7 volume during the Class Period; and

8 e) The Company was followed by a number of securities analysts
9 employed by major brokerage firms who wrote reports that were widely
10 distributed and publicly available.

11 55. Based on the foregoing, the market for Workhorse securities promptly
12 digested current information regarding the Company from all publicly available
13 sources and reflected such information in the prices of the securities, and Plaintiff
14 and the members of the Class are entitled to a presumption of reliance upon the
15 integrity of the market.

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

21 COUNT I

22 **For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder** 23 **Against All Defendants**

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

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

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

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

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

17 61. Defendants acted with scienter in that they knew that the public
18 documents and statements issued or disseminated in the name of the Company were
19 materially false and misleading; knew that such statements or documents would be
20 issued or disseminated to the investing public; and knowingly and substantially
21 participated, or acquiesced in the issuance or dissemination of such statements or
22 documents as primary violations of the securities laws. These Defendants by virtue
23 of their receipt of information reflecting the true facts of the Company, their control
24 over, and/or receipt and/or modification of Workhorse's allegedly materially
25 misleading statements, and/or their associations with the Company which made
26 them privy to confidential proprietary information concerning the Company,
27 participated in the fraudulent scheme alleged herein.
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1 62. Individual Defendants, who are or were the senior officers and/or
2 directors of the Company, had actual knowledge of the material omissions and/or
3 the falsity of the material statements set forth above, and intended to deceive
4 Plaintiff and the other members of the Class, or, in the alternative, acted with
5 reckless disregard for the truth when they failed to ascertain and disclose the true
6 facts in the statements made by them or other Workhorse personnel to members of
7 the investing public, including Plaintiff and the Class.

8 63. As a result of the foregoing, the market price of Workhorse securities
9 was artificially inflated during the Class Period. In ignorance of the falsity of
10 Defendants' statements, Plaintiff and the other members of the Class relied on the
11 statements described above and/or the integrity of the market price of Workhorse
12 securities during the Class Period in purchasing Workhorse securities at prices that
13 were artificially inflated as a result of Defendants' false and misleading statements.

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

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

21 66. By reason of the foregoing, Defendants have violated Section 10(b) of
22 the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the Plaintiff
23 and the other members of the Class for substantial damages which they suffered in
24 connection with their purchase of Workhorse'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

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

5 68. During the Class Period, the Individual Defendants participated in the
6 operation and management of the Company, and conducted and participated,
7 directly and indirectly, in the conduct of Workhorse’s business affairs. Because of
8 their senior positions, they knew the adverse non-public information about the
9 Company’s false financial statements.

10 69. As officers of a publicly owned company, the Individual Defendants
11 had a duty to disseminate accurate and truthful information with respect to
12 Workhorse’s financial condition and results of operations, and to correct promptly
13 any public statements issued by the Company which had become materially false
14 or misleading.

15 70. Because of their positions of control and authority as senior officers,
16 the Individual Defendants were able to, and did, control the contents of the various
17 reports, press releases and public filings which Workhorse disseminated in the
18 marketplace during the Class Period concerning the Company’s results of
19 operations. Throughout the Class Period, the Individual Defendants exercised their
20 power and authority to cause the Company to engage in the wrongful acts
21 complained of herein. The Individual Defendants, therefore, were “controlling
22 persons” of the Company within the meaning of Section 20(a) of the Exchange Act.
23 In this capacity, they participated in the unlawful conduct alleged which artificially
24 inflated the market price of Workhorse securities.

25 71. By reason of the above conduct, the Individual Defendants are liable
26 pursuant to Section 20(a) of the Exchange Act for the violations committed by the
27 Company
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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for
3 judgment and relief as follows:

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

8 (b) awarding damages in favor of Plaintiff and the other Class members
9 against all Defendants, jointly and severally, together with interest thereon;

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

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

14 **JURY TRIAL DEMANDED**

15 Plaintiff hereby demands a trial by jury.

16 Dated: , 2021

THE ROSEN LAW FIRM, P.A.

*/s/*_____

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