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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

IN RE GOPRO, INC. SHAREHOLDER LITIGATION	Lead Case No. CIV537077
	Class Action
This Document Relates To: All Actions.	**Consolidated Amended Complaint for Violations of §§ 11, 12(a)(2), and 15 of the Securities Act of 1933** **REDACTED VERSION** **FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER AND CALIFORNIA RULE OF COURT 2.551** Assigned for all Purposes to: Honorable Marie S. Weiner, Dep't 2 Date Action Filed: January 25, 2016 DEMAND FOR JURY TRIAL

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IN RE GOPRO, INC. SHAREHOLDER LITIGATION This Document Relates To: All Actions.	Lead Case No. CIV537077 Class Action **Consolidated Amended Complaint for Violations of §§ 11, 12(a)(2), and 15 of the Securities Act of 1933** **REDACTED VERSION** **FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER AND CALIFORNIA RULE OF COURT 2.551** Assigned for all Purposes to: Honorable Marie S. Weiner, Dep't 2 Date Action Filed: January 25, 2016 DEMAND FOR JURY TRIAL

Plaintiffs Ken Giavara, Jagdip Samra, William Cornick, and Lydia Vierson allege the following based upon the investigation of Plaintiffs' counsel, which included a review of U.S. Securities and Exchange Commission ("SEC") filings by GoPro, Inc. ("GoPro" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, media reports about the Company, documents produced by the Defendants in this action, and other sources. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. NATURE OF THE ACTION

1. This is a securities class action on behalf of all persons who purchased the Company's Class A common stock in or traceable to the Company's June 26, 2014 initial public offering (the "IPO"), seeking to pursue remedies under the Securities Act of 1933 ("1933 Act") against GoPro, certain of the Company's officers and directors, and the investment banks that underwrote the IPO.

2. GoPro develops and manufactures wearable and gear mountable cameras along with related accessories. The Company's products are designed for use in activities ranging from action sports to professional videography. GoPro also offers mobile applications and software to enable users to edit, manage, and share their photo and video files.

3. On June 11, 2014, GoPro filed an amended registration statement for the IPO, which was declared effective on June 25, 2014 (the "Registration Statement").

4. On June 26, 2014, GoPro filed with the SEC pursuant to Rule 424(b)(4), the prospectus for the IPO (the "Prospectus," and, together with the Registration Statement, the "Offering Materials").

5. The Offering Materials were negligently prepared, and, as a result, contained false and misleading statements of material fact and failed to disclose information required to be disclosed therein. GoPro and its officers and directors

negligently prepared and disseminated the materially inaccurate and misleading Registration Statement and Prospectus. The Underwriter Defendants (as defined herein) either knew about the omitted facts and failed to require their disclosure or did not know by failing to conduct a reasonable investigation and independently verify the representations in the Registration Statement and Prospectus. The claims in this action are based solely on strict liability and negligence, and are not based on any reckless or intentionally fraudulent conduct by or on behalf of defendants. The claims do not allege, arise from, or sound in fraud. Plaintiff specifically disclaims any allegations of fraud, scienter, or recklessness in these non-fraud claims.

II. JURISDICTION AND VENUE

6. The claims alleged herein arise under §§ 11, 12(a)(2), and 15 of the 1933 Act, 15 U.S.C. §§ 77k, 77*l*(a)(2), and 77*o*. Jurisdiction is conferred by § 22 of the 1933 Act and venue is proper pursuant to § 22 of the 1933 Act. Section 22 of the 1933 Act explicitly states that "[e]xcept as provided in section 16(c), no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court in the United States." Section 16(c) refers to "covered class actions," which are defined as lawsuits brought as class actions or brought on behalf of more than 50 persons, asserting claims under state or common law. This is an action asserting federal law claims. Thus, it does not fall within the definition of a "covered class action" under § 16(b)-(c) and therefore is not removable to federal court under the Securities Litigation Uniform Standards Act of 1998.

7. This Court has subject matter jurisdiction over the claims asserted in this action pursuant to the California Constitution, Article VI, § 10, because this case is a cause not given by statute to other courts.

8. The Court has personal jurisdiction over each of the defendants because they conducted business in and/or were citizens of California at the time of the IPO. This includes GoPro, which maintained its principal place of business in this County at the time of the IPO, and the Individual Defendants (as defined herein), all of whom

reside or work in California. Each of the Underwriter Defendants (as defined herein) also has offices and/or conducts significant business in California. Moreover, the violations of law complained of herein also occurred in this County, including the dissemination of materially false and misleading statements complained of herein into this County.

9. Venue is proper because the violations of law complained of herein occurred in this County, including the dissemination of materially false and misleading statements into this County, the purchase of the Company's Class A common stock by members of the class who reside in this County and the sale of the Company's Class A common stock by certain of the Underwriter Defendants (as defined below) in this County. In addition, certain of the defendants live, are headquartered and/or maintain offices or operations in this County. GoPro's headquarters are located in San Mateo County at 3000 Clearview Way, San Mateo, California 94402.

III. PARTIES

10. Plaintiff Ken Giavara acquired GoPro Class A common shares pursuant to the Offering Materials and has been damaged thereby. Mr. Giavara purchased shares of GoPro common stock on October 8, 2014 at $89.2899 per share.

11. Plaintiff Jagdip Samra acquired GoPro Class A common shares pursuant to the Offering Material and has been damaged thereby. Mr. Samra purchased shares of GoPro common stock on October 28, 2014 at $68.95 per share.

12. Plaintiff William Cornick purchased shares of GoPro common stock directly in the IPO from the Company and Underwriter Defendants for $24 per share.

13. Plaintiff Lydia Vierson acquired GoPro Class A common shares pursuant to the Offering Materials and has been damaged thereby. Ms. Vierson purchased shares of GoPro common stock directly in the IPO from the Company and Underwriter Defendants for $24 per share.

14. Defendant GoPro develops and manufactures wearable and gear

mountable cameras along with related accessories. It is the issuer for the Class A common shares offered in the IPO.

15. Defendant Nicholas Woodman ("Woodman") was, at all relevant times, the Founder and Chief Executive Officer of GoPro. Woodman participated in preparing the Prospectus and the Registration Statement, and he signed or authorized the signing of the Company's Registration Statement. Woodman solicited the investing public to purchase securities issued pursuant to the Prospectus and the Registration Statement, hired and assisted the Underwriter Defendants, planned and contributed to the IPO and the Registration Statement, attended road shows and other promotions to meet with and present favorable information to potential GoPro investors, all motivated by his own financial interests. Defendant Woodman is a resident of San Mateo County, residing in Woodside, California.

16. Defendant Jack Lazar ("Lazar") was, at all relevant times, the Chief Financial Officer and a director of GoPro. Lazar participated in preparing the Prospectus and the Registration Statement, and he signed or authorized the signing of the Company's Registration Statement. Lazar solicited the investing public to purchase securities issued pursuant to the Prospectus and the Registration Statement, hired and assisted the Underwriter Defendants, planned and contributed to the IPO and the Registration Statement, attended road shows and other promotions to meet with and present favorable information to potential GoPro investors, all motivated by his own financial interests. Defendant Lazar is a California resident and works at GoPro's headquarters in San Mateo County.

17. Defendant Michael Marks ("Marks") was, at all relevant times, a director of GoPro. Defendant Marks participated in preparing the Prospectus and the Registration Statement, and he signed or authorized the signing of the Company's Registration Statement. Defendant Marks was also, at all relevant times, the Chairman of the Compensation and Leadership Committee. Defendant Marks is a resident of San Mateo County and is the founder of Riverwood Capital, which is also

located in San Mateo County.

18. Defendant John Ball ("Ball") was, at all relevant times, a director of GoPro. Defendant Ball participated in preparing the Prospectus and the Registration Statement, and he signed or authorized the signing of the Company's Registration Statement. Ball is a resident and citizen of California.

19. Defendant Edward Gilhuly ("Gilhuly") was, at all relevant times, a director of GoPro. Defendant Gilhuly participated in preparing the Prospectus and the Registration Statement, and he signed or authorized the signing of the Company's Registration Statement. Defendant Gilhuly was also, at all relevant times, Chairman of the Nominating and Governance Committee, member of the Audit Committee and the Compensation and Leadership Committee. Defendant Gilhuly is a resident of California.

20. Defendant Kenneth Goldman ("Goldman") was, at all relevant times, a director of GoPro. Defendant Goldman participated in preparing the Prospectus and the Registration Statement, and he signed or authorized the signing of the Company's Registration Statement. Defendant Goldman was also, at all relevant times, Chairman of the Audit Committee. Defendant Goldman is a resident of California.

21. Defendant Anthony Bates ("Bates") was, at all relevant times, the President of GoPro and a director of GoPro. Bates participated in preparing the Prospectus and the Registration Statement, and he signed or authorized the signing of the Company's Registration Statement. Bates solicited the investing public to purchase securities issued pursuant to the Prospectus and the Registration Statement, hired and assisted the Underwriter Defendants, planned and contributed to the IPO and the Registration Statement, attended road shows and other promotions to meet with and present favorable information to potential GoPro investors, all motivated by his own financial interests. Defendant Bates is a resident of this County.

22. Defendant Peter Gotcher ("Gotcher") was, at all relevant times, a director of GoPro. Defendant Gotcher participated in preparing the Prospectus and the

Registration Statement, and he signed or authorized the signing of the Company's Registration Statement. Defendant Gotcher was also, at all relevant times, a member of the Audit Committee and the Compensation and Leadership Committee. Defendant Gotcher is a resident of California.

23. The defendants referenced above in ¶¶ 15-22 are referred to herein as the "Individual Defendants."

24. Defendant JP Morgan Securities LLC ("JP Morgan") is an investment banking and financial services corporation that maintains offices and operations in this County. Defendant JP Morgan served as an underwriter to the IPO, for which it received fees and commissions, and agreed to purchase 4,984,000 shares of Class A common stock to sell in the IPO.

25. Defendant Barclays Capital Inc. ("Barclays") is an investment banking and financial services corporation that maintains offices and operations in this County. Defendant Barclays served as an underwriter to the IPO, for which it received fees and commissions, and agreed to purchase 4,005,000 shares of Class A common stock to sell in the IPO.

26. Defendant Citigroup Global Markets Inc. ("Citigroup") is an investment banking and financial services corporation that maintains offices and operations in this County. Defendant Citigroup served as an underwriter to the IPO, for which it received fees and commissions, and agreed to purchase 4,005,000 shares of Class A common stock to sell in the IPO.

27. Defendant Allen & Company LLC ("Allen & Co.") is an investment banking and financial services corporation. Defendant Allen & Co. served as an underwriter to the IPO, for which it received fees and commissions, and agreed to purchase 1,780,000 shares of Class A common stock to sell in the IPO.

28. Defendant Stifel Nicolaus & Company, Incorporated ("Stifel Nicolaus") is an investment banking and financial services corporation that maintains offices and operations in San Francisco. Defendant Stifel Nicolaus served as an underwriter to

the IPO, for which it received fees and commissions, and agreed to purchase 890,000 shares of Class A common stock to sell in the IPO.

29. Defendant MCS Capital Markets LLC ("MCS Capital") is an investment banking and financial services corporation that maintains operations in this County. Defendant MCS Capital served as an underwriter to the IPO, for which it received fees and commissions, and agreed to purchase 534,000 shares of Class A common stock to sell in the IPO.

30. Defendant Robert W. Baird & Co., Incorporated ("Robert W. Baird") is an investment banking and financial services corporation that maintains offices and operations in Palo Alto and San Francisco. Defendant Robert W. Baird served as an underwriter to the IPO, for which it received fees and commissions, and agreed to purchase 534,000 shares of Class A common stock to sell in the IPO.

31. Defendant Piper Jaffray & Co. ("Piper Jaffray") is an investment banking and financial services corporation which maintains offices and operations in San Francisco. Defendant Piper Jaffray served as an underwriter to the IPO, for which it received fees and commissions, and agreed to purchase 534,000 shares of Class A common stock to sell in the IPO.

32. Defendant Raymond James & Associates, Inc. ("Raymond James") is an investment banking and financial services corporation which maintains offices and operations in Menlo Park and San Francisco. Defendant Raymond James served as an underwriter to the IPO, for which it received fees and commissions, and agreed to purchase 534,000 shares of Class A common stock to sell in the IPO.

33. The defendants named in ¶¶ 24-32 are referred to herein as the "Underwriter Defendants." The Underwriter Defendants drafted and disseminated the Offering Materials used in the IPO. The Underwriter Defendants' failure to conduct an adequate due diligence investigation was a substantial factor leading to the harm complained of herein. As such, the Underwriter Defendants are liable for the false and misleading statements in the Offering Materials as follows:

a. The Underwriter Defendants are investment banking houses that specialize, *inter alia*, in underwriting public offerings of securities. They served as the underwriters of the IPO and shared more than $25 million in fees collectively. The Underwriter Defendants determined that in return for their share of the IPO proceeds, they were willing to merchandize GoPro stock in the IPO. The Underwriter Defendants arranged a multi-city roadshow prior to the IPO during which they, and representatives from GoPro, met with potential investors and presented highly favorable information about the Company, its operation, and its financial prospects.

b. The Underwriter Defendants also demanded and obtained an agreement from GoPro that GoPro would indemnify and hold the Underwriter Defendants harmless from any liability under the federal securities laws. They also made certain that GoPro had purchased millions of dollars in directors' and officers' liability insurance.

c. Representatives of the Underwriter Defendants also assisted GoPro and the Individual Defendants in planning the IPO, and purportedly conducted an adequate and reasonable investigation into the business and operations of GoPro, an undertaking known as a "due diligence" investigation. The due diligence investigation was required of the Underwriter Defendants in order to engage in the IPO. During the course of their "due diligence," the Underwriter Defendants had continual access to confidential corporate information concerning GoPro's operations and financial prospects.

d. In addition to availing themselves of virtually unbridled access to internal corporate documents, agents of the Underwriter Defendants met with GoPro's lawyers, management, and top executives and engaged in "drafting sessions" between at least February 2014 and June 2014. During these sessions, understandings were reached as to: (i) the strategy to best accomplish the IPO; (ii) the terms of the IPO, including the price at which GoPro stock would be sold; (iii) the language to be included in the Registration Statement; (iv) what disclosures about GoPro would be

made in the Registration Statement; and (v) what responses would be made to the SEC in connection with its review of the Registration Statement. As a result of those constant contacts and communications between the Underwriter Defendants' representatives and GoPro's management and top executives, the Underwriter Defendants knew of, or in the exercise of reasonable care should have known of, GoPro's existing problems as detailed herein.

e. The Underwriter Defendants caused the Registration Statement to be filed with the SEC and declared effective in connection with the offers and sales of securities registered thereby, including those to Plaintiffs and the other members of the Class.

34. The true names and capacities of defendants sued herein under California Code of Civil Procedure § 474 as Does 1 through 25, inclusive, are presently not known to plaintiff, who therefore sues these defendants by such fictitious names. Plaintiffs will seek to amend this Complaint and include these Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein and for the damages suffered by the Class.

IV. SUBSTANTIVE ALLEGATIONS

A. Background

35. GoPro makes mountable and wearable cameras and accessories, which the Company refers to as capture devices. GoPro has developed a following in the active community by allowing athletes and regular persons to capture video of themselves while engaging in sports activities.

36. GoPro was founded by Defendant Nicholas Woodman, who is 40 years old and still the Company's Chairman and CEO. Woodman holds an undergraduate degree from UCSD, but GoPro's Proxy Statement filed with the SEC does not contain any further information about any additional degrees or business experience that

Woodman may hold.

37. GoPro started as a company founded by Woodman, who drove his Volkswagen bus up and down the California coast selling his GoPro camera devices to small surf shops.

38. Woodman started the company with just approximately $236,000 in capital. Thus, GoPro's business was not in an industry with high barriers to entry.

39. GoPro developed a loyal following with surfers and other action sports enthusiasts, but faced headwinds in parlaying that niche market into a broader market that could sustain the high growth rates and margins necessary to justify a public company IPO and valuation.

40. GoPro is a very undiversified company. As the Company admitted in the Prospectus, all the Company's revenues at the time of the IPO came from the sale of its cameras and accessories for the cameras: "To date, substantially all of our revenue has been derived from sales of our capture devices, and we expect to continue to derive the substantial majority of our revenue from sales of cameras and accessories for the foreseeable future. A decline in the price of these products, whether due to macroeconomic conditions, competition or otherwise, or our inability to increase sales of these products, would harm our business and operating results more seriously than it would if we derived significant revenue from a variety of product lines and services."

41. Thus, all information regarding the Company's cameras and accessories was highly material to investors.

42. In 2012 and 2013, GoPro considered attempting an IPO but decided against it due to a significant decrease in its revenues, gross margins, and rate of growth, which called into question its ability to sustain its historical high growth rate. These decreases continued in 2013, when margins continued to fall from 35.2% in Q1 2013 to 32.3% in Q2 2013, to 33.5% in Q3 2013.

43. For example, revenue for 2012 increased 125% to $526.0 million from $234.2 million for 2011. Revenue for 2013 increased 87% to $985.7 million from

$526.0 million for 2012. However, the Company's growth rate was decreasing and its margins were significantly impacted, with the Company's gross profit margin decreasing to 43% in 2012 from 52% in 2011, and then decreasing even further in 2013 as indicated above.

44. To conduct a successful IPO, GoPro needed to portray 2013's slowing growth as an aberration and to convince the market that it could continue to grow earnings and margins.

45. The problem for GoPro was that it was facing substantial difficulties increasing sales beyond its core customer base of avid sports enthusiasts in the United States. [redacted]. However, the program would achieve, in the short-term, a quick increase in gross margins, which was an important metric which analysts were concerned about.

46. GoPro also attempted to address slowing revenue growth by [redacted]. Indeed, after the IPO, the Company's gross margins continued to decline, dropping from the artificially boosted 42% in Q4 2013 and 41.1% in Q1 2014 to 40.1% in Q2 2014 and then 39.9% in Q3 2014.

47. The Prospectus also failed to disclose that the Company's [redacted]

[redacted]

48. [redacted]

[redacted]

B. False and Misleading Statements in the IPO Offering Materials

49. On February 7, 2014, GoPro filed with the SEC a draft Registration Statement on Form S-1, which would be used for the IPO following several amendments in response to SEC comments. Among those comments was the SEC's comment on or about March 5, 2014, which specifically referred Defendants to Item 303 of SEC Regulation S-K, 17 C.F.R. § 229.303(a)(3)(ii) ("Item 303") and emphasized the importance of compliance with Item 303.

50. On May 19, 2014, GoPro filed with the SEC on Form S-1 its Registration Statement for the IPO.

51. On June 11, 2014, GoPro filed with the SEC on Form S-1 an amendment to the Registration Statement, indicating its intent to sell 17.8 million shares of Class A stock to the public at $24 per share, for gross proceeds of $427 million. On June 25, 2014, the SEC declared the Registration Statement effective.

52. On June 26, 2014, GoPro filed the IPO Prospectus with the SEC on Form

424(b)(4).

53. The Offering Materials were negligently prepared and, as a result, contained false and misleading statements of material fact and failed to disclose information required to be disclosed therein under the rules and regulations regarding their preparation.

54. The Prospectus contained material omissions and materially misleading statements regarding [redacted].

The Prospectus's False Statements Regarding R&D Spending

55. The Prospectus stated:

> **Factors Affecting Performance**
>
> We believe that our future success will be dependent on many factors, including those further discussed below.
>
> ● Investing in research and development. ***We believe that our performance is significantly dependent on the investments we make in research and development*** and that we must continually develop and introduce innovative new products, enhance existing products and effectively stimulate customer demand for existing and future products. ***If we fail to innovate and enhance our product offerings, our brand, market position and revenue may be adversely affected***. Further if our research and development efforts are not successful, we will not recover the investments that we make in this aspect of our business.

- Investing in sales and marketing. ***We intend to continue to invest significant resources in our marketing, advertising and brand management efforts.*** Sales and marketing investments will often occur in advance of any sales benefits from these activities, and it may be difficult for us to determine if we are efficiently allocating our resources in this area.

56. These statements were false and misleading because the Prospectus failed to disclose that GoPro had [redacted].

57. As indicated *supra*, GoPro faced a major problem in 2013 – its gross margins had declined significantly, to 43% in 2012 from 52% in 2011, and then decreased even further to a low of 32.3% in Q2 2013, as the chart below demonstrates:

GoPro's Gross Margins – 2011 to 2013

Year	Gross Margins
2011	52%
2012	43%
Q1 2013	35.2%
Q2 2013	32.3%

58. GoPro's rate of revenue growth had also significantly slowed. While it had achieved revenue growth of 125% in 2012, revenue growth had stalled in 2013 and ultimately only came in at 87% as GoPro faced significant obstacles to increasing sales in the U.S. beyond its core customer base.

59. Moreover, during 2013, as indicated above, GoPro's gross margins continued to deteriorate. Gross margins continued to fall from 35.2% in Q1 2013 to 32.3% in Q2 2013.

60. GoPro originally wanted to go public in June 2013 but was told by its

investment bankers that the Company's deteriorating gross margins and decelerating growth rate would not be a compelling IPO story.

61. Due to significant competition, GoPro was unable to increase revenues and Average Sales Prices enough to counteract rapidly increasing expenses. As a result, GoPro [redacted], all in an attempt to make the Company look better for its planned IPO.[1]

62. These [redacted] began to have the desired effect, as GoPro's margins increased to 33.5% in Q3 2013, and then significantly improved in Q4 2013 to 42%, causing the full 2013 year margins to come in at 37%. For Q1 2014, the last financial quarter reported prior to the IPO, the Company's gross margins came in at 41.1%.

63. However, the Prospectus did not disclose the [redacted] had already negatively affected revenues and was likely to continue to do so after the IPO.

64. Specifically, to [redacted].

65. For example, during Q3 2013, GoPro [redacted]

[1] Plaintiffs do not allege that GoPro [redacted]

[redacted].

66. The [redacted] because, as the Prospectus admitted, "***Research and development expense consists primarily of personnel related costs, which include salaries and stock-based compensation.***"

67. The [redacted] directly affected revenues at GoPro since GoPro told analysts in the Roadshow Presentation that [redacted].[2] The Prospectus' failure to disclose [redacted] was also material because GoPro had told analysts during the Roadshow that it was [redacted].

68. GoPro also [redacted].

69. [redacted].

70. As noted *supra*, the Prospectus acknowledged that investing sufficient

[2] [redacted]

resources in personnel and R&D costs was critical to the Company's current and future performance. The Prospectus stated, under the heading "Factors Affected Performance," that:

> "***We believe that our performance is significantly dependent on the investments we make in research and development*** and that we must continually develop and introduce innovative new products, enhance existing products and effectively stimulate customer demand for existing and future products. ***If we fail to innovate and enhance our product offerings, our brand, market position and revenue may be adversely affected***."

71. This statement was false and misleading because it failed to disclose that GoPro [redacted] was reasonably likely to hinder the Company's ability to introduce new products necessary to maintain high average sales prices ("ASPs"), increase or maintain its gross margins, fend off competition, and increase the Company's revenues and profits. Indeed, in Q4 2014 the Company's [redacted]."

72. The Prospectus' statement about the Company's performance being highly dependent on R&D spending was also false and misleading because [redacted].

73. The Prospectus stated that the Company continued to spend significant

resources on its R&D, marketing, advertising, and brand management efforts, and acknowledged that significant spending in these areas was critical to its success, yet failed to disclose that [redacted] in order to make the Company look more profitable.

74. The Prospectus also failed to disclose that expenses would significantly increase after the IPO due to [redacted]. These costs would necessarily include costs such as expenses related to [redacted].

75. [redacted]. Thus, the Prospectus was misleading on two levels. Based on the expense figures disclosed, investors assumed that such figures represented the aggressive spending on R&D, marketing, sales, and other operating expenses that GoPro represented it was conducting, when in fact the expenses did not reflect all such costs since [redacted].

76. The failure to disclose the [redacted].

77. Indeed, GoPro broke down its revenues on a [redacted].

[redacted].

78. The Prospectus was false and misleading because it failed to disclose a very material and significant [redacted].[3]

79. During the second half of 2013, as GoPro [redacted].

80. [redacted].

81. [redacted].

82. GoPro also made an intentional decision to conceal this issue [redacted] because it did not

[3] The Prospectus stated: "Generally, we have experienced the highest levels of revenue in the fourth quarter of the year, which coincides with the winter holiday shopping season in the United States and Europe and the period in which we have historically introduced the newest generation of our product offerings."

want the problems to become known shortly before its planned IPO.

83. Internally, GoPro instructed its employees [redacted].

84. Ultimately, the problem cost GoPro [redacted].

85. Q4 2013 results also came in significantly below the Company's overall growth rate for revenues. For 2013, while the Company grew revenues 87% overall compared to 2012, the growth rate for Q4 2013 revenues compared to Q4 2012 was just 41%.

86. The Prospectus was false and misleading because it failed to disclose any of these problems. The Prospectus acknowledged the materiality of issues surrounding fourth quarter sales: "***any shortfall in expected fourth quarter net sales***, due to macroeconomic conditions, a decline in the effectiveness of our promotional activities or supply chain disruptions, or for any other reason, ***would cause our annual results of operations to suffer significantly***."

87. The Prospectus also admitted that: ***"[A] substantial portion of our expenses are personnel related and include salaries, stock-based compensation, benefits and incentive-based compensation plan expenses, which are not seasonal in nature. Accordingly, in the event of revenue shortfalls, we are generally unable to mitigate the negative impact on margins in the short term. If this were to occur, our operating results would be harmed."***

88. The materiality of the problems is evidenced not only in the significant

effect on revenues, but also in the relevance of the problems to the Company's ability to handle growth and produce quality products that were superior to those of its competitors. Any [redacted] with the GoPro cameras would cause consumers to switch to other companies' products, especially since those products were generally cheaper than GoPro's. This is turn had the potential to reduce the growth rate of GoPro's gross margins and overall sales.

89. The [redacted] were also material and should have been disclosed because they affected the Company's EBITDA and financial leverage and thus its compliance with debt covenants on its main, $170 million credit facility with its lenders.

90. [redacted].

91. [redacted]

92. [redacted]

93. As the Prospectus noted, "Our short term liquidity could be impacted in part by our ability to maintain compliance with covenants in the credit agreement. The agreement contains an acceleration clause for certain events related to our creditworthiness, including, among other things, our failure to maintain a financial leverage ratio below certain thresholds specified in the agreement and maintain a consolidated interest coverage ratio."

The Prospectus Also Failed to Disclose a Number of Additional Existing Problems With the Company's Products and Accessories

94. The Prospectus also failed to disclose a number of other known, adverse problems which were afflicting GoPro at the time of the IPO.

95. For example, the Company had a [redacted].

96. GoPro also had a [redacted].

97. These omissions were material because the Company had stated in the Prospectus that sales of its accessories had helped it increase sales in 2013:

> ***Our 2013 revenue also increased compared to 2012 as a result of an increase in accessories we shipped outside of units shipped.***
>
> . . .
>
> ***Revenue for 2012 also increased compared to 2011 due to an increase in accessories we shipped outside of units shipped.***

98. Since sales of accessories were important to GoPro's ability to increase revenues and profits, the Prospectus should have disclosed the [redacted]

[redacted].

99. Indeed, after the IPO [redacted].

100. In addition, GoPro knew that its [redacted].

False and Misleading Statements Regarding Gross Margins and Profitability

101. The Prospectus was false and misleading because it did not disclose that [redacted], [redacted] were reasonably likely to have a negative effect on the Company's overall profit margins. During the Roadshow, Defendants had touted the Company's high growth rate in EMEA and APAC, stating that [redacted]

[redacted].

102. The Prospectus stated that sales of the Company's products through international distributors was one of the main means of sales:

> **"Components of our results of operations and financial condition**
> ***Revenue***
>
> Our revenue is comprised of product revenue, net of returns and sales incentives:
> ● *Product revenue.* Product revenue is derived from the sale of our HERO line of cameras and accessories directly to retailers and through gopro.com, as well as through our network of domestic and international distributors."

103. The Prospectus also stated that "Independent specialty retailers outside of the United States represent a similarly important sales channel for us, and we reach these customers indirectly through our network of international distributors."

> The Prospectus also stated: "All of our sales outside of the United States are generated through distributors who sell GoPro products to independent specialty retailers, mid-market retailers and big box retailers. ***In 2013 and the three months ended March 31, 2014, our distributors accounted for 48% and 53% of our revenue, respectively***. In the three months ended March 31, 2014, one distributor, X-treme Video accounted for 10% of our revenue."

104. The Prospectus was materially misleading because it did not disclose: [redacted], and that this would put pressure on the Company's gross margins going forward. [redacted] Because the percentage of the Company's products being sold overseas was increasing rapidly and represented a very material portion of GoPro's overall revenues, the significantly [redacted]

[redacted] was highly material and should have been disclosed since it indicated that margins were being and would continue to be adversely affected since a [redacted]

105. The Prospectus' emphasis on international growth for the Company's products led analysts and the market to expect higher sales and higher profits from international sales. On September 8, 2014, an article appeared in Benziga entitled "FBN Securities Offers Insight Into GoPro Inc. Coverage." The article noted that "Shares of GoPro Inc are experiencing a strong appreciation in share price Monday following bullish coverage on the stock from FBN Securities. Analysts at the firm placed an Outperform rating and $70 price target on shares of GoPro. Shebly Seyrafi of FBN Securities highlighted four arguments on why GoPro shares are likely to move higher." The third reason cited by Seyrafi was "GoPro is strongly positioned to penetrate global markets. Seyrafi found that 38 percent of GoPro's revenues are derived from international markets. In addition, Seyrafi indicated that GoPro witnessed an 80 percent increase in Asia revenue year over year in the fiscal second quarter, which analysts feel will accelerate along with European, Middle East and Africa revenues."

106. Indeed, in the aftermath of the IPO analysts started to attempt to figure out whether GoPro was earning the same or different margins on the sale of its cameras outside the United States. In an October 30, 2014 conference call with analysts to discuss GoPro's Q3 2014 financial results, the following question and answer colloquy took place between an analyst and Jack Lazar, the company's CFO:

> Sean Naughton – Piper Jaffray & Co. – Analyst
>
> "I guess a question on the international business, maybe just on Europe. . . just curious maybe about what you're seeing in that market, how the operating margins there really differ a little bit compared to the Company average. . .?"

Jack Lazar – GoPro Inc. – CFO

"As far as your question on margin . . . it probably won't be quite as good a margin as shipping direct, so we tend to – so that's one of the things that played into the margins in a quarter."

107. This comment by CFO Lazar indicates that GoPro was well aware of the fact that [redacted] due to the fact that **GoPro derived 49% of its revenues from such international sales in 2013**,[4] and that the percentage of sales originating internationally was ***increasing***.

108. Indeed, in GoPro's Plan/Forecast for 2014, adopted in late 2013, GoPro [redacted].

109. On May 14, 2014, shortly before the IPO, [redacted]

110. Moreover, GoPro had specifically told investors in the Prospectus that "We believe that international markets represent a significant growth opportunity for us." *See* Prospectus at p. 6. Any reasonable investor who was told that international markets represented a "significant growth opportunity" for GoPro would want to know that [redacted].

111. By the next quarter (Q4 2014), [redacted]

[4] *See* Prospectus at p. 21: "Revenue from outside the United States comprised 35%, 47%, 49% and 44% of our revenue in 2011, 2012, 2013 and the nine months ended September 30, 2014, respectively, and we expect this portion to continue to be significant in the future."

[redacted] were actually causing GoPro to guide earnings lower. In the Q4 2014 earnings call with analysts on Feb. 5, 2015, Lazar answered another call from analyst Sean Naughton about margins on such sales:

> **Sean Naughton – Piper Jaffray & Company – Analyst**
> "Just looking forward and based on what you're talking about on the international expansion, could you just maybe remind us. Are there any dramatic differences in the margins on those three different segments that you have?
>
> **Jack Lazar – GoPro Inc – CFO**
> "We do see ***when we ship through distribution***, as you can imagine, ***that is a lower margin sale for us*** because there are multiple layers involved. ***So that's one of the reasons why we pointed to in the gross margin a decline down to the guidance that we provided***. Distribution is actually probably the biggest piece of it in the first quarter."

112. The next day, on February 6, 2015, Investor's Business Daily published an article entitled "GoPro Falls on Gross Margin Forecast, Lockup Expiration." The article noted that GoPro's stock price was down 10% for the day, despite "fourth quarter results that easily beat Wall Street's targets." The problem was that GoPro had guided earnings lower, based in significant part on the lower margins being realized by GoPro on international sales. The article quoted FBN Securities analyst Shelby Seyrafi, who had written a report indicating that GoPro's profitability would decline due to lower sales volume and an expected increase in sales through international distributors.

113. GoPro's gross margins did in fact suffer after the IPO, falling from 42% in Q4 2013 and 41.1% in Q1 2014 to 40.1% in Q2 2014 and 39.9% in Q3 2014.

Failure to Disclose [redacted]

114. The Prospectus was also false and misleading because it failed to disclose that, in the quarters prior to the IPO, GoPro realized [redacted]

[redacted]

115. [redacted] that existed at the time of the IPO was likely to persist and even increase. Thus, the Prospectus was false and misleading for failing to disclose this known trend.

The Prospectus Was False and Misleading Because It Failed to Disclose Decelerating Growth in Search Engine Interest and the Fact That GoPro's Revenues Were Closely Correlated to Search Engine Interest

116. The Prospectus was also false and misleading in that it touted the significant expected growth of the Company's sales and revenues, but failed to disclose that the Company's revenues closely tracked growth in search engine interest in GoPro cameras and that such growth had significantly slowed in the quarters leading up to the IPO.

117. For example, in Q3 2013, GoPro realized a significant 80% increase in search engine interest. However, in Q4 2013 (typically the quarter GoPro realized most of its sales due to the holiday season), search engine interest had slowed to just a 22% increase. In Q1, 2014, search engine interest growth similarly only grew 22%. In Q2 2014, search engine interest grew 46%, still significantly below the Q3 2013 increase of 80%. GoPro was aware of this significant trend yet failed to disclose it. The trend was material because it signaled a significant slowing in revenue growth at GoPro due to the fact that increases in revenue closely tracked increases in search engine interest.

118. Since Q3 2012, increase in search engine interest had an almost 1:1 positive correlation to increases in revenue, with the actual correlation being 0.90.

Thus, the undisclosed trend signaled a significant reduction in revenue growth at GoPro. Revenue was still increasing, but the rate of revenue growth was significantly slowing in the quarters leading up to the IPO. After the IPO, the growth in search engine interest for GoPro continued to be significantly lower than the Q3 2014 rate, eventually reaching a growth rate of just 5% in Q3 2015, and the growth rate for GoPro revenues similarly continued to decline.

119. While GoPro did disclose the decrease in revenue growth in the quarters leading up to the IPO, the Prospectus failed to disclose that a significant reason for the declining growth rate was the significant deceleration in the growth rate for search engine interest of GoPro's products.

120. The Prospectus was false and misleading in failing to disclose the deceleration of the growth rate for search engine interest. That trend was highly material because it demonstrated a significant slowing of growth in consumers' interest in GoPro products, which had a direct, almost 1:1 correlation in slowing revenue growth. The deceleration in search engine interest demonstrated that the market for GoPro's cameras was becoming saturated and that competitors were taking business away from GoPro.

121. The Prospectus also failed to disclose the fact that sales of cameras on its own website (as opposed to at big box retailers like Best Buy or sales through distributors) had significantly slowed in the 12-15 month period prior to the IPO, even though the number of consumers visiting its website was stable. This was significant because GoPro derived a significant percentage of its revenues from its website sales (approximately 8%).

122. For example, in January 2013, GoPro was realizing in excess of 150% growth (year over year "YoY" %) in actual sales through its website, with over 8.5 million consumers visiting its website. By April 2013, however, the growth rate for website sales had dropped in half to approximately 70%, even though the number of visits to its website had only slightly decreased, to a little over 7 million visits from

January's 8.5 million. By June 2013, GoPro was down to 0% growth rate for website sales, even though website visits by consumers remained at over 7 million. By September 2013, growth in website sales had rebounded slightly to 20% YoY, but remained significantly below 2012 levels of growth.

123. The Prospectus also failed to disclose that the number of consumer reviews of GoPro cameras posted on GoPro's website had similarly significantly diminished prior to the IPO, and that this negative trend indicated slowing consumer interest and demand for the Company's products. For example, the number of reviews being posted to GoPro's website was down over 40% in the quarters prior to the IPO. The number of reviews being posted to the website of Best Buy, the Company's largest retailer, was also down 32%.

Failure to Disclose the Apple Patent

124. The Prospectus contained the following false and misleading statement:

> Moreover, smartphones and tablets with photo and video functionality have significantly displaced traditional camera sales. ***It is possible*** that, ***in the future***, the manufacturers of these devices, ***such as Apple Inc.*** and Samsung, ***may*** design them for use in a range of conditions, including challenging physical environments, or develop products similar to ours. … Increased competition ***may*** result in pricing pressures and reduced profit margins and ***may*** impede our ability to continue to increase the sales of our products or cause us to lose market share, any of which ***could*** substantially harm our business and results of operations.

125. These statements were false and misleading because at the time of the IPO, Apple was ***already*** designing cameras and other products with photo and video functionality specifically targeting GoPro, which were likely to cause pricing pressures, reduced profit margins, and loss of market share for GoPro.

126. Indeed, the Prospectus concealed, and failed to disclose, that Apple ***had already acquired*** a patent from Kodak in 2013 for a wearable sports camera. The Prospectus further failed to disclose that the patent application featured a wearable video camera that could be secured to sports equipment like motorcycle helmets, scuba

masks and bike handles, and that the proposed design closely matched that of GoPro's cameras, which are popular with sports aficionados for filming their mountain climbing, deep-sea diving and skateboard tricks.

127. The Prospectus also failed to disclose that ***by March 2012***, Apple had ***already*** filed a patent application, ***published in September 2013***, targeting GoPro's market. In its patent filing, Apple called out GoPro's camera products as inferior, citing weaknesses in GoPro's camera design, such as "excessive wind resistance" and being "susceptible to damage from vibrations." The Prospectus also failed to disclose that similar to GoPro's cameras, Apple's version was capable of recording sounds and taking underwater pictures and that it could be controlled via smartwatch.

128. GoPro specifically emphasized the GoPro's wireless/remote control solutions in the Prospectus, stating:

> Our products' small, lightweight, yet durable designs make them easy to use even in highly challenging situations. In addition, our remote control solutions and our seamless integration with mobile devices via the GoPro App enable engaging self-capture during virtually any activity. As of March 31, 2014, there have been approximately 6.5 million downloads of the GoPro App.

129. The Prospectus also heavily emphasized the Company's ability, via the GoPro App and other software, to help consumers "manage" their video and picture images captured on the GoPro cameras, primarily by allowing consumers to transfer video and picture content from GoPro cameras to mobile devices such as smart phones:

> In addition to facilitating full camera control from a mobile device, the GoPro App enables a customer to easily and wirelessly copy footage from a GoPro camera to a mobile device for storage and sharing without a computer.

130. Similarly, under a heading entitled "Our Business Focus," the Prospectus touted the fact that, with respect to the fact that "[e]nabling engaging content is at the core of our business," "our remote control solutions and our seamless integration with mobile devices via the GoPro App, our mobile application, enable engaging self-capture

during virtually any activity."

131. The Prospectus also emphasized the fact that the GoPro's remote control capability and GoPro App were critical in driving consumers' movement away from traditional cameras and towards mobile devices like the GoPro, which offered "differentiated capabilities": "As mobile devices continue to displace traditional cameras and camcorders, we believe consumers will seek ***capture devices that offer differentiated capabilities like GoPro products***. Moreover, we believe mobile devices complement our products. ***With the GoPro App, mobile devices can be used to remotely control GoPro cameras***, thereby optimizing customers' ability to self-capture high-quality content of themselves and their activities. The GoPro App also enables customers to manage and share their captured content without the need for a computer. Furthermore, smartphones and tablets expand consumers' ability to access and enjoy GoPro content online."

132. The Prospectus' touting of GoPro's remote control features, including its "seamless integration" with mobile devices, without disclosing the material fact that Apple had secured a patent to do similar tasks, made the Prospectus false and misleading and constituted a material omission.

133. Moreover, the Prospectus' statements regarding GoPro's remote control/wireless features and the GoPro App were false and misleading because they failed to disclose that GoPro did not have adequate intellectual property for its cameras and their wireless/remote control functionality.

134. GoPro began introducing cameras with wireless/remote control capability for the first time in 2012, when it released the HERO3 line of cameras. Around the same time, GoPro introduced the GoPro App for use with its cameras with wireless capability. As indicated above, the Prospectus touted the benefits of the wireless capability and the GoPro App. From 2012 to 2013, GoPro's gross sales revenues increased from approximately $526 million to $986 million, and its net profit increased from $32 million to $60 million.

135. The Prospectus failed to disclose that GoPro did not have adequate intellectual property or patents relating to its cameras' wireless capabilities and GoPro App.

136. The Prospectus directly stated that GoPro believed that its efforts to facilitate consumers' capture, editing, and sharing of content captured on a GoPro camera increased GoPro's image and brand, directly resulting in demand for its products and thus increasing sales:

> We believe our business focus results in a virtuous cycle and a self-reinforcing consumer acquisition model that fuels our growth. *Our products in the hands of our customers enable compelling, authentic content that organically increases awareness for GoPro and drives demand for our products.*
>
> *As a result, we have achieved significant growth in recent periods.* In 2011, 2012, 2013 and the three months ended March 31, 2014, we generated revenue of $234.2 million, $526.0 million, $985.7 million and $235.7 million and reported net income of $24.6 million, $32.3 million, $60.6 million and $11.0 million, respectively. To date, substantially all of our revenue has been generated from the sale of our capture devices.

137. Similarly, the Prospectus acknowledged that the emergence of mobile devices with video capability was decreasing sales of traditional digital camcorders, but again omitted any reference to Apple's patent and did not adequately disclose GoPro's inability to protect itself from competition:

> Consumers continue to replace traditional cameras with mobile devices:
>
> The rapid adoption of smartphones and tablets with photo and video capabilities has changed the camera landscape and negatively impacted the sales of traditional cameras and digital video camcorders. According to IDC, global shipments of digital cameras fell from 142.7 million units in 2011 to 76.2 million units in 2013, a decline of 47%, and global shipments of digital camcorders fell from 21.1 million units in 2011 to 14.1 million units in 2013, a decline of 33%.
>
> We believe that the emergence of photo- and video-enabled mobile devices is creating further opportunities for GoPro. As mobile devices continue to displace traditional cameras and camcorders, we believe consumers will seek *capture devices that offer differentiated capabilities, like GoPro products*.

> Moreover, we believe mobile devices complement our products. With the GoPro App, mobile devices can be used to remotely control GoPro cameras, thereby optimizing customers' ability to self-capture high-quality content of themselves and their activities. The GoPro App also enables customers to manage and share their captured content without the need for a computer. Furthermore, smartphones and tablets expand consumers' ability to access and enjoy GoPro content online.

138. These statements were false and misleading for failure to disclose the Apple patent and for failure to disclose that GoPro had no substantial ability to prevent current and future competitors from doing all the things GoPro touted in the Prospectus as giving it an allegedly unique competitive advantage. To that end, the Prospectus also contained false and misleading statements regarding the competitive threats faced by GoPro, and the Company's ability to protect itself against competition. The Prospectus stated, under the heading "Competition," that:

> We believe we compete favorably with these companies' products. Our durable and versatile product design facilitates increased functionality and wearability. In addition, by offering a variety of mounts and other accessories, we enable a wide range of consumer use cases that are difficult for other competing products to address.

139. Similarly, the Prospectus stated:

> We also believe our years of experience working with active and influential consumers contributes to our ability to develop attractive products and establishes the authenticity of our brand, ***thereby differentiating us from current and potential competitors. Smartphones and tablets with photo and video functionality have significantly displaced traditional camera sales. We believe that our capture devices enable differentiated use cases from mobile devices.*** In particular, we allow consumers to self-capture their experiences in even the most challenging of environments, such as on and in water and in other environments where mobile devices would be damaged, and to do so with their hands free to focus on the activity and not the capture device. However, it is possible that in the future the manufacturers of these devices may design them for use in a range of scenarios and conditions. In addition new companies may emerge and offer competitive products directly in our category.

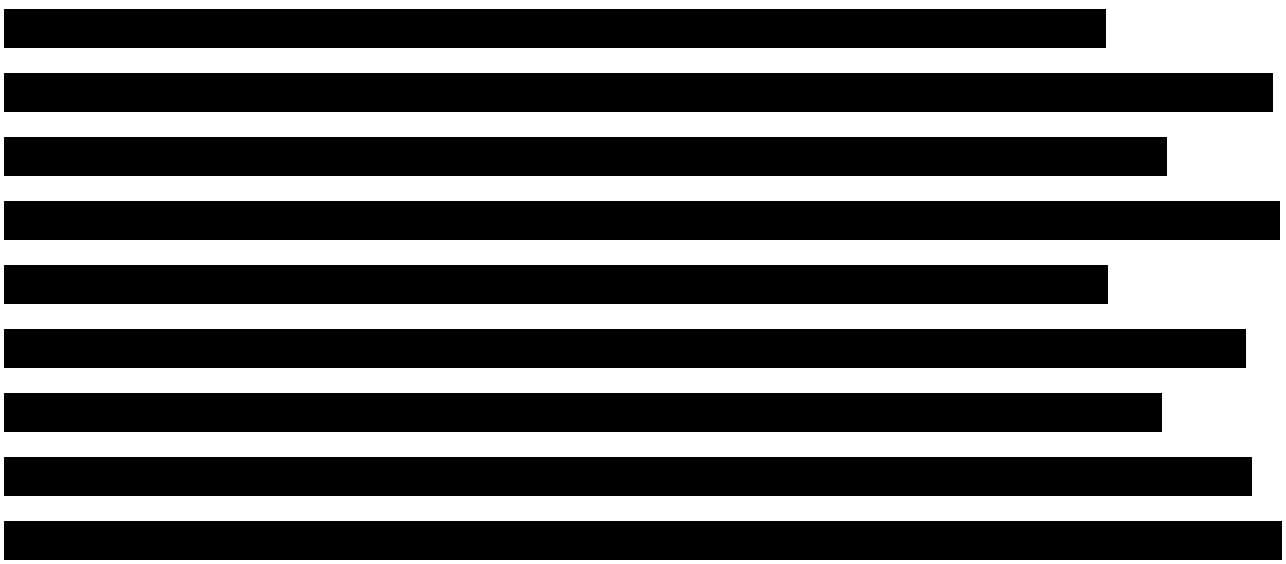
140. These statements were false and misleading because they misrepresented the Company's ability to protect itself against competition. In fact, there were ***no***

significant barriers to entry in GoPro's field and GoPro did ***not*** have any unique or proprietary patents to prevent existing competitors from eroding GoPro's market share and competing with GoPro on price, resulting in decreasing revenues and profits. The Prospectus' failure to disclose these material facts, and its representation that the Company did in fact have specific ways to protect itself from current and potential future competitors, rendered the Prospectus false and misleading.

141. Moreover, the statement that "it is possible that in the future the manufacturers of these devices may design them for use in a range of scenarios and conditions" was itself false and misleading because the Prospectus failed to disclose that Apple had already obtained a patent containing a design for use of a wearable camera in connection with an Apple iphone and/or watch for use in similar conditions and scenarios as those used by GoPro's cameras.

142. In addition, Item 303 requires the Offering Materials to "[d]escribe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on the sales or revenues or income from continuing operations." 17 C.F.R. § 229.303(a)(3)(ii). The regulation also requires the Offering Materials to disclose events that the registrant knew would "cause a material change in the relationship between costs and revenues." *Id*.

143. The fact that GoPro was (1) experiencing a negative OCOGS trend; (2)



pursuant to Item 303, because these facts posed events and uncertainties that would (and did) have an unfavorable impact on GoPro's revenues, gross margins, profitability, and income from operations.

144. The Company sold 17.8 million shares of Class A common stock at an offering price of $24 per share in the IPO, thereby generating gross proceeds of $427.2 million.

C. Events Following the IPO

145. GoPro's gross margins suffered after the IPO, falling from 42% in Q4 2013 to 40.1% in Q2 2014 and 39.9% in Q3 2014.

146. On November 20, 2014, GoPro filed a Prospectus for a Secondary Offering of shares. The Company sold just 1,287,533 shares of stock in the Secondary, but insiders, including Woodman, sold a total of 9,072,967 shares of Class A common stock, at $75 per share. Woodman sold 4,078,800 shares at $75 for proceeds of over $305 million.

147. On December 3, 2014, Defendant Michael Marks sold 332,600 Class A shares for $24.1 million, an average of $77.38 each. On the same day, Defendant Gilhuly sold 125,900 Class A shares for $9.1 million, an average of $72.38 each.

148. On January 13, 2015, GoPro's stock declined approximately 12% after it was reported that Apple had been awarded a patent for a mountable sports camera. *See* David Goldman, "Apple Patents Camera, and GoPro Shares Tank," CNN Money, Jan. 13, 2015. The story noted that the patent application was drafted in 2012, well before the Apple Watch was announced, and that in its patent application, Apple incorporated a patent it purchased from bankrupt Kodak in 2013.

149. Other news articles published the same day noted that "the patent was filed back in 2012 and is titled, 'Digital camera system having remote control.' The document details an action camera system that can be mounted to things like helmets and masks. Among the details included were mentions of weaknesses in GoPro's line

of action cameras." *See* Michael Zhang, "Apple Granted Patent for Action Camera, Causing GoPro's Stock to Tank," PetaPixel, Jan. 13, 2015.

150. Similarly, an article entitled "Apple Granted a Patent for a Superior GoPro-like Camera System," posted on *PatentlyApple.com*, observed as follows:

> The US Patent and Trademark Office officially published a series of 34 newly granted patents for Apple Inc. today. In this particular granted patent report we cover a single invention that relates to a camera system. ***What's interesting here is that Apple's invention that was filed in 2012*** and appears to incorporate intellectual property from Kodak that they acquired back in November 2013. ***In one implementation, Apple's invention could directly move into GoPro's territory as the patent specifically mentions the weaknesses of the GoPro devices.*** Specifically, the patent notes that the new camera system could be secured to various objects, such as a bike helmet or scuba mask, or mounted to the handlebars of a motorcycle or the front of a surfboard.

151. Subsequent analyst reports continued to acknowledge the market's severe reaction to news of Apple's patent targeting GoPro's market. For example, on January 14, 2015, JMP Securities published a report acknowledging the GoPro "sell-off" as a result of "the disclosure of a newly granted Apple . . . patent for a digital camera system with remote control." Similarly, on February 1, 2015, Wedbush Equity Research published a report noting the "sell-off" of GoPro stock "driven in part by concerns about Apple introducing its own action camcorder has been overdone."

152. Thereafter, however, on February 6, 2015, Defendant Woodman, GoPro's CEO, appeared on Fortune television and downplayed any potential competition from Apple, stating that GoPro had a superior brand that had huge video downloads on YouTube. Woodman relayed a conversation he had with Apple's CEO Tim Cook in which the two purportedly remarked on the strength of the GoPro brand, and that consumers only talk about downloading "GoPro videos" not "Apple videos." The *Fortune* article noted that "Woodman downplayed the importance of new competitors and called the 'whole hullabaloo' over Apple's patent overblown".

153. Moreover, on January 16, 2015, GoPro stock declined 3.8% on heavy

volume after it was reported that Contour sued GoPro for patent infringement regarding the GoPro's wireless/remote control and GoPro App features and capabilities. *See* StreetInsider.com, "GoPro Lower; Competitor Takes Legal Action Over Alleged Patent Infringement." However, the stock continued to trade at levels well above the IPO price.

154. On February 6, 2015, Investor's Business Daily published an article entitled "GoPro Falls on Gross Margin Forecast, Lockup Expiration." The article noted that GoPro's stock price was down 10% for the day, despite "fourth quarter results that easily beat Wall Street's targets." The problem was that GoPro had guided earnings lower, based in significant part on the lower margins being realized by GoPro on international sales. The article quoted FBN Securities analyst Shelby Seyrafi, who had written a report indicating that GoPro's profitability would decline due to lower sales volume and an expected increase in sales through international distributors.

155. Between February 18, 2015 and February 25, 2015, two GoPro directors sold 7,250,000 shares of GoPro stock for $335,020,687, an average of $46.21 each. The sales were made on the open market following a lockup period in the middle of the month.

156. Defendant Michael Marks, a founding partner of private-equity firm Riverwood Capital, sold 6,000,000 Class A GoPro shares through RW Camera Holdings for $277,778,670, an average of $46.30 each.[5] Following the sale, Marks directly held 889 Class A shares and held 8,744,949 Class A shares through RW Camera. After the sale, Marks held a 16.79% stake in GoPro, down from 28.30%, and continued to be the second-largest shareholder of the Company.

157. Between February 18-20, 2015, Defendant Edward Gilhuly, a co-founder and managing partner of private-investment firm Sageview Capital, converted and

[5] Marks sold 5,000,000 shares on February 18, 2015 at $46.56 per share.

sold 1,250,000 Class A shares through Sageview Capital Master for $57,242,017, an average of $45.79 each. After the sale, Gilhuly directly held 790 Class A shares and, through Sageview Capital, 250,000 Class A shares and 4,069,417 Class B shares. After the sale, his stake stood at 8.29%, down from 10.69%, making him GoPro's fifth-largest holder. *See* Barron's, Feb. 27, 2015, "GoPro Directors' $335 Million Screaming Stock Sales." In the article, Barron's noted that "GoPro said in 2011 that Sageview and Riverwood, among others, made 'substantial' though undisclosed investments in the company. Marks and Gilhuly joined the GoPro board that year."

158. On July 22, 2015, Defendant Lazar sold 75,000 GoPro shares at prices between $60.78 and $62.50 per share. The next day, Defendant Gilhuly sold 253,400 shares at prices between $64.20 - $64.82, for proceeds of over $16 million.

159. On September 9, 2015, GoPro's stock declined precipitously again on Apple-related news, falling 10.3% after Apple announced the iPhone 6s with a 4k video-capable camera.

160. On September 19, 2015, *Barron's* published an article on GoPro entitled "GoPro: Investing As An Extreme Sport." The article panned the stock and attributed a view that the shares were overpriced in large part to concerns about competition from Apple and others. The article stated:

> While analysts are bullish, investors are clearly skittish about the company's ability to ward off competition, notably from Apple (AAPL). At least twice in the past nine months, GoPro shares have tumbled on Apple-related news. In January, the mere issuance of a camera-related patent to Apple sent GoPro shares down 12%.
>
> Even seemingly positive news from Apple has been overlooked. At the company's keynote address a few weeks ago, it added GoPro support to its Apple Watch, enabling the watch to serve as a viewfinder for GoPro cameras. But Apple also upgraded the camera in its iPhone to a 12-megapixel sensor capable of producing high-resolution 4K video. GoPro shares tumbled 10% on the news.
>
> And it's not just Apple that causes concern. Sony (SNE) makes image sensors for GoPro's cameras, which puts GoPro in a vulnerable spot, considering that Sony sells its own wearable action cam. And earlier this

> month, Alcatel OneTouch, a unit of China-based TCL Communications, announced a new waterproof smartphone called the Go Play. Taking on GoPro directly, the news release boasts, "The Go Play is not only waterproof, it shoots pictures and videos underwater."

161. On September 23, 2015, CNN Money published an article attributing GoPro's declining stock price to competitive threats. *See* Matt Egan, "GoPro Has Crashed. Will Drones Save It," CNN Money, Sept. 23, 2015. The article noted that "The breathtaking decline [in GoPro's stock price] – which has accelerated in recent months – has been fueled by concerns that GoPro and its extreme sports following is just a fad subject to competitive threats." However, numerous analysts still remained bullish on GoPro and downplayed competition. "GoPro analysts are not freaking out – at all. To the contrary, two-thirds of the analysts who cover GoPro are recommending investors buy the stock. The average price target stands at a lofty $69 – or more than double GoPro's current stock price. 'We think the valuation is extremely attractive – whether we get a Hero 4 Plus now or not,' said Gauna, who has a price target of $105 on GoPro."

162. On October 28, 2015, GoPro announced Q3 2015 financial results and provided guidance for future quarters. In response to the earnings announcement and guidance, GoPro's stock declined 15% to approximately $25.

163. Analysts attributed the decline in GoPro's stock price at the time to increased competitive threats and a lack of adequate intellectual property at GoPro. For example, on October 30, 2015, *Seeking Alpha* published an article entitled "GoPro: Why A Merger With Ambarella Is Vital." The article stated that "GoPro's guidance for Q4 points to increasing competitive pressure" and that "GPRO's technology IP moat offers little protection from competitors." With respect to increasing competition and GoPro's limited ability to deter competition using intellectual property and patents, the article noted: "This is the fundamental problem for GoPro going forward. GPRO's competitors are just going to keep getting better. The company's fundamental technology advantages appear to be fairly limited. A brief perusal of GoPro's patents

reveals various mechanical design patents, including a design patent for what would become the Session. In addition, there are a few patents related to encoding video content and image processing. It just isn't much of a moat at all. Image processing and compression algorithms are a dime a dozen. Almost anything that anyone would want to do can be obtained through essential patents that have to be licensed for very nominal fees. And the design patents? Ask Apple how enforceable these are. Apple has spent years and countless millions trying to enforce its basic design patents for the iPhone against Samsung (OTC:SSNLF), to little effect. At best, patents only provide as much protection as a company's legal budget will allow."

164. On October 29, 2015, *Barron's* published an article entitled "GoPro's Shattered Stock Still Not Worth Buying." The article recommended against purchasing the stock, predicting the stock still had room to fall, noting among other things "competition from Apple." In the article, *Barron's* noted that "GoPro is expanding into new areas, including drones, however its core camera market is being targeted by other companies, including Apple (AAPL), whose new iPhone 6s has a 4K video-capable camera. In fact, ***Apple-related news was behind two double-digit drops in GoPro's stock price this year. Nor does GoPro have the advantage Apple does, with consumers upgrading regularly.***" (emphasis added). The article added that "You don't need a GoPro wearable camera to experience a heart-pounding adventure. Just own the stock."

165. Similarly, on October 29, 2015, Business Insider published a report entitled "GoPro Plummets 18% to An All-Time Low After Weak Earnings and Ugly Guidance." The article attributed GoPro's plummeting stock price to the market's concern about increased competition for GoPro: "***Other analysts sounded the alarm on competition from other manufacturers and were concerned about whether the company could significantly grow its user base outside the core group of enthusiasts***. In the earnings statement, the company said its products made up five of the top 10 products in the digital-camera and -camcorder category in

the US. Then there was the brutal Barron's magazine article in September, which forecast that GoPro shares could plunge to $25, right about where shares dropped to in after-hours trading on Wednesday. ***Again, the concern for Barron's Alexander Eule was competition***."

166. On November 12, 2015, *Bloomberg* published an article entitled "GoPro Tumbles Below Its IPO Price as Stock Market Retreats." In the article, *Bloomberg* noted:

> GoPro's shares fell 7.8 percent to $23.15 at the close in New York on Thursday. The maker of wearable cameras went public at $24 in June of last year. The decline left the stock down 63 percent this year as ***concern has mounted that San Mateo, California-based GoPro is a single-product company facing tough competition from Apple Inc. and others***. GoPro last month posted third-quarter profit and sales that trailed analysts' estimates amid lower-than-expected sales of the Hero4 Session model.

167. The decline of GoPro's stock price to well below the IPO price did not affect all GoPro shareholders, however. On December 22, 2015, CNBC reported that Defendant Woodman purchased a 180-foot yacht for an estimated cost of between $35 and $40 million. Woodman had previously cashed out over 4 million of his GoPro shares at inflated levels, selling 4,078,800 shares at $75 per share in the Company's Secondary Offering, for gross proceeds of over $305 million.

168. During 2015, GoPro stock fell by 73%.

169. During the first part of 2016, the decimation of GoPro's stock price continued. On January 7, 2016, GoPro stock declined over 7% to close at $17.00 after it was announced at the Consumer Electronics Show that Kodak would launch a virtual reality 360 degree view consumer camera.

170. As of January 11, 2016, GoPro shares closed at $15.26 per share, a decline of over 83% from the approximate $93.85 per share high, and over 36% below the $24 per share IPO price.

171. On January 15, 2016, GoPro stock declined more than 8% to close at

$11.46 – representing a more than 52% decline from the IPO price of $24.

172. While the Registration Statement generally warns of numerous risks that could affect the Company, it failed to disclose that these risks had already materialized at the time of the IPO.

173. Under the 1933 Act, Defendants were required to disclose these material facts in the Registration Statement because they were known events or uncertainties that at the time of the IPO had caused or were reasonably likely to cause GoPro's disclosed financial information to be not indicative of future operating results and likely to materially and adversely affect GoPro's future results and prospects. Further, Defendants were required to disclose the risk factors that made the offering risky or speculative and to ensure the risk factor adequately described the actual risk, and the likely material adverse effects on the GoPro's financial results and operations.

174. Accordingly, Defendants' conduct with respect to the Registration Statement violated the 1933 Act.

175. Pursuant to the Securities Act, the Underwriter Defendants are liable for the false and misleading statements in the Registration Statement as follows:

a. The Underwriter Defendants are investment banking houses that specialize, inter alia, in underwriting public offerings of securities. The Underwriter Defendants served as the underwriters of the IPO and shared more than $25 million in fees collectively. The Underwriter Defendants determined that in return for their share of the IPO proceeds, they were willing to merchandize GoPro stock in the IPO.

b. The Underwriter Defendants also demanded and obtained an agreement from the Company that the Company would indemnify and hold the Underwriter Defendants harmless from any liability under the federal securities laws. They also made certain that the Company had purchased millions of dollars in directors' and officers' liability insurance.

c. Representatives of the Underwriter Defendants also assisted GoPro and the Individual Defendants in planning the IPO, and purportedly conducted

an adequate and reasonable investigation into the business and operations of GoPro, an undertaking known as a "due diligence" investigation. The due diligence investigation was required of the Underwriter Defendants in order to engage in the IPO. During the course of their "due diligence," the Underwriter Defendants had continual access to confidential corporate information concerning GoPro's operations and financial prospects.

d. In addition to availing themselves of virtually unbridled access to material corporate documents, agents of the Underwriter Defendants met with GoPro's lawyers, management, and top executives, and engaged in "drafting sessions" between at least February 2014 and June 2014. During these sessions, understandings were reached as to: (i) the strategy to best accomplish the IPO; (ii) the terms of the IPO, including the price at which GoPro common stock would be sold; (iii) the language to be used in the Registration Statement; (iv) what disclosures about the Company would be made in the Registration Statement; and (v) what responses would be made to the SEC in connection with its review of the Registration Statement. As a result of those constant contacts and communications between the Underwriter Defendants' representatives and GoPro's management and top executives, the Underwriter Defendants knew of, or in the exercise of reasonable care should have known of, GoPro's existing problems as detailed herein.

e. The Underwriter Defendants caused the Registration Statement to be filed with the SEC and declared effective in connection with the offers and sales of securities registered thereby, including those to Plaintiffs and the other members of the Class.

V. CLASS ALLEGATIONS

176. Plaintiffs bring this action as a class action pursuant to § 382 of the California Code of Civil Procedure on behalf of a class consisting of all persons or entities who acquired the Class A common stock of GoPro pursuant and/or traceable to the false and misleading Offering Materials issued in connection with the IPO (the

"Class"). Excluded from the Class are defendants and their families, the officers, directors and affiliates of the defendants, 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.

177. The members of the Class are so numerous that joinder of all members is impracticable. The Class A common shares were actively traded on the NASDAQ, a developed and global electronic market. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by GoPro 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.

178. Plaintiffs' 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.

179. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation, including litigation in San Mateo Superior Court.

180. 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 1933 Act was violated by defendants' acts as alleged herein,

b. whether statements made by defendants to the investing public in connection with the IPO and in the Offering Materials misrepresented material facts about the business, operations and prospects of GoPro, and

c. to what extent the members of the Class have sustained damages

and the proper measure of damages.

181. 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 impracticable 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.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION
For Violation of § 11 of the 1933 Act
Against All Defendants

182. Plaintiffs incorporate each and every preceding paragraph by reference.

183. This Cause of Action is brought pursuant to § 11 of the 1933 Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants.

184. This Cause of Action does not sound in fraud. Plaintiffs do not allege that Defendants had scienter or fraudulent intent, which are not elements of a § 11 claim.

185. The Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary in order to make the statements made not misleading, and omitted to state material facts required to be stated therein.

186. GoPro is the registrant for the IPO. The Defendants named herein were responsible for the contents and dissemination of the Registration Statement.

187. As issuer of the Class A common stock, GoPro is strictly liable to Plaintiffs and the Class for any misstatements and omissions.

188. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omissions of any material facts and were not misleading.

189. By reason of the conduct herein alleged, each defendant violated, and/or controlled a person who violated, § 11 of the 1933 Act.

190. Plaintiffs acquired Class A common stock pursuant and/or traceable to the Registration Statement.

191. Plaintiffs and the Class have sustained damages. The value of the Class A common stock purchased pursuant to the Registration Statement has declined substantially subsequent to Defendants' violations.

SECOND CAUSE OF ACTION
For Violation of § 12(a)(2) of the 1933 Act
Against GoPro, Woodman, Lazar, Bates, and the Underwriter Defendants

192. Plaintiffs incorporate each and every preceding paragraph by reference.

193. This cause of action is brought pursuant to § 12(a)(2) of the 1933 Act, 15 U.S.C. § 77*l*(a)(2), on behalf of the Class, against Defendant GoPro, Individual Defendants Woodman, Lazar, and Bates, and the Underwriter Defendants.

194. This cause of action does not sound in fraud. Plaintiffs do not allege that Defendants had scienter or fraudulent intent, which are not elements of a § 12(a)(2) claim.

195. By means of the defective Prospectus, Defendants promoted and sold the Class A common stock to Plaintiffs and other members of the Class.

196. Defendant GoPro is liable under § 12(a)(2) as an issuer. SEC Rule 159A provides that an issuer of securities is considered a statutory seller for purposes of § 12(a)(2) regardless of the form of underwriting. *See* 17 C.F.R. § 230.159A(a). Defendant GoPro is also liable under § 12(a)(2) because it solicited the sale of GoPro securities in the IPO motivated by its desire to serve its own financial interest.

197. Individual Defendants Woodman, Lazar, and Bates are liable under § 12(a)(2) because they solicited the sale of GoPro securities in the IPO motivated by their desire to serve their own financial interests. Here, Woodman, Lazar, and Bates successfully solicited the purchase of GoPro stock by participating in preparing the

Prospectus and the Registration Statement and signing or authorizing the signing of the Company's Registration Statement and that by promoting and selling the Class A common stock to Plaintiffs and other members of the Class.

198. Moreover, Individual Defendants Woodman, Lazar, and Bates were directly involved in the offering and promotion of the securities. Specifically, Woodman, Lazar, and Bates each attended road shows and other promotions to meet with and present favorable information to potential GoPro investors, as follows:

(a) [redacted];

(b) [redacted];

(c) [redacted];

(d) [redacted];

(e) [redacted];

(f) [redacted];

(g) [redacted];

(h) [redacted];

(i) [redacted];

(j) [redacted]; and

(k) [redacted].

199. The Underwriter Defendants are liable under § 12(a)(2) because they sold and solicited sales of GoPro securities to the investing public, motivated by their desire to serve their own financial interests. The Underwriter Defendants were involved at each step of the IPO process, including, *inter alia*, meeting with GoPro's representatives, drafting and disseminating the Registration Statement and the Prospectus and determining the IPO price, and participating in a multi-city roadshows prior to the IPO during which they, and representatives from GoPro, met with potential investors and presented highly favorable information about GoPro, its operation, and its financial prospects. In exchange for these and other services, the Underwriter Defendants shared more than $25 million in fees collectively.

200. The Underwriter Defendants are also liable under § 12(a)(2) because the GoPro's June 26, 2014 IPO was a "firm commitment" offering. In a "firm commitment" underwriting, the underwriters agree that they will purchase the shares being offered for the purpose of resale to the public. As such, the Underwriter Defendants are liable under § 12(a)(2) because they directly passed title to public investors.

201. The Prospectus contained untrue statements of material fact, and

concealed and failed to disclose material facts, as detailed above. Defendants owed Plaintiffs and other members of the Class who purchased the Class A common stock the duty to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants, in the exercise of reasonable care, should have known of the misstatements and omissions as set forth above.

202. Plaintiffs did not know, nor in the exercise of reasonable diligence could have known, of the untruths and omissions contained in the Prospectus at the time Plaintiffs acquired the Class A common stock.

203. By reason of the conduct alleged herein, Defendants violated § 12(a)(2) of the 1933 Act. As a direct and proximate result of such violations, Plaintiffs and the other members of the Class who purchased the Class A common stock sustained damages in connection with their purchases. Accordingly, Plaintiffs and the other members of the Class who hold the Class A common stock issued pursuant to the Prospectus have the right to rescind and recover the consideration paid for their shares, and hereby tender their Class A common stock to the Defendants sued herein. To the extent Class members have sold their Class A common stock, they seek damages to the extent permitted by law.

THIRD CAUSE OF ACTION
For Violation of § 15 of the 1933 Act
Against GoPro and the Individual Defendants

204. Plaintiffs incorporate each and every preceding paragraph by reference.

205. This Cause of Action is brought pursuant to § 15 of the 1933 Act against GoPro and the Individual Defendants.

206. The Individual Defendants each were control persons of GoPro by virtue of their voting power over the Company and/or senior positions with the Company.

The Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors and/or officers and/or major shareholders of GoPro. GoPro controlled the Individual Defendants and all its employees.

207. Defendants each were culpable participants in the violations of §§ 11 and 12(a)(2) of the 1933 Act alleged in the Causes of Action above, based on their having signed or authorized the signing of the Registration Statement and having otherwise participated in the process which allowed the IPO to be successfully completed.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Declaring this action to be a proper class action and certifying Plaintiffs as Class representatives under § 382 of the California Code of Civil Procedure;

B. Awarding Plaintiffs and the members of the Class damages and interest;

C. Awarding rescission or a rescissory measure of damages;

D. Awarding Plaintiffs' reasonable costs, including attorneys' fees; and

E. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

VIII. JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED: October 7, 2016

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In re GoPro, Inc. Shareholder Litigation; Lead Case No.: CIV537077

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is: BOTTINI & BOTTINI, INC., 7817 Ivanhoe Avenue, Suite 102, La Jolla, California 92037.

On October 7, 2016, I served a true copy of the following document(s) described as:

Consolidated Amended Complaint for Violations of §§ 11, 12(a)(2), and 15 of the Securities Act of 1933 (redacted version)

on the following parties listed below:

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☒ BY U.S. MAIL. I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business, addressed to the parties listed above.

☐ BY OVERNIGHT DELIVERY. I caused such envelope to be delivered by hand to the offices of the addressee(s) via FEDEX OVERNIGHT DELIVERY SERVICE.

☐ BY PERSONAL SERVICE. I caused the above-described document(s) to be personally delivered to the offices of the party(ies) listed above.

☐ BY ELECTRONIC MAIL. I transmitted the above-described document(s) by electronic mail to the party(ies) listed above and the transmission was completed without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 7, 2016, at La Jolla, California.

Stephanie M. Ammirati