

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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

Plaintiff,

v.

BYRNA TECHNOLOGIES INC., BRYAN
SCOTT GANZ, and DAVID R. NORTH,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States (“U.S.”) Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Byrna Technologies Inc. (“Byrna” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial, additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants that purchased or otherwise acquired Byrna securities between July 7, 2022 and July 10, 2023, both dates inclusive (the “Class Period”), seeking to recover

damages caused by Defendants' violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Byrna, a non-lethal defense technology company, provides non-lethal alternative solutions for law enforcement and private security.

3. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Byrna would miss revenue and earnings estimates for Q2 2023; (ii) the foregoing, once revealed, would likely have a material negative impact on the Company's financial position and/or prospects; and (iii) as a result, the Company's public statements were materially false and misleading at all relevant times.

4. On July 11, 2023, Byrna issued a press release announcing selected financial results for its fiscal second quarter ended May 31, 2023. Among other items, Byrna reported GAAP earnings per share ("EPS") of -\$0.05, wider than estimates of \$-0.02, as well as revenue of \$11.5 million, representing a 0.9% decrease from the prior year and missing expectations by \$0.5 million. Byrna advised investors that "[i]n late March, Meta and Google simultaneously implemented a ban on any advertising by Byrna on their platforms, classifying Byrna as a 'contraband' product," which affected the Company's direct-to-consumer sales.

5. On this news, Byrna's stock price fell \$1.16 per share, or 22.22%, to close at \$4.06 per share on July 11, 2023.

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

JURISDICTION AND VENUE

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

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

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

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

PARTIES

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

12. Defendant Byrna is a Delaware corporation with principal executive offices located at 100 Burt Road, Suite 115, Andover, MA 01810. Byrna's common stock trades in an efficient market on the Nasdaq Capital Market ("NASDAQ") under the ticker symbol "BYRN".

13. Defendant Bryan Scott Ganz ("Ganz") has served as Byrna's Chief Executive Officer, President, and Chairman at all relevant times.

14. Defendant David R. North ("North") has served as Byrna's Chief Financial Officer at all relevant times.

15. Defendants Ganz and North are sometimes referred to herein as the "Individual Defendants."

16. The Individual Defendants possessed the power and authority to control the contents of Byrna's SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of Byrna's SEC filings and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because of their positions with Byrna, and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

17. Byrna and the Individual Defendants are collectively referred to herein as "Defendants."

SUBSTANTIVE ALLEGATIONS

Background

18. Byrna, a non-lethal defense technology company, provides non-lethal alternative solutions for law enforcement and private security.

Materially False and Misleading Statements Issued During the Class Period

19. The Class Period begins on July 7, 2022, when Byrna issued a press release announcing the Company's Q2 2022 financial results. The press release stated, in relevant part:

Bryan Ganz, CEO of Byrna, commented "While on face of it, the second quarter FY2022 numbers appear to suggest that Byrna lost ground as compared to the second quarter of FY2021, when one peels back the onion, it is clear that the Company is continuing to make substantial progress as we lay the foundation for continued growth."

"Organic order flow for the quarter was quite strong compared to last year when you consider that last year, approximately \$7.5 million of orders could be traced to the "Hannity Effect." During Q2FY22, excluding the \$7.5 million in orders that can be traced directly to the Hannity endorsement in April of last year, orders on Byrna.com were up 79% in Q2FY22 vs. Q2FY21. If we include orders on Amazon.com, total e-commerce orders for the quarter were up 114% versus a normalized Q2FY21. We also saw sequential quarter-over-quarter e-commerce order growth (Q2FY22 vs. Q1FY22) of 14% or 17.5% including Amazon.com orders (which equals a 90% CAGR). We are continuing to see extremely strong order growth on Amazon.com with sales increasing from \$224,000 in January to \$624,000 in June."

20. On October 5, 2022, Byrna issued a press release announcing the Company's Q3 2022 financial results. The press release stated, in relevant part:

Bryan Ganz, CEO of Byrna stated, "By all measures, Q3FY2022, was a very positive quarter as the Company posted its third consecutive quarter of top line growth. Excluding Q2 of last year (Q2FY2021) when Byrna benefitted from an unexpected endorsement by Sean Hannity, which drove approximately \$8.0 million in incremental sales, Q3FY2022 set a new sales record at \$12.4 million. Moreover, it marked an important inflection point for the Company as Byrna was profitable on an adjusted EBITDA1 basis, benefitting from improved operating leverage with sales growing by 43% year-over-year while operating expenses grew by only 24%."

21. On February 9, 2023, Byrna issued a press release announcing the Company's Q4 and full year 2022 financial results. The press release stated, in relevant part:

Bryan Ganz, CEO of Byrna commented "while sales growth for the full year 2022 was a disappointing 14%, over the last two quarters of the year, Byrna experienced year-over-year revenue growth of 43%. Full year growth was dragged down by the 14% sales decline in the first half of 2022. The decline in topline sales in the first half of 2022 was due to the \$9.0 million spike in sales in the first half of 2021 resulting from an unexpected (and unsolicited) endorsement from Sean Hannity on live television in April of 2021. If we back out the \$9.0 million in "Hannity Effect" sales that occurred in Q2 of 2021, sales in the first half of 2022 would have been up 47% year-over-year and full year 2022 sales would have been up 45% year-over-year, in keeping with Byrna's long-term growth trajectory.

22. The statements referenced in ¶¶ 19-21 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Byrna would miss revenue and earnings estimates for Q2 2023; (ii) the foregoing, once revealed, would likely have a material negative impact on the Company's financial position and/or prospects; and (iii) as a result, the Company's public statements were materially false and misleading at all relevant times.

The Truth Emerges

23. On July 11, 2023, Byrna issued a press release announcing selected financial results for its fiscal second quarter ended May 31, 2023. Among other items, Byrna reported GAAP earnings per share ("EPS") of -\$0.05, wider than estimates of -\$0.02, as well as revenue of \$11.5 million, representing a 0.9% decrease from the prior year and missing expectations by \$0.5 million. Byrna advised investors that "[i]n late March, Meta and Google simultaneously implemented a ban on any advertising by Byrna on their platforms, classifying Byrna as a 'contraband' product," which affected the Company's direct-to-consumer sales.

24. On this news, Byrna's stock price fell \$1.16 per share, or 22.22%, to close at \$4.06 per share on July 11, 2023.

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

PLAINTIFF'S CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Byrna securities during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

27. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Byrna securities were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Byrna 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.

28. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

29. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

30. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Byrna;
- whether the Individual Defendants caused Byrna to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Byrna securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

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

32. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Byrna securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Byrna securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

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

34. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

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

36. This Count is asserted against Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

37. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Byrna securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Byrna securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

38. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Byrna securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Byrna's finances and business prospects.

39. By virtue of their positions at Byrna, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended

thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.

40. Information showing that Defendants acted knowingly or with reckless disregard for the truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors of Byrna, the Individual Defendants had knowledge of the details of Byrna's internal affairs.

41. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of Byrna. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Byrna's businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Byrna securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Byrna's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Byrna securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

42. During the Class Period, Byrna securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Byrna securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Byrna securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Byrna securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

43. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

44. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

COUNT II

(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)

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

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

47. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Byrna's financial condition and results of operations, and to correct promptly any public statements issued by Byrna which had become materially false or misleading.

48. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Byrna disseminated in the marketplace during the Class Period concerning Byrna's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Byrna to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of Byrna within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Byrna securities.

49. Each of the Individual Defendants, therefore, acted as a controlling person of Byrna. By reason of their senior management positions and/or being directors of Byrna, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Byrna to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Byrna and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

50. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Byrna.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
- B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: _____, 2023

Respectfully submitted,

POMERANTZ LLP

/s/ draft

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