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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

v.

OUTSET MEDICAL, INC., LESLIE TRIGG,
and NABEEL AHMED,

Defendant.

Case No. DRAFT

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

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

9 **NATURE OF THE ACTION AND OVERVIEW**

10 1. This is a class action on behalf of persons and entities that purchased or otherwise
11 acquired Outset securities between November 8, 2022 and August 2, 2023, inclusive (the “Class
12 Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934
13 (the “Exchange Act”).

14 2. Outset is a medical technology company that purportedly aims to reduce the cost and
15 complexity of dialysis for patients with kidney failure. The Company claims its Tablo Hemodialysis
16 System (“Tablo”) is designed to allow dialysis to be delivered anytime, anywhere, and by anyone,
17 across multiple care settings and a wide range of clinical applications.

18 3. In October 2022, Outset introduced the TabloCart as an accessory for the Tablo
19 System, intended to provide additional maneuverability and pre-filtration capabilities for poor water
20 qualities.

21 4. On July 7, 2023, after market hours, Outset disclosed that it had received a Warning
22 Letter from the United States Food and Drug Administration (“FDA”) which “assert[ed] that certain
23 materials reviewed by the FDA and found on the Company’s website promote continuous renal
24 replacement therapy (CRRT), a modality outside of the current indications for the Tablo
25 Hemodialysis System” and that “the TabloCart with Prefiltration . . . requires prior 510(k) clearance
26 for marketing authorization.”

27 5. On this news, Outset’s stock price fell \$1.20, or 5.9%, to close at \$19.26 per share
28 on July 10, 2023, on unusually heavy trading volume.

1 6. Then, on August 2, 2023, after market hours, Outset announced that it had paused
2 the shipment of TabloCart with Prefiltration, pending the FDA’s 510(k) clearance. The Company
3 also stated that it now expects its 2023 revenue to be at the low end of its previously projected range
4 of \$144 to \$150 million as a result of the shipment pause.

5 7. On this news, Outset’s stock price fell \$1.97, or 10.2%, to close at \$17.39 per share
6 on August 3, 2023, on unusually heavy trading volume.

7 8. Throughout the Class Period, Defendants made materially false and/or misleading
8 statements, as well as failed to disclose material adverse facts about the Company’s business,
9 operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the
10 TabloCart would require prior 510(k) clearance from the FDA for marketing authorization; (2) that
11 the Company had not obtained the required FDA clearance to market and sell the TabloCart; (3)
12 that, as such, Outset would be forced to pause shipment of the TabloCart; (4) that Outset had
13 promoted continuous renal replacement therapy (CRRT) as a modality within the indications for the
14 Tablo Hemodialysis System, which was not the case; and (5) that, as a result of the foregoing,
15 Defendants’ positive statements about the Company’s business, operations, and prospects were
16 materially misleading and/or lacked a reasonable basis.

17 9. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline
18 in the market value of the Company’s securities, Plaintiff and other Class members have suffered
19 significant losses and damages.

20 **JURISDICTION AND VENUE**

21 10. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act
22 (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §
23 240.10b-5).

24 11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
25 § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

26 12. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section
27 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud
28 or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein,

1 including the dissemination of materially false and/or misleading information, occurred in
2 substantial part in this Judicial District. In addition, the Company’s principal executive offices are
3 located in this District.

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

8 **PARTIES**

9 14. Plaintiff _____, as set forth in the accompanying certification,
10 incorporated by reference herein, purchased Outset securities during the Class Period, and suffered
11 damages as a result of the federal securities law violations and false and/or misleading statements
12 and/or material omissions alleged herein.

13 15. Defendant Outset is incorporated under the laws of Delaware with its principal
14 executive offices located in San Jose, California. Outset’s common stock trades on the NASDAQ
15 exchange under the symbol “OM.”

16 16. Defendant Leslie Trigg (“Trigg”) was the Company’s Chief Executive Officer
17 (“CEO”) at all relevant times.

18 17. Defendant Nabeel Ahmed (“Ahmed”) was the Company’s Chief Financial Officer
19 (“CFO”) at all relevant times.

20 18. Defendants Trigg and Ahmed (collectively the “Individual Defendants”), because of
21 their positions with the Company, possessed the power and authority to control the contents of the
22 Company’s reports to the SEC, press releases and presentations to securities analysts, money and
23 portfolio managers and institutional investors, i.e., the market. The Individual Defendants were
24 provided with copies of the Company’s reports and press releases alleged herein to be misleading
25 prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance
26 or cause them to be corrected. Because of their positions and access to material non-public
27 information available to them, the Individual Defendants knew that the adverse facts specified
28 herein had not been disclosed to, and were being concealed from, the public, and that the positive

1 representations which were being made were then materially false and/or misleading. The
2 Individual Defendants are liable for the false statements pleaded herein.

3 **SUBSTANTIVE ALLEGATIONS**

4 **Background**

5 19. Outset is a medical technology company that purportedly aims to reduce the cost and
6 complexity of dialysis for patients with kidney failure. The Company claims its Tablo system is
7 designed to allow dialysis to be delivered anytime, anywhere, and by anyone, across multiple care
8 settings and a wide range of clinical applications.

9 20. In October 2022, Outset introduced the TabloCart as an accessory for the Tablo
10 System, intended to provide additional maneuverability and pre-filtration capabilities for poor water
11 qualities.

12 **Materially False and Misleading**

13 **Statements Issued During the Class Period**

14 21. The Class Period begins on November 8, 2022.¹ On that day, during an earnings call
15 regarding the Company's third quarter 2022 financial results, Defendant Trigg announced the
16 addition of the TabloCart to Outset's line of products, stating:

17 To that end, we are pleased to introduce TabloCart, which is a new accessory for
18 Tablo. TabloCart provides additional maneuverability around the hospital and
19 incremental pre-filtration capabilities for sites that suffer from water quality that is
20 far worse than the national drinking water standards. TabloCart will be sold
21 separately at an expected margin accretive ASP.

22 We closed Q3 exceeding our internal projections for TabloCart orders indicating
23 strong early demand for this innovative accessory. In summary, our strong Q3 was
24 driven by significant expansion in the acute setting and a home pipeline that is
25 rebuilding ahead of expectations. It is clear to us that Tablo remains a highly
26 differentiated solution in one of the largest, most expensive recession proof areas of
27 healthcare. Our performance reflects the truly incredible Outset team who I would
28 like to thank for their courage, commitment, and conviction in all they do every day
to advance our mission.

22. On February 13, 2023, during an earnings call to discuss the Company's fourth quarter
and full year 2022 results, Defendant Trigg stated:

28 ¹ Unless otherwise stated, all emphasis in bold and italics hereinafter is added.

1 From a product innovation perspective, last quarter was our first full quarter in
2 market with TabloCart, a new accessory that provides additional maneuverability
3 around the hospital and incremental pre-filtration capabilities for sites with water
4 quality that is far worse than the national drinking water standards. ***As a reminder,
TabloCart is sold separately at a gross margin accretive ASP. Since its launch in
Q3, we've been pleased with the strong demand and positive reaction from
customers.***

5 23. During the same earnings call, Defendant Ahmed stated the following:

6 Our four[th] quarter revenue increased approximately 15.3% sequentially and 13.7%
7 year-over-year to \$32 million with a year-over-year change driven primarily by
8 higher consumables revenue and higher service and other revenue. This uptick in
recurring revenue is one of the benefits of our expanded installed base and continues
to be one of the key drivers of gross margin expansion.

9 Product revenue was up 21.3% from the prior quarter and increased 11.5% year-
10 over-year to \$26.4 million. Console revenue grew 22.8% from the third quarter and
11 increased by 1.5% year-over-year to \$18.4 million. ***We saw console ASPs increase
again year-over-year, driven primarily by the ongoing demand for Tablo XT and
by demand TabloCart, our new accessory launched in the fourth quarter of 2022.***

12 * * *

13 [W]e have absolutely seen ASP increases from the XT attach, which is again adding
14 value to our customers instead of monetizing that value, which we like. ***We've also
seen TabloCart be a big driver or be a driver rather of ASP sort of in the quarter
here and are really pleased with the performance there.***

15 You know the one thing, we have also talked a lot about the fact that we haven't had
16 to discount very heavily in our past, which we view as again, a testament to Tablo's
17 economic value proposition. So pricing, we have no complaints about pricing and
pricing is favorable, was favorable for us.

18 24. On May 5, 2023, in an earning call regarding the Company's first quarter 2023
19 financial results, Defendant Trigg stated:

20 Another important element of our commercial strategy is to drive utilization across
21 the installed base, and we were pleased to see positive trends in treatment volume
22 during the quarter, in line with our expectations. We also saw ASPs rise, both on
23 consoles and consumables, which serves as strong validation of Tablo's clinical and
economic value proposition versus our competitors. Our ASPs benefited again from
better-than-expected uptake of Tablo add-ons, including good early demand for our
TabloCart new product accessory.

24 * * *

25 From a product innovation standpoint, we are very pleased with demand for
26 TabloCart, a new product accessory we introduced in Q3 of last year that provides
27 additional maneuverability around the hospital, and incremental water prefiltration
capabilities. ***TabloCart is sold separately and is gross margin accretive ASP and is
proving to be a valuable solution to many of our acute care customers.***

1 25. The above statements identified in ¶¶ 21-24 were materially false and/or misleading,
2 and failed to disclose material adverse facts about the Company’s business, operations, and
3 prospects. Specifically, Defendants failed to disclose to investors that: (1) that the TabloCart would
4 require prior 510(k) clearance from the FDA for marketing authorization; (2) that the Company had
5 not obtained the required FDA clearance to market and sell the TabloCart; (3) that, as such, Outset
6 would be forced to paused shipment of the TabloCart; (4) that Outset had promoted continuous renal
7 replacement therapy (CRRT) as a modality within the indications for the Tablo Hemodialysis
8 System, which was not the case; and (5) that, as a result of the foregoing, Defendants’ positive
9 statements about the Company’s business, operations, and prospects were materially misleading
10 and/or lacked a reasonable basis.

11 26. The truth began to emerge on July 7, 2023, after market hours, when Outset disclosed
12 that it had received a Warning Letter from the FDA. Specifically, the Company filed a Form 8-K
13 with the SEC disclosing:

14 On July 6, 2023, Outset Medical, Inc. (the “Company”) received a Warning Letter,
15 dated July 5, 2023 (the “Warning Letter”), from the United States Food and Drug
Administration (the “FDA”).

16 As previously disclosed by the Company in its Annual Report on Form 10-K filed
17 on February 13, 2023, the FDA issued an FDA Form-483 identifying four
18 inspectional observations resulting from an FDA inspection that concluded on
19 February 10, 2023. The Company provided its response plan to the FDA on March
20 3, 2023, and has since completed the associated remediation workstreams to fully
21 address these observations.

22 The Warning Letter raises two additional observations. The first observation asserts
23 that certain materials reviewed by the FDA and found on the Company’s website
24 promote continuous renal replacement therapy (CRRT), a modality outside of the
25 current indications for the Tablo® Hemodialysis System. The Company believes this
26 concern has been effectively addressed through labeling and promotional changes
27 already underway.

28 The second observation asserts that the TabloCart with Prefiltration (the
“TabloCart”), requires prior 510(k) clearance for marketing authorization. TabloCart, an accessory to the Tablo System, launched in the third quarter of 2022 and sales to date have not been material to the Company’s financial results. The Company intends to work collaboratively with the FDA to resolve this observation, including potentially submitting a 510(k) on TabloCart.

The Warning Letter does not request the restriction of the manufacture, production or shipment of the Tablo System in the United States nor does it request the withdrawal of the Tablo System from the U.S. marketplace.

1 The Company intends to fully cooperate with the FDA, including by responding
2 within 15 business days, to expeditiously and completely resolve the Warning Letter.
3 The Company cannot, however, give any assurances that the FDA will be satisfied
4 with the Company's actions taken in response to the matters raised in the Warning
5 Letter. The Company also cannot give any assurances as to the timing of the
6 resolution of such matters.

7 27. On this news, Outset's stock price fell \$1.20, or 5.9%, to close at \$19.26 per share
8 on July 10, 2023, on unusually heavy trading volume.

9 28. The above statement was materially false and/or misleading, and failed to disclose
10 material adverse facts about the Company's business, operations, and prospects. Specifically,
11 Defendants failed to disclose to investors that: (1) that Outset would be forced to pause shipment of
12 the TabloCart; and (2) that, as a result of the foregoing, Defendants' positive statements about the
13 Company's business, operations, and prospects were materially misleading and/or lacked a
14 reasonable basis.

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

16 29. On August 2, 2023, in conjunction with its second quarter 2023 financial results,
17 Outset issued a press release announcing that it had paused the shipment of TabloCart, pending the
18 FDA's 510(k) clearance. The Company also stated that it now expects its 2023 revenue to be at the
19 low end of its previously projected range as a result of the shipment pause. Specifically, the
20 Company stated:

21 The Company also announced it has paused the shipment of TabloCart with
22 Prefiltration, an accessory for the Tablo System, pending the Food and Drug
23 Administration's clearance of a 510(k) the Company plans to submit later this month.

24 "Since receiving the Warning Letter on July 6, we have made the decision to file a
25 510(k) for TabloCart with Prefiltration and pause distribution of the product until a
26 510(k) clearance has been granted," added Trigg. "As we look ahead to the second
27 half of the year, we expect our strong momentum both in the acute and home end
28 markets to continue to drive the business."

* * *

Outset reiterated its 2023 revenue guidance range of \$144 million to \$150 million,
and now expects to be at the low end of this range as a result of the shipment pause
for TabloCart with Prefiltration. The Company reaffirmed its gross margin guidance
for the year to be in the low-20% range, exiting the fourth quarter in the mid-20%
range.

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

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

6 36. A class action is superior to all other available methods for the fair and efficient
7 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
8 damages suffered by individual Class members may be relatively small, the expense and burden of
9 individual litigation makes it impossible for members of the Class to individually redress the wrongs
10 done to them. There will be no difficulty in the management of this action as a class action.

11 **UNDISCLOSED ADVERSE FACTS**

12 37. The market for Outset's securities was open, well-developed and efficient at all
13 relevant times. As a result of these materially false and/or misleading statements, and/or failures to
14 disclose, Outset's securities traded at artificially inflated prices during the Class Period. Plaintiff
15 and other members of the Class purchased or otherwise acquired Outset's securities relying upon
16 the integrity of the market price of the Company's securities and market information relating to
17 Outset, and have been damaged thereby.

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

24 39. At all relevant times, the material misrepresentations and omissions particularized in
25 this Complaint directly or proximately caused or were a substantial contributing cause of the
26 damages sustained by Plaintiff and other members of the Class. As described herein, during the
27 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
28 statements about Outset's financial well-being and prospects. These material misstatements and/or

1 omissions had the cause and effect of creating in the market an unrealistically positive assessment
2 of the Company and its financial well-being and prospects, thus causing the Company's securities
3 to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or
4 misleading statements during the Class Period resulted in Plaintiff and other members of the Class
5 purchasing the Company's securities at artificially inflated prices, thus causing the damages
6 complained of herein when the truth was revealed.

7 **LOSS CAUSATION**

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

10 41. During the Class Period, Plaintiff and the Class purchased Outset's securities at
11 artificially inflated prices and were damaged thereby. The price of the Company's securities
12 significantly declined when the misrepresentations made to the market, and/or the information
13 alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,
14 causing investors' losses.

15 **SCIENTER ALLEGATIONS**

16 42. As alleged herein, Defendants acted with scienter since Defendants knew that the
17 public documents and statements issued or disseminated in the name of the Company were
18 materially false and/or misleading; knew that such statements or documents would be issued or
19 disseminated to the investing public; and knowingly and substantially participated or acquiesced in
20 the issuance or dissemination of such statements or documents as primary violations of the federal
21 securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their
22 receipt of information reflecting the true facts regarding Outset, their control over, and/or receipt
23 and/or modification of Outset's allegedly materially misleading misstatements and/or their
24 associations with the Company which made them privy to confidential proprietary information
25 concerning Outset, participated in the fraudulent scheme alleged herein.

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1 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

2 **(FRAUD-ON-THE-MARKET DOCTRINE)**

3 43. The market for Outset’s securities was open, well-developed and efficient at all
4 relevant times. As a result of the materially false and/or misleading statements and/or failures to
5 disclose, Outset’s securities traded at artificially inflated prices during the Class Period. On February
6 2, 2023, the Company’s share price closed at a Class Period high of \$30.26 per share. Plaintiff and
7 other members of the Class purchased or otherwise acquired the Company’s securities relying upon
8 the integrity of the market price of Outset’s securities and market information relating to Outset,
9 and have been damaged thereby.

10 44. During the Class Period, the artificial inflation of Outset’s shares was caused by the
11 material misrepresentations and/or omissions particularized in this Complaint causing the damages
12 sustained by Plaintiff and other members of the Class. As described herein, during the Class Period,
13 Defendants made or caused to be made a series of materially false and/or misleading statements
14 about Outset’s business, prospects, and operations. These material misstatements and/or omissions
15 created an unrealistically positive assessment of Outset and its business, operations, and prospects,
16 thus causing the price of the Company’s securities to be artificially inflated at all relevant times, and
17 when disclosed, negatively affected the value of the Company shares. Defendants’ materially false
18 and/or misleading statements during the Class Period resulted in Plaintiff and other members of the
19 Class purchasing the Company’s securities at such artificially inflated prices, and each of them has
20 been damaged as a result.

21 45. At all relevant times, the market for Outset’s securities was an efficient market for
22 the following reasons, among others:

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

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

27 (c) Outset regularly communicated with public investors via established market
28 communication mechanisms, including through regular dissemination of press releases on the

1 national circuits of major newswire services and through other wide-ranging public disclosures,
2 such as communications with the financial press and other similar reporting services; and/or

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

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

12 47. A Class-wide presumption of reliance is also appropriate in this action under the
13 Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),
14 because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or
15 omissions. Because this action involves Defendants' failure to disclose material adverse
16 information regarding the Company's business operations and financial prospects—information that
17 Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery.
18 All that is necessary is that the facts withheld be material in the sense that a reasonable investor
19 might have considered them important in making investment decisions. Given the importance of
20 the Class Period material misstatements and omissions set forth above, that requirement is satisfied
21 here.

22 **NO SAFE HARBOR**

23 48. The statutory safe harbor provided for forward-looking statements under certain
24 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The
25 statements alleged to be false and misleading herein all relate to then-existing facts and conditions.
26 In addition, to the extent certain of the statements alleged to be false may be characterized as forward
27 looking, they were not identified as "forward-looking statements" when made and there were no
28 meaningful cautionary statements identifying important factors that could cause actual results to

1 differ materially from those in the purportedly forward-looking statements. In the alternative, to the
2 extent that the statutory safe harbor is determined to apply to any forward-looking statements
3 pleaded herein, Defendants are liable for those false forward-looking statements because at the time
4 each of those forward-looking statements was made, the speaker had actual knowledge that the
5 forward-looking statement was materially false or misleading, and/or the forward-looking statement
6 was authorized or approved by an executive officer of Outset who knew that the statement was false
7 when made.

8 **FIRST CLAIM**

9 **Violation of Section 10(b) of The Exchange Act and**

10 **Rule 10b-5 Promulgated Thereunder**

11 **Against All Defendants**

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

14 50. During the Class Period, Defendants carried out a plan, scheme and course of conduct
15 which was intended to and, throughout the Class Period, did: (i) deceive the investing public,
16 including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other
17 members of the Class to purchase Outset's securities at artificially inflated prices. In furtherance of
18 this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions
19 set forth herein.

20 51. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue
21 statements of material fact and/or omitted to state material facts necessary to make the statements
22 not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a
23 fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially
24 high market prices for Outset's securities in violation of Section 10(b) of the Exchange Act and Rule
25 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct
26 charged herein or as controlling persons as alleged below.

27 52. Defendants, individually and in concert, directly and indirectly, by the use, means or
28 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a

1 continuous course of conduct to conceal adverse material information about Outset's financial well-
2 being and prospects, as specified herein.

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

12 54. Each of the Individual Defendants' primary liability and controlling person liability
13 arises from the following facts: (i) the Individual Defendants were high-level executives and/or
14 directors at the Company during the Class Period and members of the Company's management team
15 or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities
16 as a senior officer and/or director of the Company, was privy to and participated in the creation,
17 development and reporting of the Company's internal budgets, plans, projections and/or reports;
18 (iii) each of these defendants enjoyed significant personal contact and familiarity with the other
19 defendants and was advised of, and had access to, other members of the Company's management
20 team, internal reports and other data and information about the Company's finances, operations, and
21 sales at all relevant times; and (iv) each of these defendants was aware of the Company's
22 dissemination of information to the investing public which they knew and/or recklessly disregarded
23 was materially false and misleading.

24 55. Defendants had actual knowledge of the misrepresentations and/or omissions of
25 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
26 ascertain and to disclose such facts, even though such facts were available to them. Such defendants'
27 material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose
28 and effect of concealing Outset's financial well-being and prospects from the investing public and

1 supporting the artificially inflated price of its securities. As demonstrated by Defendants'
2 overstatements and/or misstatements of the Company's business, operations, financial well-being,
3 and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the
4 misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by
5 deliberately refraining from taking those steps necessary to discover whether those statements were
6 false or misleading.

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

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

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

25 59. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
26 other members of the Class suffered damages in connection with their respective purchases and
27 sales of the Company's securities during the Class Period.

28

1 **SECOND CLAIM**

2 **Violation of Section 20(a) of The Exchange Act**

3 **Against the Individual Defendants**

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

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

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

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

27 **PRAYER FOR RELIEF**

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

1 (a) Determining that this action is a proper class action under Rule 23 of the Federal
2 Rules of Civil Procedure;

3 (b) Awarding compensatory damages in favor of Plaintiff and the other Class members
4 against all defendants, jointly and severally, for all damages sustained as a result of Defendants'
5 wrongdoing, in an amount to be proven at trial, including interest thereon;

6 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this
7 action, including counsel fees and expert fees; and

8 (d) Such other and further relief as the Court may deem just and proper.

9 **JURY TRIAL DEMANDED**

10 Plaintiff hereby demands a trial by jury.

11 DATED: _____, 2023

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