

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

\_\_\_\_\_, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

DULUTH HOLDINGS INC., STEPHANIE  
PUGLIESE, and DAVID LORETTA,

Defendants.

Case No.: DRAFT

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

**JURY TRIAL DEMANDED**

Law Offices of Howard G. Smith

Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Duluth Holdings Inc. (“Duluth” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Duluth; and (c) review of other publicly available information concerning Duluth.

### **NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Duluth securities between June 5, 2018 and April 4, 2019, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Duluth is a clothing company that sells men’s and women’s casual wear, workwear, and accessories exclusively through the Company’s direct and retail channels.

3. On December 6, 2018, the Company reported a 32% increase in expenses during third quarter 2018 compared to the prior year period for technology, advertising, and store openings.

4. On this news, the Company’s share price fell \$6.03, or nearly 20%, to close at \$24.33 per share on December 7, 2018, on unusually heavy trading volume.

5. On April 4, 2019, the Company disclosed that its fourth quarter 2018 financial results had been negatively impacted by “challenges with systems implementation and late deliveries of product,” which resulted in “inventory that was misaligned to the timing of sales and not distributed optimally throughout the network.”

6. On this news, the Company’s share price fell \$5.94, or more than 25%, to close at \$17.60 per share on April 5, 2019, on unusually heavy trading volume.

7. Throughout the Class Period, Defendants made materially false and/or misleading

statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company experienced problems implementing its order management system; (2) that, as a result, the Company lacked adequate internal controls over inventory levels; (3) that the Company would incur increased costs to make the required adjustments; (4) that, as a result, the Company would not be well-positioned to deliver sales during the holiday season; (5) that, as a result of the foregoing, the Company's financial results would be materially impacted; and (6) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

8. 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.

#### **JURISDICTION AND VENUE**

9. The claims asserted herein arise under 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).

10. 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).

11. 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)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, the Company's principal executive offices are located in this district.

12. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

## **PARTIES**

13. Plaintiff \_\_\_\_\_, as set forth in the accompanying certification, incorporated by reference herein, purchased Duluth securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

14. Defendant Duluth is incorporated under the laws of Wisconsin with its principal executive offices located in Mount Horeb, Wisconsin. Duluth's common stock trades on the NASDAQ exchange under the symbol "DLTH."

15. Defendant Stephanie Pugliese ("Pugliese") was the Chief Executive Officer at all relevant times.

16. Defendant David Loretta ("Loretta") was the Chief Financial Officer of the Company at all relevant times.

17. Defendants Pugliese and Loretta, (collectively the "Individual Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

18. Duluth is a clothing company that sells men's and women's casual wear, workwear, and accessories exclusively through the Company's direct and retail channels.

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

19. The Class Period begins on June 5, 2018. On that day, the Company announced its financial results for first quarter 2018 and reiterated its previously-issued fiscal 2018 outlook.

The Company stated in a press release, in relevant part:

**Highlights for the First Quarter Ended April 29, 2018**

- Net sales increased 19.7% to \$100.2 million compared to \$83.7 million in the prior-year first quarter
- Gross margin decreased 230 basis points to 55.8% compared to 58.1% in the prior-year first quarter
- Operating loss of \$0.3 million compared to operating income of \$0.7 million in the prior-year first quarter
- Net loss of \$0.7 million, or \$0.02 per diluted share compared to net income of \$0.4 million, or \$0.01 per diluted share in the prior year-first quarter
- Adjusted EBITDA<sup>1</sup> of \$2.6 million compared to \$2.7 million in the prior-year first quarter

\* \* \*

**Management Commentary**

“We achieved our 33<sup>rd</sup> consecutive quarter of increased net sales year-over-year. Our 20% top-line growth was driven by new stores, growth in the women’s business, and direct segment growth, with direct sales in established omnichannel markets growing more than double the Company average of 4%,” said Stephanie Pugliese, Chief Executive Officer of Duluth Trading. “While the late arrival of spring in several regions of the country did have a slight impact on quarterly sales, we were able to control expenses and our bottom line results were in-line with our expectations. We expect to deliver on our 2018 financial guidance.”

\* \* \*

“I am pleased to report that our order management system, which has been a key technology project for the past two years, went live on May 21 and provides us the foundation to further enhance our omnichannel customer experience in 2018 and beyond.”

\* \* \*

**Fiscal 2018 Outlook**

The Company reiterated its previously issued fiscal 2018 outlook. Its fiscal 2018 outlook is provided on a 53-week period, compared to a 52-week period in fiscal 2017.

- Net sales in the range of \$555.0 million to \$575.0 million
- Adjusted EBITDA<sup>1</sup> in the range of \$51.0 million to \$54.0 million
- EPS in the range of \$0.79 to \$0.84 per diluted share, with an effective tax rate of 26%
- Capital expenditures, net of proceeds from finance lease obligations, of \$45.0 million to \$55.0 million

20. On June 6, 2018, the Company filed its quarterly report on Form 10-Q with the SEC for the period ended April 29, 2018 which affirmed the previously reported financial results.

21. On September 5, 2018, the Company announced its second quarter 2018 financial results and reiterated its previously-issued fiscal 2018 outlook. The Company stated in a press release, in relevant part:

**Highlights for the Second Quarter Ended July 29, 2018**

- Net sales increased 28.3% to \$110.7 million compared to \$86.2 million in the prior-year second quarter
- Gross margin decreased 50 basis points to 56.2% compared to 56.7% in the prior-year second quarter
- Operating income increased 33.9% to \$9.9 million compared to operating income of \$7.4 million in the prior-year second quarter
- Net income increased 48.9% to \$6.4 million, or \$0.20 per diluted share compared to net income of \$4.3 million, or \$0.13 per diluted share in the prior-year second quarter
- Adjusted EBITDA<sup>1</sup> increased 38.6% to \$13.1 million compared to \$9.5 million in the prior-year second quarter

\* \* \*

[Stephanie Pugliese, Chief Executive Officer, stated,] “Our team achieved some significant milestones this quarter. . . . We also successfully implemented two major IT projects. Our order management system went live in May and our ecommerce platform was launched to our customers the first week of August.”

“These results demonstrate the strength of the Duluth Trading brand and validate the investments we have made in building our omnichannel presence over the past few years. For the balance of the year, we plan to focus on product innovation, digital marketing, opening the remaining seven stores, and the completion of key technology and infrastructure projects to prepare us for our peak selling season. We are pleased with our first half results and optimistic about the rest of the year. We expect to deliver on our fiscal 2018 guidance.”

22. On September 6, 2018, the Company filed its quarterly report on Form 10-Q with the SEC for the period ended July 29, 2018 which affirmed the previously reported financial results.

23. The above statements identified in ¶¶19-22 were materially false and/or misleading, and failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company experienced problems implementing its order management system; (2) that, as a result, the Company lacked adequate internal controls over inventory levels; (3) that the Company would incur increased costs to make the required adjustments; (4) that, as a result, the Company would not be well-positioned to deliver sales during the holiday season; (5) that, as a result of the foregoing, the Company’s financial results would be materially impacted; and (6) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

24. The truth began to emerge on December 6, 2018 when the Company reported a 32% increase in expenses during third quarter 2018, purportedly for advertising, new store openings, and technology. However, the Company maintained that it had “strengthen[ed]” its competitive position ahead of the key holiday season and expected to deliver its fiscal 2018 guidance. In a press release, the Company announced its third quarter 2018 financial results, stating in relevant part:

**Highlights for the Third Quarter Ended October 28, 2018**

- Net sales increased 27.4% to \$106.7 million compared to \$83.7 million in the prior-year third quarter
- Gross margin increased 50 basis points to 57.1% compared to 56.6% in the prior-year third quarter

- Operating loss of \$2.6 million compared to operating loss of \$0.6 million in the prior-year third quarter
- Net loss of \$3.2 million, or \$0.10 per diluted share, compared to net loss of \$0.8 million, or \$0.03 per diluted share, in the prior-year third quarter
- Adjusted EBITDA of \$1.0 million compared to \$1.9 million in the prior-year third quarter

\* \* \*

[Stephanie Pugliese, Chief Executive Officer, stated,] *“Throughout the year, our team worked tirelessly and our results year-to-date put us in a strong position heading into the holiday season. We expect to deliver on our fiscal 2018 guidance. We have made significant investments during the year that strengthen our competitive position and enable us to provide an outstanding customer experience, including:*

- improvements in the e-commerce and mobile experience;
- buy-online-pickup-in-store and ship-from-store in seven of our stores;
- mini-distribution center in our Greensboro retail store;
- electronic gift cards;
- launch of our Women’s plus line;
- 15 new store locations to touch and experience our products; and
- *upgrades to our Belleville distribution center.”*

***Selling, general and administrative expenses increased 32.3% to \$63.5 million, compared to \$48.0 million in the same period a year ago.*** As a percentage of net sales, selling, general and administrative expenses increased 210 basis points to 59.5%, compared to 57.4% in the corresponding prior-year period. As a percentage of net sales, advertising and marketing costs increased 20 basis points to 20.4% compared to 20.2% in the corresponding prior-year period, primarily due to an increase in women’s television advertising to fuel the growth in the women’s business, offset by a decrease in catalog expense due to a planned decrease in catalog spend as a percentage of net sales. As a percentage of net sales, selling expenses increased 70 basis points to 16.5%, compared to 15.8% in the corresponding prior-year period, primarily due to an increase in customer service expense as a result of the growth in retail stores, partially offset by a decrease in shipping expenses due to leverage from an increase in the proportion of retail net sales. As a percentage of net sales, general and administrative expenses increased 120 basis points to 22.6% compared to 21.4% in the corresponding prior-year period, primarily due to an increase in information technology support and outside services and an increase in depreciation as a result of more stores.

(Emphasis added.)

25. On this news, the Company's share price fell \$6.03, or nearly 20%, to close at \$24.33 per share on December 7, 2018, on unusually heavy trading volume.

26. On December 7, 2018, the Company filed its quarterly report on Form 10-Q for the period ended October 28, 2018 which affirmed the previously reported financial results.

27. The above statements identified in ¶¶24, 26 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company experienced problems implementing its order management system; (2) that, as a result, the Company lacked adequate internal controls over inventory levels; (3) that the Company would incur increased costs to make the required adjustments; (4) that, as a result, the Company would not be well-positioned to deliver sales during the holiday season; (5) that, as a result of the foregoing, the Company's financial results would be materially impacted; and (6) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

#### **Disclosures at the End of the Class Period**

28. On April 4, 2019, the Company announced disappointing financial results for the period ended February 3, 2019, stating in a press release:

#### **Highlights for the Fourth Quarter Ended February 3, 2019 (14 weeks compared to 13 weeks last year)**

- Net sales increased 15.0% to \$250.5 million compared to \$217.8 million in the prior-year fourth quarter, includes \$7.7 million of net sales from 53<sup>rd</sup> week
- Gross margin decreased 90 basis points to 52.4% compared to 53.3% in the prior-year fourth quarter
- Operating income increased 2.6% to \$30.3 million, or 12.1% of net sales, compared to \$29.5 million, or 13.6% of net sales in the prior-year fourth quarter
- Net income was \$20.8 million, or \$0.64 per diluted share, compared to \$19.5 million, or \$0.60 per diluted share in the prior-year fourth quarter
- Adjusted EBITDA<sup>1</sup> increased 8.8% to \$35.3 million compared to \$32.4 million in the prior-year fourth quarter

29. The same day, the Company held a conference call with analysts and investors to discuss the financial results. During the call, Defendant Pugliese attributed the poor performance to “challenges with systems implementation and late deliveries of product[, resulting in] inventory that was misaligned to the timing of sales and not distributed optimally throughout the network.”

30. Moreover, during the call, Defendant Loretta disclosed that inventory had been overstated during the year:

[I]nventory balances . . . were inflated by the cut over to the new order management system earlier in the year. We discovered the inflated inventory during our year-end close, but have determined that the adjustments are immaterial to our full year results. We are completing our assessment of the effectiveness of internal controls related to this and expect that that assessment will be completed in time for our 10-K filing.

31. On this news, the Company’s share price fell \$5.94, or more than 25%, to close at \$17.60 per share on April 5, 2019, on unusually heavy trading volume.

### **CLASS ACTION ALLEGATIONS**

32. 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 and entities that purchased or otherwise acquired Duluth securities between June 5, 2018 and April 4, 2019, inclusive, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, 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.

33. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Duluth’s common shares actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of Duluth common stock were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by Duluth 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.

34. 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.

35. 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.

36. 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:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Duluth; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

37. 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 makes 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.

#### **UNDISCLOSED ADVERSE FACTS**

38. The market for Duluth's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, Duluth's securities traded at artificially inflated prices during the Class Period.

Plaintiff and other members of the Class purchased or otherwise acquired Duluth's securities relying upon the integrity of the market price of the Company's securities and market information relating to Duluth, and have been damaged thereby.

39. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Duluth's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about Duluth's business, operations, and prospects as alleged herein.

40. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Duluth's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

### **LOSS CAUSATION**

41. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

42. During the Class Period, Plaintiff and the Class purchased Duluth's securities at artificially inflated prices and were damaged thereby. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,

causing investors' losses.

### **SCIENTER ALLEGATIONS**

43. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or 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 federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding Duluth, their control over, and/or receipt and/or modification of Duluth's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Duluth, participated in the fraudulent scheme alleged herein.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE (FRAUD-ON-THE-MARKET DOCTRINE)**

44. The market for Duluth's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, Duluth's securities traded at artificially inflated prices during the Class Period. On September 5, 2018, the Company's share price closed at a Class Period high of \$34.21 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of Duluth's securities and market information relating to Duluth, and have been damaged thereby.

45. During the Class Period, the artificial inflation of Duluth's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Duluth's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Duluth and its business, operations, and prospects, thus causing the price of the Company's securities to be

artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

46. At all relevant times, the market for Duluth's securities was an efficient market for the following reasons, among others:

(a) Duluth shares met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, Duluth filed periodic public reports with the SEC and/or the NASDAQ;

(c) Duluth regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) Duluth was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

47. As a result of the foregoing, the market for Duluth's securities promptly digested current information regarding Duluth from all publicly available sources and reflected such information in Duluth's share price. Under these circumstances, all purchasers of Duluth's securities during the Class Period suffered similar injury through their purchase of Duluth's securities at artificially inflated prices and a presumption of reliance applies.

48. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business operations and financial

prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

### **NO SAFE HARBOR**

49. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Duluth who knew that the statement was false when made.

### **FIRST CLAIM** **Violation of Section 10(b) of The Exchange Act and** **Rule 10b-5 Promulgated Thereunder** **Against All Defendants**

50. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

51. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Duluth’s securities at artificially inflated prices. In

furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

52. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Duluth's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

53. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Duluth's financial well-being and prospects, as specified herein.

54. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Duluth's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Duluth and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

55. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and

participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

56. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Duluth's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

57. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of Duluth's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Duluth's securities during the Class Period at artificially high prices and were damaged thereby.

58. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Duluth was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Duluth securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

59. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

60. 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 and sales of the Company's securities during the Class Period.

**SECOND CLAIM**  
**Violation of Section 20(a) of The Exchange Act**  
**Against the Individual Defendants**

61. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

62. Individual Defendants acted as controlling persons of Duluth within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

63. In particular, Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

64. As set forth above, Duluth and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_ *Draft* \_\_\_\_\_

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