

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

PLAINTIFF, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

JURY TRIAL DEMANDED

ENSERVCO CORPORATION, RICHARD
A. MURPHY, and MARJORIE A.
HARGRAVE,

Defendants.

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

Plaintiff, individually and on behalf of all others similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States ("U.S.") Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Enservco Corporation ("Enservco" or the "Company"), analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that

substantial, additional 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 and entities other than Defendants that purchased or otherwise acquired Enservco securities between May 13, 2021 and April 18, 2022, both dates inclusive (the “Class Period”), seeking to recover damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Enservco, through its subsidiaries, provides well enhancement and fluid management services to the onshore oil and natural gas industry in the U.S.

3. Recently, the Company has employed several tactics in an apparent effort to strengthen its balance sheets. For example, in August 2020, Enservco’s Board of Directors approved a transaction to, *inter alia*, exchange 50% of the Company’s subordinated debt with Cross River Partners, L.P. (“Cross River Partners”), a related party. Enservco’s Chief Executive Officer (“CEO”), Defendant Richard A. Murphy (“Murphy”), is managing member of Cross River Capital Management, LLC, the general partner of Cross River Partners. On February 3, 2021, Enservco exchanged the remaining 50% of its subordinated debt with Cross River Partners. In addition, the Company awarded a warrant to Cross River Partners to purchase up to 150,418 additional shares of the Company’s common stock in the future at an exercise price of \$2.507 per share.

4. Moreover, during the second quarter of 2021, Enservco amended payroll tax returns originally filed for the third and fourth quarters of 2020 to claim refundable Employee Retention Credits (“ERCs”)¹ for those periods.

5. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company’s business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Enservco had defective disclosure controls and procedures and internal control over financial reporting; (ii) as a result, there were errors in Enservco’s financial statements relating to, *inter alia*, its transactions with Cross River Partners and accounting for ERCs; (iii) accordingly, the Company would need to restate certain of its financial statements and delay the filing of its 2021 annual report with the SEC; (iv) the Company downplayed the true scope and severity of its financial reporting issues; (v) accordingly, the Company could not file its delayed 2021 annual report with the SEC within its initially represented timeline; and (vi) as a result, the Company’s public statements were materially false and misleading at all relevant times.

6. On March 28, 2022, Enservco disclosed in an SEC filing that it had “concluded that the Company’s previously issued condensed consolidated financial statements as of and for the quarters ended March 31, 2021, June 30, 2021 and September 30, 2021” (collectively, the “Relevant Periods”) “should no longer be relied upon largely because of the Company’s accounting for a conversion of debt to equity with a related party,” namely, Cross River Partners. The Company further advised that it had “misinterpret[ed the] eligibility for certain employee retention tax credits under relevant provisions of the [CARES Act]” and would “amend its

¹ ERCs are a type of tax credit provided for under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).

Quarterly Reports on Form 10-Q for the Relevant Periods to reflect restatements of its condensed consolidated financial statements for the Relevant Periods.”

7. On this news, Enservco’s stock price fell \$0.45 per share, or 12.3%, to close at \$3.21 per share on March 28, 2022.

8. On March 31, 2022, Enservco disclosed in an SEC filing that it could not timely file the Company’s annual report on Form 10-K with the SEC for the quarter and year ended December 31, 2021 because the Company was “in the process of restating [its] financial statements and preparing amendments to its Quarterly Reports on Form 10-Q filings for the Relevant Periods, which must be completed prior to the completion and filing of the [Company]’s Annual Report on Form 10-K for the period ended December 31, 2021.”

9. On this news, Enservco’s stock price fell \$0.21 per share, or 7.78%, to close at \$2.49 per share on April 1, 2022.

10. On April 4, 2022, Enservco disclosed in an SEC filing that its Chief Financial Officer (“CFO”), Defendant Marjorie A. Hargrave (“Hargrave”), “is departing the Company and will no longer be an executive officer and employee of the Company effective April 22, 2022.”

11. On this news, Enservco’s stock price fell \$0.19 per share, or 7.48%, to close at \$2.35 per share on April 5, 2022.

12. On April 11, 2022, Enservco filed amended quarterly reports with the SEC for the Relevant Periods, each of which reported adjusted net losses that increased, and adjusted other income that decreased, significantly for their respective periods.

13. Then, on April 18, 2022, Enservco disclosed in an SEC filing that the Company “will not be filing its Form 10-K for the fiscal year ended December 31, 2021 within the 15 day extension period provided by the Company’s 12b-25 filing” because it “intends to [again] amend

its Quarterly Reports on Form 10-Q for the Relevant Periods to reflect restatements of its condensed consolidated financial statements for the Relevant Periods.”

14. On this news, Enservco’s stock price fell \$0.38 per share, or 10.47%, to close at \$3.25 per share on April 19, 2022.

15. 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

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

17. 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.

18. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Enservco is headquartered in this Judicial District, Defendants conduct business in this Judicial District, and a significant portion of Defendants’ actions took place within this Judicial District.

19. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

PARTIES

20. Plaintiff, as set forth in the attached Certification, acquired the Company's securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

21. Defendant Enservco is a Delaware corporation with principal executive offices located at 14133 County Road 9½, Longmont, Colorado 80504. Enservco's common stock trades in an efficient market on the NYSE American ("NYSE") under the trading symbol "ENSV".

22. Defendant Murphy has served as Enservco's CEO at all relevant times. Murphy also serves as Enservco's Executive Chairman and as managing member of Cross River Capital Management, LLC, the general partner of Cross River Partners.

23. Defendant Hargrave served as Enservco's CFO at all relevant times. Hargrave also served as Enservco's President during the Class Period.

24. Defendants Murphy and Hargrave are sometimes referred to herein as the "Individual Defendants."

25. The Individual Defendants possessed the power and authority to control the contents of Enservco's SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of Enservco's SEC filings 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 to cause them to be corrected. Because of their positions with Enservco, and their access to material information available to them but not to the public, 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 being made were then

materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

26. Enservco and the Individual Defendants are collectively referred to herein as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Background

27. Enservco, through its subsidiaries, provides well enhancement and fluid management services to the onshore oil and natural gas industry in the U.S.

28. Recently, the Company has employed several tactics in an apparent effort to strengthen its balance sheets. For example, on August 13, 2020, Enservco’s Board of Directors approved a transaction to exchange 50%, or \$1.25 million, of the Company’s subordinated debt with Cross River Partners, as well as \$265,000 in accrued interest, for 403,602 shares of Company common stock. On February 3, 2021, the Company exchanged the remaining 50%, or \$1.25 million, of its subordinated debt with Cross River Partners, as well as \$62,000 in accrued interest, for 601,674 shares of Company common stock. In addition, the Company awarded a warrant to Cross River Partners to purchase up to 150,418 additional shares of Company common stock in the future at an exercise price of \$2.507 per share.

29. Moreover, during the second quarter of 2021, Enservco amended payroll tax returns originally filed for the third and fourth quarters of 2020 to claim refundable ERCs for those periods.

Materially False and Misleading Statements Issued During the Class Period

30. The Class Period begins on May 13, 2021, when Enservco filed a quarterly report on Form 10-Q with the SEC, reporting the Company’s financial and operating results for the

quarter ended March 31, 2021 (the “1Q21 10-Q”). That filing reported, among other results, a net loss of \$2.173 million for the three months ended March 31, 2021.

31. With respect to Enservco’s transactions with Cross River Partners, the 1Q21 10-Q stated, in relevant part:

On August 13, 2020, the Company’s Board of Directors approved a transaction to exchange 50%, or \$1.25 million, of our subordinated debt with Cross River Partners[], a related party, as well as \$265,000 in accrued interest, for 403,602 shares of Company common stock. This transaction was finalized on September 15, 2020. On February 3, 2021, Cross River Partners[] converted the remaining principal amount of such subordinated debt, or \$1.25 million, as well as \$62,000 in accrued interest, for 601,674 shares of Company common stock, at a conversion price equal to \$2.18 per share, which was the closing price of the Company’s stock reported on the NYSE . . . on the date of the conversion. In connection with such conversion, the Company issued a warrant to Cross River Partners[] to purchase up to 150,418 additional shares of Company common stock in the future at an exercise price of \$2.507 per share. The warrant for the 150,418 shares has a five-year term and is exercisable beginning February 3, 2022 until February 3, 2026.

* * *

On February 11, 2021, in connection with the conversion of the subordinated loan agreement to Company common stock, the Company granted Cross River one five-year warrant to buy an aggregate total of 150,418 shares of the Company’s common stock at an exercise price of \$2.507 per share. The warrants had a grant-date fair value \$2.02 and are exercisable beginning one-year from the issuance date on February 11, 2022 until February 11, 2026.

32. With respect to Enservco’s disclosure controls and procedures and internal control over financial reporting, the 1Q21 10-Q stated, in relevant part:

We carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures . . . as of March 31, 2021. This evaluation was carried out under the supervision and with the participation of [the Individual Defendants]. Based on that evaluation, [the Individual Defendants] concluded that our disclosure controls and procedures were effective as of March 31, 2021.

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to

ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and our principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

* * *

There has been no change in the Company's internal control over financial reporting . . . during the quarter covered by this report that has materially affected, or is reasonably likely to materially affect, its internal control over financial reporting.

33. Appended as an exhibit to the 1Q21 10-Q were signed certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX"), wherein the Individual Defendants certified that "[t]he [1Q21 10-Q] fully complies with the requirements of section 13(a) or 15(d) of the [Exchange Act]" and that "[t]he information contained in the [1Q21 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company."

34. On August 5, 2021, Enservco filed a quarterly report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended June 30, 2021 (the "2Q21 10-Q"). That filing reported, among other results, a net loss of \$1.606 million and \$3.779 million for the three and six months ended June 30, 2021, respectively.

35. With respect to Enservco's transactions with Cross River Partners, the 2Q21 10-Q stated, in relevant part:

In a separate transaction on February 11, 2021, the Company exchanged the remaining 50%, or \$1.25 million, of our subordinated debt with Cross River Partners, L.P., as well as \$62,000 in accrued interest, for 601,674 shares of Company common stock, which was based on the price of Company common stock at market close on the date of the conversion. In addition, the Company awarded a warrant to Cross River Partners, L.P. to purchase up to 150,418 shares of the Company's common stock at an exercise price of \$2.507 per share. The warrants had a grant-date fair value \$2.02 per share and are exercisable beginning one-year from the issuance date on February 11, 2022 until February 11, 2026. ***The total fair value of the warrant and loss on extinguishment of the subordinated debt was \$304,000, which was immaterial to the Company's consolidated financial statements.***

(Emphasis added.)

36. With respect to Enservco's accounting for ERCs and the impact this had on the Company's other income for the quarter, the 2Q21 10-Q stated, *inter alia*:

For 2021, [ERCs] are up to \$7,000 per employee per quarter on qualified wages. During the second quarter of 2021, the Company amended payroll tax returns originally filed for the third and fourth quarters of 2020 in order to claim refundable [ERCs] for those periods. For the three and six months ended June 30, 2021, the Company recorded \$1.3 million and \$1.5 million, respectively.

* * *

Other income for the three months ended June 30, 2021 was approximately \$1.4 million, compared to other income of approximately \$76,000 for the three months ended June 30, 2020, respectively. Other income for the six months ended June 30, 2021 was approximately \$1.6 million, compared to other income of approximately \$96,000 for the three months ended June 30, 2020, respectively. These increases in other income were due primarily to the recognition of [ERCs] during the first two quarters of 2021. The Company expects to continue receiving [ERCs] throughout the remainder of 2021 pursuant to the extension of the program to December 31, 2021, through the American Rescue Plan Act.

37. Additionally, the 2Q21 10-Q contained substantively the same statements referenced in ¶ 32, *supra*, regarding Enservco's purportedly effective disclosure controls and procedures and internal control over financial reporting.

38. Appended as an exhibit to the 2Q21 10-Q were substantively the same SOX certifications referenced in ¶ 33, *supra*, signed by the Individual Defendants.

39. On November 15, 2021, Enservco filed a quarterly report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended September 30, 2021 (the "3Q21 10-Q"). That filing reported, among other results, a net loss of \$3.956 million for the nine months ended September 30, 2021.

40. With respect to Enservco's accounting for ERCs and the impact this had on the Company's other income for the quarter, the 3Q21 10-Q stated, *inter alia*:

For 2021, the [ERCs] are up to \$7,000 per employee per quarter on qualified wages for the first three quarters of 2021. During the second quarter of 2021, the Company amended payroll tax returns originally filed for the third and fourth quarters of 2020 in order to claim refundable [ERCs] for those periods. For the three and nine months ended September 30, 2021, the Company recorded \$612,000 and \$2.1 million, respectively, to other income in the condensed consolidated statements of operations.

* * *

Other income for the three months ended September 30, 2021 was approximately \$2.7 million, compared to other income of approximately \$11.5 million for the same period in 2020. This decrease of \$8.8 million, or 77%, was . . . partially offset by the \$2.0 million gain on forgiveness of the PPP Loan and \$612,000 in [ERCs] during the third quarter of 2021. Other income for the nine months ended September 30, 2021 was approximately \$4.2 million, compared to other income of approximately \$10.4 million for the same period in 2020. This decrease of \$6.2 million, or 59%, was . . . partially offset by the \$2.0 million gain on forgiveness of the PPP Loan and \$2.1 million in [ERCs] during the same period in 2021.

41. Additionally, the 3Q21 10-Q contained substantively the same statements referenced in ¶ 32, *supra*, regarding Enservco's purportedly effective disclosure controls and procedures and internal control over financial reporting.

42. Appended as an exhibit to the 3Q21 10-Q were substantively the same SOX certifications referenced in ¶ 33, *supra*, signed by the Individual Defendants.

43. The statements referenced in ¶¶ 30-42 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Enservco had defective disclosure controls and procedures and internal control over financial reporting; (ii) as a result, there were errors in Enservco's financial statements relating to, *inter alia*, its transactions with Cross River Partners and accounting for ERCs; (iii) accordingly, the Company would need to restate certain of its financial statements and delay the filing of its 2021 annual

report with the SEC; and (iv) as a result, the Company's public statements were materially false and misleading at all relevant times.

The Truth Begins to Emerge

44. On March 28, 2022, during pre-market hours, Enservco filed a current report on Form 8-K with the SEC, disclosing, in relevant part:

On March 22, 2022, Enservco . . . concluded that the Company's previously issued condensed consolidated financial statements [for the Relevant Periods] should no longer be relied upon largely because of the Company's accounting for a conversion of debt to equity with a related party, in addition to misinterpretation of eligibility for certain employee retention tax credits under relevant provisions of the [CARES Act], as discussed below. The Company intends to amend its Quarterly Reports on Form 10-Q for the Relevant Periods to reflect restatements of its condensed consolidated financial statements for the Relevant Periods. [. . .]

Employee Retention Tax Credits

The errors in the condensed consolidated financial statements as of and for the quarters ended June 30, 2021 and September 30, 2021 relate to the Company's recognition of certain payroll tax credits ([ERCs]) under relevant provisions of the [CARES Act]. During the second quarter of 2021, the Company amended payroll tax returns originally filed for the third and fourth quarters of 2020 in order to claim refundable [ERCs] for those periods. Enservco reported such refundable [ERCs] as other receivables on each of its balance sheets for the quarters ended June 30, 2021 and September 30, 2021, and the amounts were reflected as other income in the Company's condensed consolidated statements of operations for the quarter ended June 30, 2021.

[. . .] [T]he Company has determined that it was not eligible for a portion of the [ERCs] due to the aggregation of eligible employees at the Company and its subsidiaries. As a result, the Company determined that it improperly recorded accounts receivable of approximately \$304,000 during the quarter ended June 30, 2021 related to Employee Tax Credits to which it was not entitled, and recognized such amount in other income in the Company's condensed consolidated statements of operations for such quarter.

* * *

Loss Attributable to Conversion of Subordinated Debt and Warrant Issuance

On February 3, 2021, Cross River Partners[], a related party, converted subordinated debt in the principal amount of \$1.25 million and \$62,000 in accrued

interest into 601,674 shares of Company common stock. In connection with such conversion, the Company issued a warrant to Cross River Partners[] to purchase up to 150,418 additional shares of Company common stock in the future at an exercise price of \$2.507 per share. At the time, the Company did not record a loss on the debt conversion and recorded the transaction through equity The Company has since determined that the debt conversion in conjunction with the warrant issuance resulted in a loss of \$304,000, which should have been reflected on the Company's consolidated statement of operations for the quarter ended March 31, 2021.

* * *

[T]he Company has determined that these changes have a material impact on the as filed condensed consolidated financial statements for the Relevant Periods.

45. On this news, Enservco's stock price fell \$0.45 per share, or 12.3%, to close at \$3.21 per share on March 28, 2022. Despite this decline in the Company's stock price, Enservco securities continued to trade at artificially inflated prices throughout the remainder of the Class Period because of Defendants' continued misstatements and omissions regarding the true scope and severity of the Company's financial reporting issues.

46. For example, the same March 28, 2022 Form 8-K stated, in relevant part:

The errors described above are not related to operating matters, and adjustments to correct the errors will have no impact on revenues, operating expenses or loss from operations as reflected on the Company's condensed consolidated statement of operations for the Relevant Periods. Further, the adjustments to correct the errors will have no impact on Adjusted EBITDA, which is an important non-GAAP reporting metric presented by the Company and used by analysts and investors in evaluating Company performance As soon as practicable, the Company intends to amend its Quarterly Reports on Form 10-Q for the Relevant Periods to reflect restatements of its condensed consolidated financial statements for the Relevant Periods.

47. The statements referenced in ¶¶ 44 and 46 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Enservco had defective disclosure controls and procedures and internal control over financial reporting; (ii)

accordingly, the Company would need to delay the filing of its 2021 annual report with the SEC; (iii) the Company downplayed the true scope and severity of its financial reporting issues; and (iv) as a result, the Company's public statements were materially false and misleading at all relevant times.

48. On March 31, 2022, during after-market hours, Enservco filed a notification of its inability to timely file its 2021 annual report with the SEC for the quarter and year ended December 31, 2021. That filing stated, in relevant part:

On March 28, 2022, the [Company] announced that it would be restating its previously issued condensed consolidated financial statements as of and for the [Relevant Periods]. The [Company] is in the process of restating such financial statements and preparing amendments to its Quarterly Reports on Form 10-Q filings for the Relevant Periods, which must be completed prior to the completion and filing of the [Company]'s Annual Report on Form 10-K for the period ended December 31, 2021. As a result, such Annual Report on Form 10-K cannot be filed within the prescribed time period.

49. On this news, Enservco's stock price fell \$0.21 per share, or 7.78%, to close at \$2.49 per share on April 1, 2022. Despite this decline in the Company's stock price, Enservco securities continued to trade at artificially inflated prices throughout the remainder of the Class Period because of Defendants' continued misstatements and omissions regarding the true scope and severity of the Company's financial reporting issues.

50. For example, the same March 31, 2022 notification of late filing assured investors that Enservco's "Annual Report on Form 10-K [for the period ended December 31, 2021] will be filed on or before the 15th calendar day following the prescribed due date."

51. The statements referenced in ¶¶ 48 and 50 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Enservco

had defective disclosure controls and procedures and internal control over financial reporting; (ii) as a result, the Company downplayed the true scope and severity of its financial reporting issues; (iii) accordingly, the Company could not file its delayed 2021 annual report with the SEC within its initially represented timeline; and (iv) as a result, the Company's public statements were materially false and misleading at all relevant times.

52. On April 4, 2022, during after-market hours, Enservco filed a current report on Form 8-K with the SEC, disclosing that Defendant Hargrave "is departing the Company and will no longer be an executive officer and employee of the Company effective April 22, 2022."

53. On this news, Enservco's stock price fell \$0.19 per share, or 7.48%, to close at \$2.35 per share on April 5, 2022. Despite this decline in the Company's stock price, Enservco securities continued to trade at artificially inflated prices throughout the remainder of the Class Period because of Defendants' continued misstatements and omissions regarding the true scope and severity of the Company's financial reporting issues.

54. For example, on April 11, 2022, Enservco filed an amended quarterly report on Form 10-Q/A with the SEC for the quarter ended March 31, 2021 (the "1Q21 10-Q/A"). That filing reassured investors, in relevant part, that "we plan to continue to enhance our system of evaluating and implementing the accounting standards that apply to our accounting for complex financial instruments, including through enhanced analyses by our personnel and third-party professionals with whom we consult regarding complex accounting applications."

55. Appended as an exhibit to the 1Q21 10-Q/A were substantively the same SOX certifications referenced in ¶ 33, *supra*, signed by the Individual Defendants.

56. That same day, Enservco filed an amended quarterly report on Form 10-Q/A with the SEC for the quarter ended June 30, 2021 (the "2Q21 10-Q/A"). That filing contained

substantively the same statements referenced in ¶ 54, *supra*, regarding the Company's strengthening of its financial controls.

57. Appended as an exhibit to the 2Q21 10-Q/A were substantively the same SOX certifications referenced in ¶ 33, *supra*, signed by the Individual Defendants.

58. Also on April 11, 2022, Enservco filed an amended quarterly report on Form 10-Q/A with the SEC for the quarter ended September 30, 2021 (the "3Q21 10-Q/A"). That filing contained substantively the same statements referenced in ¶ 54, *supra*, regarding the Company's strengthening of its financial controls.

59. Appended as an exhibit to the 3Q21 10-Q/A were substantively the same SOX certifications referenced in ¶ 33, *supra*, signed by the Individual Defendants.

60. The 1Q21 10-Q/A, 2Q21 10-Q/A, and 3Q21 10-Q/A each reported adjusted net losses that increased, and adjusted other income that decreased, significantly for their respective periods. For example, the 1Q21 10-Q/A reported a restated net loss that increased from \$2.173 million to \$2.477 million, or 13.99%, and restated other income that decreased from \$226,000 to a negative \$78,000, or 134.51%, for the three months ended March 31, 2021. Likewise, the 2Q21 10-Q/A reported a restated net loss that increased from \$1.606 million to \$1.91 million, or 18.93%, and restated other income that decreased from \$1.361 million to \$1.057 million, or 22.34%, for the three months ended June 30, 2021, as well as a restated net loss that increased from \$3.779 million to \$4.387 million, or 16.09%, and restated other income that decreased from \$1.587 million to \$979,000, or 38.31%, for the six months ended June 30, 2021. Moreover, the 3Q21 10-Q/A reported a restated net loss that increased from \$3.956 million to \$4.564 million, or 15.37%, and restated other income that decreased from \$4.276 million to \$3.668 million, or 14.22%, for the nine months ended September 30, 2021.

61. On April 18, 2022, Enservco issued a press release announcing that the Company was further delaying the filing of its 2021 annual report to again restate the Company's financial statements for the Relevant Periods, while simultaneously downplaying the full scope and severity of the impact of those restatements, stating, in relevant part:

Enservco . . . today announced it will delay the filing of its 2021 Form 10-K to restate the Company's financial statements on three Form 10-Qs for 2021 to adjust for its utilization of certain deferred tax liabilities in 2021. These restatements are not related to operating matters and will not affect the Company's reported revenue or operating expenses.

* * *

"We apologize to our stockholders for the delay in our filings and earnings call, but we want to ensure that our amended Form 10-Qs and Form 10-K accurately reflect the appropriate tax treatment that was impacted by the financing completed early in 2021," [Defendant] Murphy added. "Our auditors and third-party tax advisors are working diligently to complete these calculations as quickly as possible, and we expect to complete our 2021 filings as soon as practicable."

62. The statements referenced in ¶¶ 54-59 and 61 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Enservco downplayed the true scope and severity of its financial reporting issues; (ii) accordingly, Enservco could not file its delayed 2021 annual report with the SEC within the 15 day extension period granted by its notification of late filing; and (iii) as a result, the Company's public statements were materially false and misleading at all relevant times.

The Truth Fully Emerges

63. On April 18, 2022, during after-market hours, Enservco filed a current report on Form 8-K with the SEC, disclosing, in relevant part:

On April 14, 2022, Enservco . . . in consultation with the Audit Committee of its Board of Directors, concluded that the Company's previously issued condensed consolidated financial statements [for the Relevant Periods] should no longer be relied upon due to the Company's utilization of certain deferred tax liabilities in 2021. The Company intends to amend its Quarterly Reports on Form 10-Q for the Relevant Periods to reflect restatements of its condensed consolidated financial statements for the Relevant Periods ***Because of such amendments to its Quarterly Reports on Form 10-Q, the Company will not be filing its Form 10-K for the fiscal year ended December 31, 2021 within the 15 day extension period provided by the Company's 12b-25 filing.*** The Company anticipates that it will file the amendments to its Quarterly Reports on Form 10-Q for the Relevant Periods and its Form 10-K for the fiscal year ended December 31, 2021 prior to April 30, 2022.

(Emphasis added.)

64. On this news, Enservco's stock price fell \$0.38 per share, or 10.47%, to close at \$3.25 per share on April 19, 2022.

65. 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.

Post-Class Period Developments

66. On May 16, 2022, Enservco filed a notification of its inability to timely file with the SEC its quarterly report on Form 10-Q for the quarter ended March 31, 2022, stating, in relevant part:

On April 18, 2022, the Registrant announced that it would be not be filing its Form 10-K for the fiscal year ended December 31, 2021 within the 15 day extension period provided by the Company's 12b-25 filing because the Registrant was restating its previously issued condensed consolidated financial statements as of and for the [Relevant Periods]. As of May 16, 2022, the Registrant is nearing completion of the process of restating such financial statements and preparing amendments to its Quarterly Reports on Form 10-Q filings for the Relevant Periods, which must be completed prior to the completion and filing of the Registrant's Annual Report on Form 10-K for the period ended December 31, 2021. The Registrant cannot file the Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 until the amendments to the Quarterly Reports for the Relevant Periods and Form 10-K for the period ended December 31, 2021 are filed.

Therefore, the Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 cannot be filed within the prescribed time period. Such Quarterly Report on Form 10-Q will be not filed on or before the 5th calendar day following the prescribed due date.

PLAINTIFF' S CLASS ACTION ALLEGATIONS

67. 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 Enservco securities during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. 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.

68. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Enservco securities were actively traded on the NYSE. 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 Enservco 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.

69. 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.

70. 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.

71. 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 Enservco;
- whether the Individual Defendants caused Enservco 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 Enservco 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.

72. 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.

73. 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;
- Enservco 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 NYSE 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 Enservco 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.

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

75. 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 Promulgated Thereunder Against All Defendants)

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

77. 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.

78. 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 Enservco securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Enservco securities and options 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.

79. 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 quarterly and 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 Enservco 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 Enservco's finances and business prospects.

80. By virtue of their positions at Enservco, 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.

81. 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 Enservco, the Individual Defendants had knowledge of the details of Enservco's internal affairs.

82. 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 Enservco. 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 Enservco'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 Enservco securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Enservco's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Enservco 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.

83. During the Class Period, Enservco 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 Enservco 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 Enservco securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Enservco securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

84. 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.

85. 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)

86. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

87. During the Class Period, the Individual Defendants participated in the operation and management of Enservco, and conducted and participated, directly and indirectly, in the conduct of Enservco's business affairs. Because of their senior positions, they knew the adverse non-public information about Enservco's misstatement of income and expenses and false financial statements.

88. 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 Enservco's financial condition and results of operations, and to correct promptly any public statements issued by Enservco which had become materially false or misleading.

89. 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 Enservco disseminated in the marketplace during the Class Period concerning Enservco's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Enservco to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of Enservco 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 Enservco securities.

90. Each of the Individual Defendants, therefore, acted as a controlling person of Enservco. By reason of their senior management positions and/or being directors of Enservco, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Enservco to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Enservco 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.

91. 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 Enservco.

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.