

1 **I. INTRODUCTION**

2 1. Plaintiff, individually and on behalf of all others similarly situated, by
3 Plaintiff's undersigned attorneys, alleges the following based upon personal
4 knowledge as to Plaintiff and Plaintiff's own acts, and upon information and belief as
5 to other matters based on the investigation conducted by and through Plaintiff's
6 attorneys, which included, among other things, a review of U.S. Securities and
7 Exchange Commission ("SEC") filings by Orthofix Medical Inc. ("Orthofix" or the
8 "Company"), and former SeaSpine Holdings Corporation ("SeaSpine"), as well as
9 media and analyst reports about the Company and Company press releases. Plaintiff
10 believes that substantial additional evidentiary support will exist for the allegations set
11 forth herein.

12 **II. SUMMARY OF THE ACTION**

13 2. This is a securities class action on behalf of former SeaSpine shareholders
14 who acquired newly issued Orthofix common stock pursuant to the S-4 registration
15 statement (inclusive of amendments thereto and documents incorporated therein, the
16 "Registration Statement"), the related 424B3 prospectus (inclusive of amendments
17 thereto, related prospectuses, and documents incorporated therein, the "Prospectus"),
18 and related oral communications (collectively, the "Offering Materials") issued in
19 connection with the January 2023 stock-for-stock transaction by which Orthofix
20 acquired and merged with SeaSpine (the "Merger").

21 3. Plaintiff asserts exclusively non-fraud claims sounding in negligence and
22 strict liability under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 ("1933
23 Act" or "Securities Act") against Orthofix and certain current and former officers and
24 directors of Orthofix and SeaSpine.

25 4. In January 2023, in connection with the Merger, Orthofix solicited and
26 sold approximately 16.6 million new shares of Orthofix common stock directly to
27 former shareholders of SeaSpine as follows: Each former share of SeaSpine common
28 stock was exchanged for 0.4163 shares of newly issued Orthofix common stock (and,

1 if applicable, cash in lieu of fractional shares). All of these new shares of Orthofix
2 common stock were solicited and sold pursuant to the Offering Materials and related
3 oral communications.

4 5. The Offering Materials and related oral communications contained
5 untrue statements of material fact and omitted material facts both required by
6 governing regulations and necessary to make the statements made not misleading.
7 Foremost, Defendants made a series of representations touting Orthofix’s purportedly
8 robust and effective disclosure controls and procedures and internal controls over
9 financial reporting and ethical compliance. In truth, contrary to Defendants’ claims,
10 at the time of the Merger, Orthofix lacked adequate internal controls and its purported
11 compliance and training programs and protocols were grossly deficient, all of which
12 resulted in: lax vetting of incoming executive hires; senior management and directors
13 engaging in rampant harassment and other inappropriate misconduct in violation of
14 the Company’s purported ethical and professional standards; prioritization of personal
15 and financial incentives over ensuring that Orthofix and its management complied
16 with applicable laws, regulations, and contracts; and the Company’s failure to ensure
17 that its SEC filings and public disclosures were free of material misstatements.

18 6. Defendants were required to disclose this material information in the
19 Registration Statement for at least three independent reasons. First, SEC Regulation
20 S-K, 17 C.F.R. §229.303 (“Item 303”), required disclosure of any known events or
21 uncertainties that had caused or were reasonably likely to cause Orthofix’s disclosed
22 financial information not to be indicative of future operating results. Defendants’
23 undisclosed misconduct was already likely to (and in fact did) materially and adversely
24 affect Orthofix’s future results and prospects.

25 7. Second, SEC Regulation S-K, 17 C.F.R. §229.105 (“Item 105”),
26 required, in the “Risk Factors” section of the Offering Materials, a discussion of the
27 most significant factors that make the offering risky or speculative and that each risk
28 factor adequately describes the risk. Orthofix’s discussions of risk factors did not even

1 mention, much less adequately describe the risk posed by, Defendants' undisclosed
2 misconduct, nor the likely and consequent material adverse effects on the Company's
3 future results and prospects.

4 8. Third, Defendants' undisclosed misconduct rendered false and
5 misleading the Registration Statement's many references to known risks that "*if*"
6 occurring "*may*" or "*could*" affect the Company. These "risks" were already
7 materializing at the time of the Merger.

8 9. With these misrepresentations and omissions in the Offering Materials
9 and related oral communications, Defendants were able to complete the Merger. But
10 as the truth of Defendants' misrepresentations and omissions gradually and partially
11 emerged, the price of Orthofix shares suffered sharp declines.

12 10. For example, on September 12, 2023, Defendants announced the
13 appointment of an interim CEO, interim CFO, and interim CLO, effective
14 immediately, following the "unanimous decision by the Board's independent directors
15 to terminate for cause Keith Valentine, John Bostjancic and Patrick Keran from those
16 respective roles." According to the press release issued that day:

17 Orthofix Medical Inc. (NASDAQ: OFIX), a leading global spine and
18 orthopedics company, today announced that Catherine Burzik, Chair of
19 the Orthofix Board of Directors, has been appointed Interim Chief
20 Executive Officer; Geoffrey Gillespie, Orthofix Vice President,
21 Corporate Controller, has been appointed Interim Chief Financial
22 Officer; and Puja Leekha, Orthofix Senior Vice President, Chief Ethics
23 and Compliance Officer, has been appointed Interim Chief Legal Officer.
24 *The appointments are effective immediately and follow the unanimous
25 decision by the Board's independent directors to terminate for cause
26 Keith Valentine, John Bostjancic and Patrick Keran from those
27 respective roles. The Board also requested that Mr. Valentine resign
28 from the Board.* The Board will immediately begin a search for
permanent successors.

*The Board's decision follows an investigation conducted by
independent outside legal counsel and directed and overseen by the
Company's independent directors. As a result of the investigation, the*

1 **Board determined that each of these executives engaged in repeated**
2 **inappropriate and offensive conduct that violated multiple code of**
3 **conduct requirements and was inconsistent with the Company’s values**
4 **and culture.** These matters are unrelated to and do not impact the
5 Company’s strategy, results of operations or previously filed financial
6 statements.

7 Catherine Burzik, Chair of the Orthofix Board, said, “**Orthofix’s core**
8 **values are built around fostering, cultivating and preserving a culture**
9 **that is respectful, and we do not condone harassing or inappropriate**
10 **conduct or statements of any kind. We require all employees - and**
11 **especially our leaders - to behave in accordance with the Company’s**
12 **values. The Board did not make these decisions lightly. We believe they**
13 **are necessary to ensure our employees, investors, customers, and other**
14 **stakeholders have confidence in the Company’s leaders.”**

15 11. On this news, the price of Orthofix shares plummeted over 30% on heavy
16 volume to a close of \$13.01 per share on September 13, 2023.

17 12. Then, on March 5, 2024, with the filing of its Annual Report on Form 10-
18 K with the SEC, Orthofix admitted as follows:

19 In connection with the preparation and filing of this Annual Report, the
20 Company’s management, including our President and Chief Executive
21 Officer and our Chief Financial Officer, conducted an evaluation of the
22 effectiveness of our internal control over financial reporting as of
23 December 31, 2023, based on the framework set forth in “Internal
24 Control—Integrated Framework (2013)” issued by the Committee of
25 Sponsoring Organizations of the Treadway Commission (the COSO
26 criteria). Based on its evaluation, the Company’s management **concluded**
27 **that our internal control over financial reporting was not effective** as of
28 December 31, 2023, **due to a material weakness in the design and**
29 **operation of certain management review controls pertaining to**
30 **business combinations** and assessing recoverability of goodwill,
31 resulting from **insufficient evidence supporting the precision over the**
32 **determination of certain estimates** and **insufficient evidence supporting**
33 **the operating effectiveness of the associated review controls. . . .**

34 As permitted by the SEC Staff interpretive guidance for recently acquired
35 businesses, management’s assessment and conclusion on the
36 effectiveness of the Company’s disclosure controls and procedures as of

1 December 31, 2023, *excludes an assessment of the internal control over*
2 *financial reporting of the SeaSpine business* acquired on January 5,
3 2023. SeaSpine represents approximately 52% of consolidated total
4 assets and approximately 35% of consolidated revenues as of and for the
year ended December 31, 2023.

5 13. Orthofix also disclosed that “Ernst & Young LLP, an independent
6 registered public accounting firm, ha[d] issued an audit report on the effectiveness of
7 our internal control over financial reporting as of December 31, 2023,” which report
8 stated as follows:

9 We have audited Orthofix Medical Inc.’s internal control over financial
10 reporting as of December 31, 2023, based on criteria established in
11 Internal Control—Integrated Framework issued by the Committee of
12 Sponsoring Organizations of the Treadway Commission (2013
13 framework) (the COSO criteria). In our opinion, because of the effect of
14 the material weakness described below on the achievement of the
15 objectives of the control criteria, *Orthofix Medical Inc. (the Company)*
has not maintained effective internal control over financial reporting
as of December 31, 2023, based on the COSO criteria.

16 14. By the commencement of this action, Orthofix shares have traded below
17 \$10 per share, an *over 50% decline* from the amount paid per share in the Merger
18 exchange. Plaintiff and similarly situated former SeaSpine investors suffered severe
19 losses as a result.

20 **III. JURISDICTION AND VENUE**

21 15. This Court has original subject matter jurisdiction as the claims alleged
22 arise under the federal Securities Act.

23 16. This Court has personal jurisdiction and venue is proper in this county
24 because certain Defendants are headquartered or otherwise reside within California
25 and this county, Defendants drafted the Offering Materials in part in this county,
26 Defendants and their agents affirmatively solicited the subject securities and Offering
27 Materials and disseminated the alleged false and misleading statements and omissions
28

1 to investors in California and this county, and those contacts with California are
2 substantially connected to the claims asserted in this complaint.

3 **IV. PARTIES**

4 17. Plaintiff Tommy O'Hara is a former SeaSpine shareholder who was
5 directly solicited to acquire, and did acquire, newly issued Orthofix shares directly in
6 the Merger in exchange for SeaSpine shares pursuant to the Offering Materials and
7 related oral communications and was damaged thereby.

8 18. Defendant Orthofix is incorporated under the laws of Delaware. The
9 Company's common stock trades in an efficient market on the Nasdaq Global Select
10 Market ("NASDAQ") under the ticker symbol "OFIX." Defendant Orthofix describes
11 itself as a leading global spine and orthopedics company with a comprehensive
12 portfolio of biologics, innovative spinal hardware, bone growth therapies, specialized
13 orthopedic solutions, and a leading surgical navigation system. Orthofix's headquarters
14 are in Lewisville, Texas and its primary offices are in Carlsbad, California. By means
15 of the Merger, Orthofix merged with and acquired SeaSpine, which at the time was an
16 independent company headquartered in Carlsbad, California and trading on the
17 NASDAQ under the ticker symbol "SPNE." On January 5, 2023, in connection with
18 the Merger, Orthofix issued approximately 16 million new shares of Orthofix common
19 stock directly to Plaintiff and other former shareholders of SeaSpine as follows: Each
20 former share of SeaSpine common stock was exchanged for 0.4163 shares of newly
21 issued Orthofix common stock (and, if applicable, cash in lieu of fractional shares).
22 All of these new shares of Orthofix common stock were solicited and sold pursuant to
23 the Offering Materials and related oral communications.

24 19. Defendant Jon C. Serbousek served, at the time of the Merger, as the
25 Company's Executive Chairman of the Board. He was formerly Orthofix's President
26 and Chief Executive Officer. He reviewed, contributed to, participated in the drafting
27 and solicitation of, and signed the Offering Materials.

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1 20. Douglas C. Rice provided, at the time of the Merger, assistance with
2 integration activities. He was formerly the Company's Chief Financial Officer
3 (principal financial and accounting officer). He reviewed, contributed to, participated
4 in the drafting and solicitation of, and signed the Offering Materials.

5 21. Catherine M. Burzik served, at the time of the Merger, as Orthofix's Chair
6 of the Board of Directors, a position she held since 2021. She was named Lead
7 Independent Director of Orthofix's Board. She reviewed, contributed to, participated
8 in the drafting and solicitation of, and signed the Offering Materials.

9 22. Wayne Burris served, at the time of the Merger, as a member of Orthofix's
10 Board and on its Audit and Finance Committee from September 2021 to the closing of
11 the merger. He also served on Orthofix's Compensation and Talent Committee from
12 June 2022 until January 2023. He reviewed, contributed to, participated in the drafting
13 and solicitation of, and signed the Offering Materials.

14 23. Jason M. Hannon served, at the time of the Merger, as a director on
15 Orthofix's Board. He reviewed, contributed to, participated in the drafting and
16 solicitation of, and signed the Offering Materials.

17 24. James F. Hinrichs served, at the time of the Merger, as a director on
18 Orthofix's Board. He reviewed, contributed to, participated in the drafting and
19 solicitation of, and signed the Offering Materials.

20 25. Lilly Marks served, at the time of the Merger, as a director on Orthofix's
21 Board. She reviewed, contributed to, participated in the drafting and solicitation of,
22 and signed the Offering Materials.

23 26. Michael E. Paolucci served, at the time of the Merger, as a director on
24 Orthofix's Board, and also served on the Compensation and Talent Development
25 Committee. He reviewed, contributed to, participated in the drafting and solicitation
26 of, and signed the Offering Materials.

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28

1 27. John E. Sicard served, at the time of the Merger, as a director on
2 Orthofix’s Board. He reviewed, contributed to, participated in the drafting and
3 solicitation of, and signed the Offering Materials.

4 28. Thomas A. West served, at the time of the Merger, as a director on
5 Orthofix’s Board, and also served on the Compensation and Talent Development
6 Committee. He reviewed, contributed to, participated in the drafting and solicitation
7 of, and signed the Offering Materials.

8 29. Keith C. Valentine served, at the time of the Merger, as the Company’s
9 President and Chief Executive Officer and as a member of its Board. He was formerly
10 SeaSpine’s President, Chief Executive Officer and a member of its Board. He
11 reviewed, contributed to, participated in the drafting and solicitation of, and signed the
12 Offering Materials.

13 30. Kimberley A. Elting served, at the time of the Merger, as the Company’s
14 Chief Legal and Development Officer where she assumed leadership responsibilities
15 for Business Development and oversaw Orthofix’s Legal, Business Development, and
16 Corporate Communications teams. In April 2022, Ms. Elting also became the
17 Company’s President of Global Orthopedics. She reviewed, contributed to,
18 participated in the drafting and solicitation of, and signed the Offering Materials.

19 31. Patrick L. Keran served, at the time of the Merger, as Orthofix’s Chief
20 Legal Officer. He was formerly SeaSpine’s Senior Vice President, General Counsel
21 and Secretary. He reviewed, contributed to, participated in the drafting and solicitation
22 of, and signed the Offering Materials.

23 32. The defendants named in ¶¶19-31 are referred to herein as the “Individual
24 Defendants.” The Individual Defendants and Orthofix are collectively referred to as
25 “Defendants.” The Individual Defendants each signed and were identified as officers
26 or directors or incoming directors in the Registration Statement, solicited the purchase
27 of securities issued pursuant thereto, planned and contributed to the Merger and
28 Registration Statement, and attended promotions to meet with and present favorable

1 information to Orthofix and SeaSpine investors, all motivated by their own and the
2 Company's financial interests.

3 **V. FALSE AND MISLEADING OFFERING MATERIALS AND**
4 **RELATED ORAL COMMUNICATIONS**

5 33. On October 11, 2022, Orthofix announced that it was merging with
6 SeaSpine.¹ On the same date, Orthofix filed with the SEC numerous documents
7 announcing the merger such as the transcript of the joint October 11, 2022 Merger
8 Announcement call hosted by Orthofix and SeaSpine as well as graphics touting the
9 "Talented, Proven Leadership" of Defendant Valentine on Form 425 prospectus, under
10 Securities Act Rule 425 for certain prospectuses and communications in connection
11 with business combinations.²

12 34. On November 8, 2022, Defendants filed with the SEC on Form S-4 a
13 draft Registration Statement which would register the Orthofix shares to be issued and
14 exchanged in the Merger following amendments in response to SEC comments,
15 including comments from the SEC emphasizing Defendants' responsibility for the
16 accuracy and adequacy of their disclosures, notwithstanding any review, comments,
17 action or absence of action by the SEC.³

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19 _____
20 ¹
<https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000119312522260149/d345457d8k.htm>

21
22 ²
<https://www.sec.gov/Archives/edgar/data/884624/000119312522260727/d412130d425.htm>;
23 <https://www.sec.gov/Archives/edgar/data/884624/000119312522260866/d368852d425.htm>;
24 <https://www.sec.gov/Archives/edgar/data/884624/000119312522260721/d410116d425.htm>

25
26 ³
<https://www.sec.gov/Archives/edgar/data/884624/000119312522279689/d345453ds4.htm>;
27 <https://www.sec.gov/Archives/edgar/data/884624/00000000022012361/filename1.pdf>

1 35. On November 22, 2022, Defendants filed with the SEC an amendment to
2 the Registration Statement.⁴

3 36. On November 22, 2022, the SEC declared the Registration Statement
4 effective.⁵

5 37. On November 23, 2022, Defendants filed a prospectus on Form 424B3
6 for the Orthofix shares ultimately issued and exchanged in the Merger, which
7 prospectus forms part of the Registration Statement.⁶ Beginning on November 23,
8 2022, Defendants began mailing the Offering Materials to stockholders of Orthofix
9 and stockholders of SeaSpine.

10 38. On January 5, 2023, Defendants completed the Merger, selling over 16
11 million shares of Orthofix common stock directly to former SeaSpine common
12 stockholders in exchange for their SeaSpine common shares (excluding shares of
13 Orthofix common stock underlying the equity awards and stock options assumed by
14 Orthofix as a result of the Merger).⁷

15 39. As detailed below, Defendants conducted the Merger despite the Offering
16 Materials and related oral communications containing untrue statements of material
17 fact and omissions of material fact both required by governing regulations and
18 necessary to make the statements made not misleading.

19
20 _____
21 ⁴
<https://www.sec.gov/Archives/edgar/data/884624/000119312522290915/d345453ds4a.htm>

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23 ⁵
https://www.sec.gov/Archives/edgar/data/884624/999999999522003378/xslEFFECTX01/primary_doc.xml

24
25 ⁶
<https://www.sec.gov/Archives/edgar/data/884624/000119312522291314/d345453d424b3.htm>

26
27 ⁷
<https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000119312523001900/d433449d8k.htm>

1 **A. The Offering Materials Misrepresented and Omitted Material Facts**
2 **Regarding Orthofix’s Deficient Internal Controls**

3 40. The Committee of Sponsoring Organizations of the Treadway
4 Commission (“COSO”)—an organization that provides guidance to executive
5 management and governance entities on issues of corporate governance and internal
6 controls—defines “internal controls” in Chapter 1 of its Framework as follows:

7 Internal control is a process, effected by an entity’s board of directors,
8 management and other personnel, designed to provide reasonable
9 assurance regarding the achievement of objectives in the following
categories: (i) Effectiveness and efficiency of operations; (ii) Reliability
of financial reporting; (iii) Compliance with applicable laws and
regulations.

10 41. Moreover, COSO emphasizes the importance of a strong control
11 environment, which sets a positive “tone at the top” and then flows down through the
12 Company. The COSO Framework Executive Summary identifies the pervasive
13 influence that the control environment has on the Company, as follows:

14 The control environment sets the tone of an organization, influencing the
15 control consciousness of its people. It is the foundation for all other
16 components of internal control, providing discipline and structure.
17 Control environment factors include the integrity, ethical values and
18 competence of the entity’s people; management’s philosophy and
operating style; the way management assigns authority and
responsibility, and organizes and develops its people; and the attention
and direction provided by the board of directors.

19 42. In addition, the COSO Framework, Ch. 2, establishes that management’s
20 philosophy and operating style directly affects the manner in which the company is
21 managed, the amount of risk that the company accepts and ultimately the success of
22 the company. Chapter 2 of the COSO Framework states:

23 Management’s philosophy and operating style affect the way the
24 enterprise is managed, including the kinds of business risks accepted. . .
25 . . . Other elements of management’s philosophy and operating style include
26 attitudes toward financial reporting, conservative or aggressive selection
27 from available alternative accounting principles, conscientiousness and
28 conservatism with which accounting estimates are developed, and
attitudes toward data processing and accounting functions and personnel.
. . . The impact of an ineffective control environment could be far
reaching, possibly resulting in a financial loss, a tarnished public image
or a business failure.

1 43. Section 404 of the Sarbanes-Oxley Act of 2002 (“the Sarbanes-Oxley
2 Act”) requires management to assess the effectiveness of the internal control structure
3 and the financial reporting for procedures. Management is responsible for performing
4 this assessment in the context of a top-down risk assessment, which requires
5 management to base both the scope of its assessment and the evidence gathered on
6 risk. Management’s conclusion of its assessment of the effectiveness of the
7 Company’s internal control must be included in the Company’s annual report.
8 Moreover, it was crucial for Orthofix to regularly monitor those controls to verify their
9 operating effectiveness.

10 44. SEC rules require management to report publicly all material weaknesses
11 in the Company’s internal controls.

12 45. Defendants Serbousek and Rice were required under Rule 302 of the
13 Sarbanes-Oxley Act to provide assurances relating to the Company’s “internal control
14 over financial reporting.” Rule 302 states as follows:

15 [E]ach annual report . . . [should] contain an internal control report, which
16 shall: (1) state the responsibility of management for establishing and
17 maintaining an adequate internal control structure and procedures for
18 financial reporting; and (2) contain an assessment, as of the end of the
19 most recent fiscal year of the issuer, of the effectiveness of the internal
20 control structure and procedures of the issuer for financial reporting.

21 46. In the Offering Materials, and materials incorporated therein, Defendants
22 made a series of representations concerning Orthofix’s purported disclosure controls
23 and procedures and internal controls over financial reporting.

24 47. For example, the Offering Materials, which incorporated the Merger
25 Agreement by reference, stated that Orthofix maintained internal controls over
26 financial reporting:

27 Orthofix maintains a system of “internal control over financial reporting”
28 (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurance (i) that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, (ii) that transactions are executed only in accordance with the authorization of management and (iii) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of Orthofix’s properties or assets. Since

1 January 1, 2020, none of Orthofix, Orthofix’s independent accountants,
2 the Orthofix Board or its audit committee has received any oral or written
3 notification of any (A) “significant deficiency” in the internal controls
4 over financial reporting of Orthofix, (B) “material weakness” in the
5 internal controls over financial reporting of Orthofix, or (C) fraud,
6 whether or not material, that involves management or other employees of
7 Orthofix or its Subsidiaries who have a significant role in the internal
8 controls over financial reporting of Orthofix. Since January 1, 2020, any
9 material change in internal control over financial reporting required to be
10 disclosed in any Orthofix SEC Document has been so disclosed.

11 48. The Offering Materials, and materials incorporated therein, further stated
12 that:

13 The “disclosure controls and procedures” (as defined in Rules 13a-15(e)
14 and 15d-15(e) of the Exchange Act) utilized by Orthofix are reasonably
15 designed to ensure that all information (both financial and non-financial)
16 required to be disclosed by Orthofix in the reports that it files or submits
17 under the Exchange Act is recorded, processed, summarized and reported
18 within the time periods specified in the rules and forms of the SEC and
19 that all such information required to be disclosed is accumulated and
20 communicated to the management of Orthofix, as appropriate, to allow
21 timely decisions regarding required disclosure and to enable the chief
22 executive officer and chief financial officer of Orthofix to make the
23 certifications required under the Exchange Act with respect to such
24 reports.

25 49. The Offering Materials, and materials incorporated therein, recognized
26 the importance of effective internal controls and stated that Orthofix’s business
27 “could” be harmed “if” the Company failed to maintain effective internal controls:

28 *If we fail to maintain an effective system of internal controls or discover
material weaknesses in our internal control over financial reporting, we
may not be able to report our financial results accurately or detect fraud,
which could harm our business and the trading price of our common
stock.*

Effective internal controls are necessary for us to produce reliable
financial reports and are important in our effort to prevent financial fraud.
We are required to periodically evaluate the effectiveness of the design
and operation of our internal controls. As has occurred in several years
prior, these evaluations may result in the conclusion that enhancements,
modifications, or changes to our internal controls are necessary or
desirable. While management evaluates the effectiveness of our internal
controls on a regular basis, these controls may not always be effective.
There are inherent limitations on the effectiveness of internal controls,
including collusion, management override, and failure of human
judgment. Because of this, control procedures are designed to reduce
rather than eliminate business risks. If we fail to maintain an effective
system of internal controls or if management or our independent
registered public accounting firm were to discover material weaknesses
in our internal controls, we may be unable to produce reliable financial

1 reports or prevent fraud, which could harm our financial condition and
2 operating results, and could result in a loss of investor confidence and a
decline in our stock price.

3 50. The Offering Materials, and the materials incorporated therein,
4 represented that Orthofix's management, including Defendants Serbousek and Rice,
5 evaluated the effectiveness of the design and operation of the Company's disclosure
6 controls and procedures and determined the Company's disclosure controls and
7 procedures were effective.⁸

8 51. The Offering Materials, including the 2021 Form 10-K incorporated
9 therein, represented that:

10 **Management's Report on Internal Control over Financial Reporting**

11 The Company's management is responsible for establishing and
12 maintaining adequate internal control over financial reporting (as such
13 term is defined in the Exchange Act Rule 13a-15(f)). The Company's
14 internal control over financial reporting includes those policies and
15 procedures that (i) pertain to the maintenance of records that, in
16 reasonable detail, accurately and fairly reflect the transactions and
17 dispositions of the assets of the Company; (ii) provide reasonable
18 assurance that transactions are recorded as necessary to permit
preparation of financial statements in accordance with U.S. GAAP, and
that receipts and expenditures of the Company are being made only in
accordance with authorizations of management and directors of the
Company; and (iii) provide reasonable assurance regarding the
prevention or timely detection of unauthorized acquisition, use or
disposition of the Company's assets that could have a material effect on
the financial statements.

19 Internal control over financial reporting is designed to provide reasonable
20 assurance to the Company's management and board of directors
21 regarding the preparation of reliable financial statements for external
22 purposes in accordance with U.S. GAAP. Because of the inherent
23 limitations in any internal control, no matter how well designed,
24 misstatements may occur and not be prevented or detected. Accordingly,
25 even effective internal control over financial reporting can provide only
reasonable assurance with respect to financial statement preparation.
Further, the evaluation of the effectiveness of internal control over
financial reporting was made as of a specific date, and continued
effectiveness in future periods is subject to the risks that controls may
become inadequate because of changes in conditions or that the degree
of compliance with the policies and procedures may decline.

26 _____
27 ⁸ [https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000156459022006929/ofi
x-10k_20211231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000156459022006929/ofi
28 x-10k_20211231.htm)

1 In connection with the preparation and filing of this Annual Report, the
2 Company's management, including our President and Chief Executive
3 Officer and our Chief Financial Officer, conducted an evaluation of the
4 effectiveness of our internal control over financial reporting as of
5 December 31, 2021, based on the framework set forth in "Internal
6 Control—Integrated Framework (2013)" issued by the Committee of
7 Sponsoring Organizations of the Treadway Commission (the COSO
8 criteria). Based on its evaluation, the Company's management concluded
9 that, as of December 31, 2021, the Company's internal control over
10 financial reporting is effective based on the specified criteria.

11 52. The Offering Materials also stated that there had not been changes in
12 internal control over financial reporting that had materially affected or were
13 reasonably likely to materially affect, Orthofix's internal control over financial
14 reporting, including in Orthofix's 2021 Form 10-K. Similarly, Orthofix's quarterly
15 Form 10-Q's during 2022 stated:

16 There was no change in our internal control over financial reporting,
17 known to the President and Chief Executive Officer or the Chief
18 Financial Officer that occurred for the quarterly period covered by this
19 report that has materially affected, or is reasonably likely to materially
20 affect, our internal control over financial reporting.

21 53. In the Offering Materials, and materials incorporated therein, Defendants
22 Serbousek and Rice further certified under Sections 302 and 906 of the Sarbanes-
23 Oxley Act of 2002 ("Sarbanes-Oxley") that the Annual and Quarterly Reports were
24 accurate and complete, and that they had established appropriate internal controls,
25 stating that they: (i) were responsible for establishing and maintaining internal control
26 over financial reporting, and (ii) had designed such internal controls over financial
27 reporting to provide reasonable assurance regarding the reliability of Orthofix's
28 financial reporting and the preparation of Orthofix's financial statements ahead of the
Merger. Furthermore, Defendants Serbousek and Rice represented that: (i) they had

9 *See, e.g.,*
10 <https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000095017022007997/ox-20220331.htm>;
11 <https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000095017022014951/ox-20220630.htm>;
12 <https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000095017022021538/ox-20220930.htm>

1 reviewed Orthofix’s filings; (ii) the filings did not contain any “untrue statement of a
2 material fact or omit to state a material fact necessary to make the statements made, in
3 light of the circumstances under which such statements were made, not misleading”;
4 (iii) Orthofix’s financial statements “fairly present[ed] in all material respects the
5 financial condition, results of operations and cash flows” of Orthofix; and (iv)
6 Orthofix’s financial statements “fairly present[ed], in all material respects, the
7 financial condition and results of operations of Orthofix,” as required by 18 U.S.C. §
8 1350. Further, in each of the SOX Certifications, Defendants Serbousek and Rice
9 further made positive representations to investors that they had: (i) evaluated the
10 “effectiveness of [Orthofix]’s disclosure controls and procedures”; and (ii) designed
11 “disclosure controls and procedures” to “ensure” that material information about
12 Orthofix was made known to them. In connection with the Offering Materials,
13 Defendants Serbousek and Rice executed the SOX Certifications on February 25,
14 2022, May 6, 2022,¹⁰ August 5, 2022,¹¹ and on November 3, 2022.¹²

15 54. In truth, contrary to Defendants’ claims, Orthofix lacked adequate
16 internal controls, compliance and training programs, which resulted in: lax vetting of
17 incoming executive hires; senior management and directors engaging in rampant
18 harassment and other inappropriate misconduct in violation of the Company’s
19 purported ethical and professional standards; prioritization of personal and financial
20 incentives over ensuring that Orthofix and its management complied with applicable
21

22 _____
23 ¹⁰
[https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000095017022007997/ofi
x-20220331.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000095017022007997/ofi
x-20220331.htm)

24
25 ¹¹
[https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000095017022014951/ofi
x-20220630.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000095017022014951/ofi
x-20220630.htm)

26
27 ¹²
[https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000095017022021538/ofi
x-20220930.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/884624/000095017022021538/ofi
x-20220930.htm)

1 laws, regulations, and contracts; and the Company’s failure to ensure that its SEC
2 filings and public disclosures were free of material misstatements.

3 **B. The Offering Materials Falsely and Misleadingly Represented**
4 **Orthofix’s Ethical Compliance Processes and Protocols**

5 55. The Offering Materials, and materials incorporated therein, also
6 misrepresented and omitted material facts in regard to Orthofix’s purported ethical
7 compliance and related process and protocols.

8 56. For example, the Offering Materials falsely represented that Orthofix
9 complied with all employment laws and that there had been no allegations of
10 misconduct against officers, directors, managers or other supervisory-level
11 employees:

12 Orthofix is in compliance in all material respects with all Laws relating
13 to the employment of labor, including all such Laws relating to wages,
14 hours, civil and/or human rights, harassment, discrimination and/or
15 retaliation in employment, reasonable accommodation, unfair
16 competition, affirmative action, pay equity, employment equity, workers’
17 compensation, safety and health, worker classification (including
18 employee-independent contractor classification and the proper
19 classification of employees as exempt employees and non-exempt
20 employees), WARN and any similar foreign, state, provincial or local
21 “mass layoff” or “plant closing” Law. No Misconduct Allegation has
22 been made at any time within the past four (4) years against any Person
23 who is or was an officer, director, manager or supervisory-level employee
24 of Orthofix in such person’s capacity as such or, to the knowledge of
25 Orthofix, in any other capacity, nor are any Misconduct Allegations
26 pending or, to the knowledge of Orthofix, threatened, nor is there any
27 reasonable basis for such a Misconduct Allegation. Within the past four
28 (4) years, Orthofix has not entered into any settlement agreement, tolling
agreement, non-disparagement agreement, confidentiality agreement or
non-disclosure agreement, or any Contract or provision similar to any of
the foregoing relating directly or indirectly to any Misconduct Allegation
against Orthofix or any person who is or was an officer, director,
manager, employee or independent contractor of Orthofix.¹³

57. In truth, contrary to Defendants’ claims, Orthofix was not in material
compliance with all applicable laws related to employment, harassment, and ethical
compliance. Orthofix lacked adequate internal controls, compliance and training

¹³
<https://www.sec.gov/Archives/edgar/data/884624/000119312522291314/d345453d424b3.htm>

1 programs related to employment, harassment, and ethical compliance and vetting,
2 which resulted in: lax vetting of incoming executive hires; senior management and
3 directors engaging in rampant harassment and other inappropriate misconduct in
4 violation of the Company’s purported ethical and professional standards; prioritization
5 of personal and financial incentives over ensuring that Orthofix and its management
6 complied with applicable laws, regulations, and contracts; and the Company’s failure
7 to ensure that its SEC filings and public disclosures were free of material
8 misstatements.

9 **C. Pure Omissions: Omitted Material Information Required Under**
10 **Regulation S-K**

11 58. In addition to affirmative misrepresentations and omissions of material
12 fact necessary to make certain affirmative statements not misleading, Defendants
13 omitted information required to be stated in the Offering Materials pursuant to
14 affirmative disclosure duties imposed by controlling SEC regulations, including Items
15 303 and 105 of Regulation S-K.

16 **i. Offering Materials Omitted Information in Violation of Item**
17 **303**

18 59. Item 303 of SEC Regulation S-K requires that management’s discussion
19 and analysis (“MD&A”) “[i]dentify any known trends or any known demands,
20 commitments, events or uncertainties that will result in or that are reasonably likely to
21 result in the registrant’s liquidity increasing or decreasing in any material way” and
22 “[d]escribe any known trends or uncertainties that have had or that are reasonably
23 likely to have a material favorable or unfavorable impact on net sales or revenues or
24 income from continuing operations.” 17 C.F.R. § 229.303.

25 60. In addition to the identification of such “known trends or uncertainties,”
26 Item 303 further requires disclosure of (i) whether those trends have had or are
27 reasonably expected to have a material unfavorable impact on revenue; and (ii) the
28 extent of any such impact on revenue. Moreover, pursuant to SEC Regulation C,
registrants have an overarching duty to disclose material information necessary to

1 ensure that representations in a registration statement are not misleading. Specifically,
2 Rule 408 states that: “In addition to the information expressly required to be included
3 in a registration statement, there shall be added such further material information, if
4 any, as may be necessary to make the required statements, in light of the circumstances
5 under which they are made, not misleading.” 17 C.F.R. § 230.408(a).

6 61. Accordingly, as the SEC has repeatedly emphasized, the “specific
7 provisions in Item 303 [set forth above] require disclosure of forward-looking
8 information.” Indeed, the SEC has stated that Item 303 is “intended to give the investor
9 an opportunity to look at the company through the eyes of management by providing
10 both a short and long-term analysis of the business of the company . . . with particular
11 emphasis on the registrant’s prospects for the future.” *See* Management’s Discussion
12 and Analysis of Financial Condition and Results of Operation, Securities Act Release
13 No. 6835, 1989 WL 1092885, at *3 (May 18, 1989). Thus, “material forward looking
14 information regarding known material trends and uncertainties is required to be
15 disclosed as part of the required discussion of those matters and the analysis of their
16 effects.” *See* Commission Guidance Regarding Management’s Discussion and
17 Analysis of Financial Condition and Results of Operation, Securities Act Release No.
18 8350, 2003 WL 22996757, at *11 (December 29, 2003).

19 62. In its May 1989 interpretive release on Item 303 (“1989 Interpretive
20 Release”), the SEC emphasized that disclosure of even forward-looking information
21 concerning the registrant (here, Orthofix) is required, explaining as follows:

22 Required disclosure is based on ***currently known trends, events, and***
23 ***uncertainties that are reasonably expected to have material effects***, such
24 as: A reduction in the registrant’s product prices; erosion in the
registrant’s market share; changes in insurance coverage; or the likely
non-renewal of a material contract.

25 * * *

26 A disclosure duty exists where a trend, demand, commitment, event or
27 uncertainty is both presently known to management and reasonably likely
to have material effects on the registrant’s financial condition or results
28 of operation.

1 63. The 1989 Interpretive Release prescribes the following test to determine
2 if disclosure under Item 303(a) is required:

3 Where a trend, demand, commitment, event or uncertainty is known,
4 management must make two assessments:

5 (1) Is the known trend, demand, commitment, event or uncertainty
6 likely to come to fruition? If management determines that it is not
7 reasonably likely to occur, no disclosure is required.

8 (2) If management cannot make that determination, it must evaluate
9 objectively the consequences of the known trend, demand, commitment,
10 event or uncertainty, on the assumption that it will come to fruition.
11 Disclosure is then required unless management determines that a material
12 effect on the registrant’s financial condition or results of operations is not
13 reasonably likely to occur.

14 64. As such, the SEC put the burden on issuers to rule out potential material
15 effects or disclose and quantify, stating that if “[m]anagement is unable to determine
16 that a material effect . . . is not reasonably likely to occur,” then “MD&A disclosure
17 of the effects of [the known trend, development or uncertainty], *quantified to the*
18 *extent reasonably practicable*, would be required.” 54 Fed. Reg. at 22,430; *see*
19 *also* 2003 SEC Release, 68 Fed. Reg. at 75,062 (“Quantitative disclosure . . . required
20 to the extent material if quantitative information is reasonably available.”). Thus, the
21 “required disclosure regarding the future impact of presently known trends, events or
22 uncertainties [under Item 303] may involve some prediction or projection.” 1989 SEC
23 Release, 54 Fed.Reg. at 22,429; *see also* 2003 SEC Release, 68 Fed. Reg. at
24 75,059 (“In addressing prospective financial condition and operating performance,
25 there are circumstances, particularly regarding known material trends and
26 uncertainties, where forward-looking information is required to be disclosed.”).

27 65. Then in its 2003 interpretive guidance, the SEC further emphasized that
28 “[a]s we have explained in prior guidance, disclosure of a trend, demand, commitment,
event or uncertainty is required unless a company is able to conclude either that it is
not reasonably likely that the trend, uncertainty or other event will occur or come to
fruition, or that a material effect on the company’s liquidity, capital resources or results
of operations is not reasonably likely to occur.” Further, the SEC advised that

1 “companies must identify and disclose known trends, events, demands, commitments
2 and uncertainties that are reasonably likely to have a material effect on financial
3 condition or operating performance,” citing the 1989 Interpretive Release as support
4 and quoting, in footnote 6, the following text of the 1989 Interpretive Release:

5 MD&A mandates disclosure of specified forward-looking information,
6 and specifies its own standards for disclosure – i.e., reasonably likely to
7 have a material effect. The specific standard governs the circumstances
8 in which Item 303 requires disclosure.

9 66. Moreover, the SEC’s December 29, 2003 release again emphasized the
10 importance of quantifying material trends and uncertainties and recognized that such
11 disclosures are required when quantitative information is reasonably available:

12 One of the principal objectives of MD&A is to provide information about
13 the quality and potential variability of a company’s earnings and cash
14 flow, so that readers can ascertain the likelihood that past performance is
15 indicative of future performance. Ascertaining this indicative value
16 depends to a significant degree on the quality of disclosure about the facts
17 and circumstances surrounding known material trends and uncertainties
18 in MD&A. Quantification of the material effects of known material
19 trends and uncertainties can promote understanding. Quantitative
20 disclosure should be considered and may be required to the extent
21 material if quantitative information is reasonably available.

22 67. Here, Defendants had an affirmative obligation to disclose facts in the
23 Offering Materials required by Item 303 of Regulation S-K, including information
24 regarding known trends, uncertainties, or events. Further, Defendants were required
25 to quantify the anticipated material effects of known trends and uncertainties as well
26 as the factors that contributed to those known trends and uncertainties.

27 68. In violation of Item 303, the Offering Materials failed to disclose,
28 contrary to Defendants’ claims, that Orthofix lacked adequate internal controls and its
29 purported compliance and training programs and protocols were grossly deficient, all
30 of which resulted in: lax vetting of incoming executive hires; senior management and
31 directors engaging in rampant harassment and other inappropriate misconduct in
32 violation of the Company’s purported ethical and professional standards; prioritization
33 of personal and financial incentives over ensuring that Orthofix and its management
34 complied with applicable laws, regulations, and contracts; and the Company’s failure

1 to ensure that its SEC filings and public disclosures were free of material
2 misstatements.

3 69. At the time of the Merger, these undisclosed materially adverse events,
4 trends, and uncertainties were known by Defendants and were already likely to (and
5 in fact did) materially and adversely affect Orthofix’s results and prospects and
6 rendered the disclosed results and trends in the Offering Materials not indicative of
7 Orthofix’s future operating results. The Offering Materials, however, failed to disclose
8 this required information.

9 **ii. The Offering Materials Omitted Information in Violation of**
10 **Item 105**

11 70. Item 105 of SEC Regulation S-K requires disclosure of “material” risk
12 factors. As detailed therein, the “Risk Factor” section of the Offering Materials must
13 “provide under the caption ‘Risk Factors’ a discussion of the material factors that
14 make an investment in the registrant or offering speculative or risky.” 17 C.F.R. §
15 229.105.¹⁴ As such, Item 105 requires disclosure of the most significant factors that
16 make the offering risky or speculative and that each disclosed risk factor adequately
17 describes the risk. “Generic or boilerplate discussions” do *not* suffice. SEC Release
18 No. 33-7558, 1998 WL 425894, at *14 (July 29, 1998).

19 71. In violation of Item 105’s requirements, the Offering Materials failed to
20 disclose that at the time of the Merger, contrary to Defendants’ claims, Orthofix
21 lacked adequate internal controls and its purported compliance and training programs
22 and protocols were grossly deficient, all of which resulted in: lax vetting of incoming
23 executive hires; senior management and directors engaging in rampant harassment and
24 other inappropriate misconduct in violation of the Company’s purported ethical and
25 professional standards; prioritization of personal and financial incentives over
26 ensuring that Orthofix and its management complied with applicable laws,

27
28 ¹⁴ Before April 2, 2019, current Item 105 was Item 503(c).

1 regulations, and contracts; and the Company’s failure to ensure that its SEC filings
2 and public disclosures were free of material misstatements.

3 72. While the Offering Materials’ discussion of risk factors made incomplete
4 reference to the mere possibility of potential, generalized risks in vague and generic
5 terms, it did not even mention the actual material risks the Company already faced at
6 the time of the Merger as a result of these undisclosed deficiencies, nor the likely and
7 consequent material adverse effects on the Company’s future results and prospects.

8 73. Defendants’ failure to disclose the material information described above,
9 much less the materially adverse effects of the undisclosed information on the
10 Company’s reputation, results, share price, and prospects, rendered false and
11 misleading the Registration Statement’s many references to known risks that “*if*”
12 occurring “*might*” or “*could*” affect the Company. These “risks” were already
13 materializing at the time of the Merger.

14 **VI. DEFENDANTS’ MISSTATEMENTS AND OMISSIONS WERE**
15 **MATERIAL**

16 74. With the foregoing and related misrepresentations and omissions in the
17 Offering Materials and related oral communications, Defendants were able to
18 complete the Merger. But as the truth of Defendants’ misrepresentations and
19 omissions later only gradually and partially emerged, the price of Orthofix shares
20 suffered sharp declines.

21 75. For example, on September 12, 2023, Defendants announced the
22 appointment of an interim CEO, interim CFO, and interim CLO, effective
23 immediately, following the “unanimous decision by the Board’s independent directors
24 to terminate for cause Keith Valentine, John Bostjancic and Patrick Keran from those
25 respective roles.” According to the press release issued that day:

26 Orthofix Medical Inc. (NASDAQ: OFIX), a leading global spine and
27 orthopedics company, today announced that Catherine Burzik, Chair of
28 the Orthofix Board of Directors, has been appointed Interim Chief
Executive Officer; Geoffrey Gillespie, Orthofix Vice President,

1 Corporate Controller, has been appointed Interim Chief Financial
2 Officer; and Puja Leekha, Orthofix Senior Vice President, Chief Ethics
3 and Compliance Officer, has been appointed Interim Chief Legal Officer.
4 *The appointments are effective immediately and follow the unanimous*
5 *decision by the Board’s independent directors to terminate for cause*
6 *Keith Valentine, John Bostjancic and Patrick Keran from those*
7 *respective roles. The Board also requested that Mr. Valentine resign*
8 *from the Board.* The Board will immediately begin a search for
9 permanent successors.

10 *The Board’s decision follows an investigation conducted by*
11 *independent outside legal counsel and directed and overseen by the*
12 *Company’s independent directors. As a result of the investigation, the*
13 *Board determined that each of these executives engaged in repeated*
14 *inappropriate and offensive conduct that violated multiple code of*
15 *conduct requirements and was inconsistent with the Company’s values*
16 *and culture.* These matters are unrelated to and do not impact the
17 Company’s strategy, results of operations or previously filed financial
18 statements.

19 Catherine Burzik, Chair of the Orthofix Board, said, “*Orthofix’s core*
20 *values are built around fostering, cultivating and preserving a culture*
21 *that is respectful, and we do not condone harassing or inappropriate*
22 *conduct or statements of any kind. We require all employees - and*
23 *especially our leaders - to behave in accordance with the Company’s*
24 *values. The Board did not make these decisions lightly. We believe they*
25 *are necessary to ensure our employees, investors, customers, and other*
26 *stakeholders have confidence in the Company’s leaders.”*

27 76. On this news, the price of Orthofix shares plummeted over 30% on heavy
28 volume to a close of \$13.01 per share on September 13, 2023.

77. Then, on March 5, 2024, with the filing of its Annual Report on Form 10-
K with the SEC, Orthofix admitted as follows:

In connection with the preparation and filing of this Annual Report, the
Company’s management, including our President and Chief Executive
Officer and our Chief Financial Officer, conducted an evaluation of the
effectiveness of our internal control over financial reporting as of
December 31, 2023, based on the framework set forth in “Internal
Control—Integrated Framework (2013)” issued by the Committee of

1 Sponsoring Organizations of the Treadway Commission (the COSO
2 criteria). Based on its evaluation, the Company’s management **concluded**
3 **that our internal control over financial reporting was not effective** as of
4 December 31, 2023, **due to a material weakness in the design and**
5 **operation of certain management review controls pertaining to**
6 **business combinations** and assessing recoverability of goodwill,
7 resulting from **insufficient evidence supporting the precision over the**
8 **determination of certain estimates** and **insufficient evidence supporting**
9 **the operating effectiveness of the associated review controls. . . .**

10 As permitted by the SEC Staff interpretive guidance for recently acquired
11 businesses, management’s assessment and conclusion on the
12 effectiveness of the Company’s disclosure controls and procedures as of
13 December 31, 2023, **excludes an assessment of the internal control over**
14 **financial reporting of the SeaSpine business** acquired on January 5,
15 2023. SeaSpine represents approximately 52% of consolidated total
16 assets and approximately 35% of consolidated revenues as of and for the
17 year ended December 31, 2023.

18 78. Orthofix also disclosed that “Ernst & Young LLP, an independent
19 registered public accounting firm, ha[d] issued an audit report on the effectiveness of
20 our internal control over financial reporting as of December 31, 2023,” which report
21 stated as follows:

22 We have audited Orthofix Medical Inc.’s internal control over financial
23 reporting as of December 31, 2023, based on criteria established in
24 Internal Control—Integrated Framework issued by the Committee of
25 Sponsoring Organizations of the Treadway Commission (2013
26 framework) (the COSO criteria). In our opinion, because of the effect of
27 the material weakness described below on the achievement of the
28 objectives of the control criteria, **Orthofix Medical Inc. (the Company)**
has not maintained effective internal control over financial reporting
as of December 31, 2023, based on the COSO criteria.

79. By the commencement of this action, Orthofix shares have traded below
\$10 per share, an **over 50% decline** from the approximately \$22.76 amount paid per
share in the Merger exchange. Plaintiff and similarly situated former SeaSpine
investors suffered severe losses as a result.

1 **VII. INAPPLICABILITY OF THE PSLRA SAFE HARBOR**

2 80. The PSLRA’s statutory safe harbor applicable to forward-looking
3 statements under certain circumstances does not apply to any of the false or misleading
4 statements or omissions pleaded in this Complaint. The safe harbor applies to
5 affirmative statements; it does not apply to omissions of already existing material
6 facts. Moreover, the affirmative statements complained of herein were: (i) historical
7 statements or statements of purportedly current facts and conditions at the time the
8 statements were made; (ii) mixed statements of present and/or historical facts and
9 future plans; and/or (iii) omitted to state material current or historical facts necessary
10 to make the statements not misleading.

11 81. Further, to the extent that any of the false or misleading affirmative
12 statements alleged herein could be construed as forward-looking, the statements were
13 not accompanied by any meaningful cautionary language identifying important facts
14 that could cause actual results to differ materially from those in the statements. Given
15 the then-existing facts contradicting the Defendants’ statements, Defendants’
16 generalized risk disclosures were not sufficient to insulate them from liability for their
17 materially false and misleading statements.

18 82. Alternatively, to the extent the statutory safe harbor otherwise would
19 apply to any forward-looking affirmative statements pleaded herein, the Defendants
20 are liable for those false and misleading forward-looking statements because at the
21 time each of those statements was made, the speaker knew the statement was false or
22 misleading, did not actually believe the statements, had no reasonable basis for the
23 statements, and were aware of undisclosed facts tending to seriously undermine the
24 statements’ accuracy.

25 **VIII. CLASS ACTION ALLEGATIONS**

26 83. Plaintiff brings this putative class action on behalf of all former SeaSpine
27 shareholders who acquired newly issued Orthofix common stock in exchange for
28 SeaSpine share pursuant to Offering Materials issued in connection with the Merger

1 (the “Class”). Excluded from the Class are defendants and their families, the officers
2 and directors and affiliates of defendants, at all relevant times, members of their
3 immediate families and their legal representatives, heirs, successors or assigns and any
4 entity in which defendants have or had a controlling interest.

5 84. The members of the Class are so numerous that joinder of all members is
6 impracticable. While the exact number of Class members is unknown to Plaintiff at
7 this time and can only be ascertained through appropriate discovery, Plaintiff believes
8 that there are hundreds of members in the proposed Class. Record owners and other
9 members of the Class may be identified from records maintained by Orthofix or its
10 transfer agent and may be notified of the pendency of this action by mail, using the
11 form of notice similar to that customarily used in securities class actions.

12 85. Plaintiff’s claims are typical of the claims of the members of the Class,
13 as all members of the Class are similarly affected by defendants’ wrongful conduct in
14 violation of federal law that is complained of herein.

15 86. Plaintiff will fairly and adequately protect the interests of the members
16 of the Class and has retained counsel competent and experienced in class and securities
17 litigation.

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

- 21 (a) whether defendants violated the Securities Act;
- 22 (b) whether the Registration Statement were negligently prepared and
23 contained inaccurate statements of material fact and omitted material information
24 required to be stated therein; and
- 25 (c) to what extent the members of the Class have sustained damages
26 and the proper measure of damages.

27 88. A class action is superior to all other available methods for the fair and
28 efficient adjudication of this controversy since joinder of all members is impracticable.

1 Furthermore, as the damages suffered by individual Class members may be relatively
2 small, the expense and burden of individual litigation make it impossible for members
3 of the Class to individually redress the wrongs done to them. There will be no
4 difficulty in the management of this action as a class action.

5 **FIRST CAUSE OF ACTION**
6 **For Violation of §11 of the Securities Act**
7 **Against All Defendants**

8 89. Plaintiff incorporates all the foregoing by reference.

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

11 91. This Cause of Action alleges and sounds in strict liability and negligence.
12 It expressly excludes and disclaims any allegation that could be construed as alleging
13 fraud or scienter, as it is solely based on claims of strict liability and/or negligence
14 under the Securities Act.

15 92. The Registration Statement contained untrue statements of material facts,
16 omitted to state other facts necessary to make the statements made not misleading, and
17 omitted to state material facts required to be stated therein.

18 93. Defendants are strictly liable to Plaintiff and the Class for the
19 misstatements and omissions.

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

24 95. By reason of the conduct alleged herein, each defendant violated, or
25 controlled an employee or other agent who violated, §11 of the Securities Act.

26 96. Plaintiff acquired Orthofix shares directly in the Merger exchange
27 pursuant to the Registration Statement.
28

1 required to be stated in order to make the statements contained therein not misleading.
2 Defendants, in the exercise of reasonable care, should have known of the
3 misstatements and omissions contained in the prospectus and related oral
4 communications as set forth above.

5 103. By means of the prospectus and related oral communications, Defendants
6 promoted, solicited, and sold Orthofix shares to Plaintiff and Class members.
7 Defendants were sellers to and direct solicitors of purchasers of the Company's
8 securities offered pursuant to the Merger exchange. Defendants issued, caused to be
9 issued, or signed or authorized the signing of the prospectus in connection with the
10 offering, and used it to directly induce investors, including Plaintiff and the other Class
11 members, to purchase the Company's shares.

12 104. Plaintiff did not know, nor in the exercise of reasonable diligence could
13 have known, of the untruths and omissions contained in the prospectus at the time he
14 acquired Orthofix shares.

15 105. By reason of the conduct alleged herein, defendants violated §12(a)(2) of
16 the Securities Act. As a direct and proximate result of such violations, Plaintiff and
17 the other members of the Class who acquired Orthofix shares pursuant to the Merger
18 exchange sustained substantial damages in connection with their purchases of the
19 stock. Accordingly, Plaintiff and the other members of the Class who hold the
20 common stock issued pursuant to the prospectus have the right to rescind and recover
21 the consideration paid for their shares, and hereby tender their common stock to
22 Defendants sued herein. Class members who have sold their common stock seek
23 damages to the extent permitted by law.

24 **THIRD CAUSE OF ACTION**
25 **For Violation of §15 of the Securities Act**
26 **Against All Defendants**

27 106. Plaintiff incorporates all the foregoing by reference.
28

1 107. This Cause of Action is brought pursuant to §15 of the Securities Act
2 against the defendants.

3 108. This Cause of Action alleges and sounds in strict liability and negligence.
4 It expressly excludes and disclaims any allegation that could be construed as alleging
5 fraud or scienter, as it is solely based on claims of strict liability and/or negligence
6 under the Securities Act.

7 109. Orthofix controlled its employee officers and directors named as
8 Individual Defendants. The Individual Defendants were controlling persons of
9 Orthofix, as well as certain employees of Orthofix and/or SeaSpine, by virtue of their
10 positions as directors or senior officers of Orthofix and SeaSpine. Specifically, the
11 Individual Defendants participated at all relevant times in the operation and
12 management of Orthofix, and conducted and participated, directly and indirectly, in
13 the conduct of Orthofix's business affairs. As directors and officers of a publicly
14 owned company, the Individual Defendants had a duty to disseminate accurate and
15 truthful information with respect to Orthofix. Because of their positions of control and
16 authority as directors and officers of Orthofix, the Individual Defendants were able to,
17 and did, control the contents of the Offering Materials and related oral
18 communications, which contained materially untrue information and omissions. The
19 Individual Defendants each had a series of direct or indirect business or personal
20 relationships with other directors or officers or major shareholders of Orthofix and
21 SeaSpine. The Company controlled the Individual Defendants and all Orthofix
22 employees.

23 110. Orthofix and the Individual Defendants were each a culpable participant
24 in the violations of §§11 and 12(a)(2) of the Securities Act alleged in the First and
25 Second Causes of Action above, based on their having signed or authorized the signing
26 of the Offering Materials, having solicited Plaintiff and other Class members, and
27 having otherwise participated in the process which allowed the Merger exchange to
28 be successfully completed.

1 **PRAYER FOR RELIEF**

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

3 A. Certifying this as a class action, appointing Plaintiff as a Class
4 representative, and appointing Plaintiff’s counsel as Class Counsel;

5 B. Awarding damages in favor of Plaintiff and the Class against all
6 Defendants, jointly and severally, in an amount to be proven at trial, including interest
7 thereon;

8 C. Awarding Plaintiff and the Class their reasonable costs and expenses
9 incurred in this action, including counsel fees and expert fees; and

10 D. Awarding rescission, disgorgement, or such other equitable or injunctive
11 relief as deemed appropriate by the Court.

12 **JURY DEMAND**

13 Plaintiff hereby demands a jury trial on all issues so triable.

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15 DATED: September 6, 2024
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