

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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

Plaintiff,

v.

EOS ENERGY ENTERPRISES, INC., JOE  
MASTRANGELO, and SAGAR  
KURADA,

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 Eos Energy Enterprises, Inc. (“Eos” 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 Eos; and (c) review of other publicly available information concerning Eos.

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

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Eos securities between December 22, 2020 and January 14, 2021, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Eos is a clean energy company with a purportedly “breakthrough” Zynth aqueous zinc battery designed to overcome the limitations of conventional lithium-ion technology. It became public via reverse merger with B. Riley Principal Merger Corp. II, a special purpose acquisition company, which was completed in November 2020.

3. On January 14, 2021, Iceberg Research published a report entitled “Eos Energy (\$EOSE): Fake Customers Won’t Recharge a Dead Battery,” alleging among other things that Eos Energy has “failed technology and dubious customers” and that “the disclosed customers are extremely unlikely to have the financial ability to honour their contracts.” The report also pointed to a “fundamental flaw” in the Company’s technology that has led to “commercial failure:” that Eos’s zinc batteries are less efficient and more expensive than lithium batteries.

4. On this news, the Company's share price fell \$3.85, or over 13%, to close at \$24.56 per share on January 14, 2021, thereby damaging investors. The price of the Company's warrants fell \$2.45, or 18%, to close at \$10.98 per share on January 14, 2021.

5. 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's customers are unlikely to have the financial ability to honor their contracts; (2) that zinc batteries have a lower round-trip efficiency than lithium-ion batteries, representing a fundamental flaw to the Company's technology; and (3) 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.

6. 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**

7. 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).

8. 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).

9. 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 in this District.

10. 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**

11. Plaintiff \_\_\_\_\_, as set forth in the accompanying certification, incorporated by reference herein, purchased Eos 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.

12. Defendant Eos is incorporated under the laws of Delaware with its principal executive offices located in Edison, New Jersey. Eos's common stock trades on the NASDAQ exchange under the symbol "EOSE" and its warrants trade under the symbol "EOSEW."

13. Defendant Joe Mastrangelo ("Mastrangelo") was the Company's Chief Executive Officer ("CEO") at all relevant times.

14. Defendant Sagar Kurada ("Kurada") was the Company's Chief Financial Officer ("CFO") at all relevant times.

15. Defendants Mastrangelo and Kurada (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**

16. Eos is a clean energy company with a purportedly “breakthrough” Zynth aqueous zinc battery designed to overcome the limitations of conventional lithium-ion technology. It became public via reverse merger with B. Riley Principal Merger Corp. II, a special purpose acquisition company, which was completed in November 2020.

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

17. The Class Period begins on December 22, 2020. On that day, the Company issued a press release announcing a \$2 million contract for storage systems. In a press release entitled “Eos Energy Secures Contract to provide Safe, Sustainable Storage to California Hospital,” Eos stated, in relevant part:

Eos Energy Enterprises, Inc. (NASDAQ: EOSE) (“Eos”), a leading manufacturer of safe, scalable, efficient, and sustainable zinc-based energy storage systems, today announced it has a firm order from Charge Bliss, Inc. (“CBI”), a renewable energy microgrid developer/builder, to provide a critical care hospital with 2 MW of energy storage using its Znyth® battery. The deal is valued at \$2 million.

“We are proud to collaborate with Charge Bliss to provide safe and reliable storage for a hospital micro grid application,” said Dr. Balki Iyer, Chief Commercial Officer of Eos. “Our Znyth® battery technology is optimized for long duration storage, which is experiencing tremendous growth and rapid adoption. We hope this installation can serve as a model for other facilities with similar energy needs.”

Eos will provide this groundbreaking project with up to 2 MW of continuous power delivery upon installation, which is scheduled to take place in the second quarter of

2021. The project agreement comes after Eos recently announced that it increased its projected pipeline by 30 percent in a 30-day period, as a result of increased demand for long duration storage (>4 hours of discharge).

18. On January 4, 2021, Eos announced a \$20 million contract for energy storage systems. In a press release entitled “Eos Energy Secures \$20 million order—the Largest in Company History—to Supply Long Duration Storage to California Power Grid,” the Company stated, in relevant part:

Eos Energy Enterprises, Inc. (NASDAQ: EOSE) (“Eos”), a leading provider of safe, scalable, efficient, and sustainable zinc-based energy storage systems, today announced a firm order from EnerSmart, a developer, owner and operator of utility scale energy storage projects, to provide at least 90MWh, and as much as 180MWh, of energy storage over the next 24 months.

The projects are planned to be powered by Eos’s innovative Znyth® battery technology to provide improved grid stability and increased renewables utilization across multiple locations in California. The first project, anticipated to supply 9MWh of storage in El Cajon to CAISO (California’s independent grid operator), is valued at \$2 million with installation scheduled for the fourth quarter of 2021.

“We are very excited and believe that this agreement will expand our installed base and continue to show the demand for longer duration storage. We look forward to working with EnerSmart to bring innovative technology designed to make a long-term positive impact on California’s power grid,” said Balki Iyer, Chief Commercial Officer of Eos.

The Eos Znyth® battery is designed to provide continuous power upon installation and is anticipated to have a useful life of 20 years. This positively ingenious storage solution developed in Edison, NJ is proven to be safe across a wide range of operating conditions and will be shipped from Eos’s manufacturing facility located in Pittsburgh, PA.

19. On January 13, 2021, Eos announced “strong sales momentum” in a press release entitled “Eos Energy Enterprises Begins 2021 Propelled by Strong Demand for Energy Storage building a \$16MM Orders Backlog.” The Company stated, in relevant part:

Eos Energy Enterprises, Inc. (NASDAQ: EOSE) (“Eos”), a leading provider of safe, scalable, efficient, and sustainable zinc-based energy storage systems, today announced strong sales momentum over the past 90 days towards meeting its 2021 growth objectives.

As of December 31, 2020, Eos logged \$16 million of booked orders. Additionally, the company secured firm commitments supported by customer technical sections and letters of intent for an additional \$550 million with expected delivery over the next three years. Eos entered binding agreements with a variety of top energy companies, including utilities and microgrid developers, to provide long-duration energy storage for multiple customer use cases. Nearly 20% of these agreements are for extended partnerships, with the longest spanning up to 20 years.

“The market’s response to our technology has been astounding,” said Joe Mastrangelo, CEO of Eos. “We have shown that the safety, reliability and sustainability of our product is resonating with customers across multiple market segments and use cases. The opportunity we have in front of us is extremely promising.”

The Eos Znyth® technology can be used for front-of-meter grid installations and behind-the-meter industrial applications, among other use cases. Over the summer, an Eos installation proved its effectiveness in extreme conditions when called upon to address grid stabilization issues during California’s rolling blackouts. Earlier this month, Eos announced that it secured its largest customer order in company history, \$20 million, to supply EnerSmart with at least 90MWh of energy storage over the next two years beginning with a project site in El Cajon, CA.

In addition to multiple locations across the U.S., Eos is installing systems at project sites around the world, including Greece in collaboration with Motor Oil and Nigeria with Nayo Tropical Technology Ltd.

“Eos continues to make strong progress in 2021 and remains focused on growing pipeline, scaling manufacturing and building project execution capabilities to make Eos a global leader in long-duration storage. We believe our product — invented, designed, tested and manufactured in the U.S. — is positively ingenious in its technology, dedicated to delivering more and using less. We look forward to telling our unique story of American ingenuity helping to solve the world’s energy storage challenges and creating a more positive future for us all.” Mastrangelo said.

20. The above statements identified in ¶¶ 17-19 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’s customers are unlikely to have the financial ability to honor their contracts; (2) that zinc batteries have a lower round-trip efficiency than lithium-ion batteries, representing a fundamental flaw to the Company’s technology; and (3) 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**

21. On January 14, 2021, Iceberg Research published a report entitled “Eos Energy (\$EOSE): Fake Customers Won’t Recharge a Dead Battery,” alleging among other things that Eos Energy has “failed technology and dubious customers” and that “the disclosed customers are extremely unlikely to have the financial ability to honour their contracts.” Specifically, the report stated:

EOS’ largest customer IEP calls itself a “technology agnostic power producer which seeks to build, own and operate a portfolio of generation assets”. Its website does not list any manager despite claims that “our senior managers have over 30 years of industry experience”. We found this information on a hidden old web page: out of four managers, at least two have left the company. And while IEP was involved in energy projects in the mid-2015s, it does not seem to have been really active since then.

EOS has agreed to supply IEP with 1 GWh of battery energy storage systems in connection with the Electric Reliability Council of Texas (“ERCOT”) grid. We found no trace of IEP on the ERCOT website nor did we find any relationship between ERCOT and IEP. A press article reports: “IEP is yet to identify the exact locations where the systems will be sited.” We wonder how IEP can order 1GWh of batteries if they don’t know yet where to put them.

\* \* \*

EOS announced on January 4th that it secured a \$20 million (90MWh) order with EnerSmart. EOS calls it the “largest contract in Company history” even though it is 11 times smaller than the IEP contract. LinkedIn shows EnerSmart is a two-person firm and is described as a “developer, owner and operator of utility scale energy storage projects”. We asked EnerSmart whether they already has this \$20m funded and allocated to the EOS contract. We have not received an answer.

We believe these customers lack financial substance and will be unable to honour their very large contracts. EOS’ executives are clearly incentivised to create these ‘partnerships’ to sell the SPAC merger and boost EOS’ share price e.g., Chief commercial officer Balki Iyer was granted 14.4k options with a conversion price of

\$8.67 if EOS' booked orders exceed the stated vesting conditions of > 600 MWh of booked orders.

22. The report also pointed to a “fundamental flaw” in the Company’s technology that has led to “commercial failure.” Specifically, it stated:

Although zinc battery technology does have some advantages over lithium, its own limitations have dramatically hampered both development and adoption. In its presentations, EOS does not spend much time on a crucial limitation: round-trip efficiency (“RTE”). RTE is the amount of usable energy that can be discharged from a storage system relative to the amount of energy that was put in. Zinc batteries have a lower RTE than lithium batteries. EOS’ batteries have an RTE of 75%-80%, according to its presentation, while the RTE of lithium batteries is close to or exceeds 90%. [1] [2] It is a significant hidden cost as renewable energy producers will see part of their produced electricity, and therefore revenue, disappear. This alone has discouraged potential customers from adopting zinc-based technology.

EOS admits in the prospectus that “Compared to traditional energy storage technologies, Eos’ products have less power density and round trip efficiency and may be considered inferior to competitors’ products.” “If customers were to place greater value on power density and efficient power delivery over the numerous other advantages of Eos’s technologies, (...) Eos could have difficulty positioning its batteries as a viable alternative to traditional Li-ion batteries and its business would suffer.

The higher RTE for lithium batteries is one reason why 99% of batteries are still lithium-based and alternatives such as zinc batteries have not taken off. EOS does not hope to fill the RTE gap in future iterations of its battery, as it predicts its technology will achieve an 80%+ RTE in 2021.

[Image Omitted]

To make matters worse, mass production and innovation have allowed lithium batteries producers to dramatically reduce their price, leaving alternative technologies in the dust. Lithium-ion battery pack prices have fallen 89% in real terms from above \$1,100 per kilowatt-hour in 2010 to \$137/kWh in 2020. BloombergNEF forecasts average prices to be close to \$100/kWh by 2023.

\* \* \*

EOS has no chance of competing on cost because of the ever declining cost of lithium batteries. Scientific articles also suggest there are many technical problems to solve before zinc becomes a serious alternative to lithium. The company does not have the financial resources to conduct this research with just \$150m cash post SPAC merger. This compares to behemoths such as Samsung, LG Chem, and Tesla,

all of which employ lithium-ion technologies. The window of opportunity for startups long in the tooth like EOS is gone.

23. On this news, the Company's share price fell \$3.85, or over 13%, to close at \$24.56 per share on January 14, 2021, thereby damaging investors. The price of the Company's warrants fell \$2.45, or 18%, to close at \$10.98 per share on January 14, 2021.

### **CLASS ACTION ALLEGATIONS**

24. 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 Eos securities between December 22, 2020 and January 14, 2021, 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.

25. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Eos's 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 Eos shares 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 Eos 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.

26. 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.

27. 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.

28. 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 Eos; and

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

29. 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**

30. The market for Eos'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, Eos's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Eos's securities relying upon the integrity of the market price of the Company's securities and market information relating to Eos, and have been damaged thereby.

31. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Eos'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 Eos's business, operations, and prospects as alleged herein.

32. 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 Eos'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**

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

34. During the Class Period, Plaintiff and the Class purchased Eos'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**

35. 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 Eos, their control over, and/or receipt and/or modification of Eos's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Eos, participated in the fraudulent scheme alleged herein.

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

36. The market for Eos'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, Eos's securities traded at artificially inflated prices during the Class Period. On January 12, 2021, the Company's share price closed at a Class Period high of \$30.44 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 Eos's securities and market information relating to Eos, and have been damaged thereby.

37. During the Class Period, the artificial inflation of Eos'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 Eos's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Eos 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.

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

(a) Eos 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, Eos filed periodic public reports with the SEC and/or the NASDAQ;

(c) Eos 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) Eos 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.

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

40. 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**

41. 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 Eos 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**

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

43. 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 Eos'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.

44. 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 Eos'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.

45. 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 Eos's financial well-being and prospects, as specified herein.

46. 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 Eos'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 Eos 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.

47. 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.

48. 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 Eos'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.

49. 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 Eos'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 Eos's securities during the Class Period at artificially high prices and were damaged thereby.

50. 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 Eos was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Eos 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.

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

52. 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**

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

54. Individual Defendants acted as controlling persons of Eos 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.

55. 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.

56. As set forth above, Eos 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: \_\_\_\_\_, 2021

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