UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Plaintiff, v. PLUG POWER INC., ANDREW MARSH, and PAUL B. MIDDLETON, Defendants.	**Case No.** 1:24-CV-406 (MAD/DJS) **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 Plug Power Inc. ("Plug" 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 Plug securities between May 9, 2023 and January 16, 2024, 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. Plug provides hydrogen fuel cell turnkey solutions for the electric mobility and stationary power markets in North America and Europe, focusing on proton exchange membrane ("PEM") fuel cell and fuel processing technologies, fuel cell-battery hybrid technologies, and related hydrogen storage and dispensing infrastructure. Plug offers its products to retail-distribution and manufacturing businesses through a direct product sales force, original equipment manufacturers ("OEMs"), and dealer networks.

3. Integral to Plug's business are the green hydrogen production plants that the Company operates in multiple locations throughout the U.S. and Europe. These plants are at various stages of development, from operational to under construction. Plug's strategy to maintain growth and profitability involves expanding production capabilities at the Company's already completed green hydrogen plants while finishing construction of new plants. The Company has struggled to execute these hydrogen plant build-out and construction efforts on budget and on time and, as a result, is frequently tasked with identifying additional sources of capital to fund its operations.

4. Despite the foregoing issues, Defendants assured investors throughout the Class Period that Plug was on a clear path to long-term growth and profitability, that the build-out and construction of its green hydrogen production plants remained "on track", and that the Company had identified multiple opportunities to continue to fund its operations. Relatedly, Defendants assured investors that Plug had enacted a diversification strategy to mitigate the potential negative

impacts that, *inter alia*, supply chain constraints and material shortages could have or were having on the Company's business.

5. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company's business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Plug overstated its ability and/or efforts to mitigate the negative impacts that, *inter alia*, supply chain constraints and material shortages could have or were having on the Company's hydrogen business, as well as the sufficiency of its cash and capital to fund its operations; (ii) Plug continued to experience delays related to its green hydrogen production facility build-out plans, as well as in securing external funding sources to finance its growth plans; (iii) Plug downplayed the true scope and severity of all the foregoing when these issues were eventually revealed; (iv) as a result of all the foregoing, Plug also overstated the near-term prospects of its hydrogen production operations, as well as the viability of expanding those operations; and (v) as a result, the Company's public statements were materially false and misleading at all relevant times.

6. On November 9, 2023, Plug announced its third quarter 2023 results, including third quarter GAAP[1] earnings-per-share ("EPS") of -$0.47, missing consensus estimates by $0.16, and third quarter revenue of $198.71 million, missing consensus estimates by $23.02 million. In discussing these results, Plug disclosed that its "2023 overall financial performance has been negatively impacted by unprecedented supply challenges in the hydrogen network in North America", including, *inter alia*, "severe hydrogen shortages", prompting multiple analyst downgrades.

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[1] "GAAP" refers to generally accepted accounting principles, which are a set of accounting rules, standards, and procedures that U.S. public companies must follow when their accountants compile their financial statements.

7. On this news, Plug's stock price fell $2.40 per share, or ***40.47%***, to close at $3.53 per share on November 10, 2023.

8. On November 16, 2023, Citi downgraded Plug's stock from a "Buy" to a "Neutral" rating, as well as slashed its price target on the stock from $12.50 to $5.00, noting, among other things, that Plug management's "subpar execution has led the company into liquidity challenges" and, accordingly, Plug will require $500 million of cash over the next six months.

9. On this news, Plug's stock price fell $0.17 per share, or 3.91%, to close at $4.18 per share on November 16, 2023.

10. On December 6, 2023, Morgan Stanley downgraded Plug's stock from an "Equal Weight" to an "Underweight" rating, as well as slashed its price target on the stock from $3.50 to $3.00, citing liquidity concerns and worsening hydrogen economics.

11. On this news, Plug's stock price fell $0.25 per share, or 5.9%, to close at $3.99 per share on December 6, 2023.

12. On January 11, 2024, Susquehanna downgraded Plug's stock from a "Positive" to a "Neutral" rating, as well as cut its price target on the stock from $5.50 to $4.00, citing "delays related to both PLUG's green hydrogen production facility build-out and securing external funding sources to finance its growth plans[.]"

13. On this news, Plug's stock price fell $0.32 per share, or 7.92%, to close at $3.72 per share on January 11, 2024.

14. On January 16, 2024, Plug announced that it would provide its annual business update on January 23, 2024.

15. Then, on January 17, 2024, *Seeking Alpha* reported that "the market appears to have reset expectations ahead of [Plug]'s planned January 23 business update with CEO Andy Marsh

and CFO Paul Middleton." For example, *Seeking Alpha* noted that "Morgan Stanley analyst Andrew Percoco maintained his Underweight rating and $3 price target, anticipating downside to Plug's (PLUG) $2.1B revenue and 25% gross margin guidance for FY 2024 announced during its Q4 earnings call"; that "[t]he analyst thinks further delays at Plug's (PLUG) green hydrogen production facility in Georgia could be announced, which would add to pressure on the growth and profitability profile of the company's green hydrogen business model"; and that "Percoco also pointed to an increasing probability that Plug (PLUG) will need to raise $1B-$1.5B of equity and equity-like capital to fund its highly capital intensive business to provide itself runway to improve its margin and cash flow profile, which is not fully baked into the current share price."

16. On this news, Plug's stock price fell $0.30 per share, or 9.87%, to close at $2.74 per share on January 17, 2024.

17. 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

18. 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).

19. 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.

20. 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). Plug 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.

21. 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

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

23. Defendant Plug is a Delaware corporation with principal executive offices located at 968 Albany Shaker Road, Latham, New York 12110. The Company's common stock trades in an efficient market on the Nasdaq Capital Market ("NASDAQ") under the ticker symbol "PLUG".

24. Defendant Andrew Marsh ("Marsh") has served as Plug's Chief Executive Officer at all relevant times.

25. Defendant Paul B. Middleton ("Middleton") has served as Plug's Chief Financial Officer at all relevant times.

26. Defendants Marsh and Middleton are collectively referred to herein as the "Individual Defendants".

27. The Individual Defendants possessed the power and authority to control the contents of Plug's SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of Plug'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 Plug, 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.

28. Plug and the Individual Defendants are collectively referred to herein as "Defendants".

SUBSTANTIVE ALLEGATIONS

Background

29. Plug provides hydrogen fuel cell turnkey solutions for the electric mobility and stationary power markets in North America and Europe, focusing on PEM fuel cell and fuel processing technologies, fuel cell-battery hybrid technologies, and related hydrogen storage and dispensing infrastructure. Plug offers its products to retail-distribution and manufacturing businesses through a direct product sales force, OEMs, and dealer networks.

30. Integral to Plug's business are the green hydrogen production plants that the Company operates in multiple locations throughout the U.S. and Europe. These plants are at various stages of development, from operational to under construction. Plug's strategy to maintain growth and profitability involves expanding production capabilities at the Company's already completed green hydrogen plants while finishing construction of new plants. The Company has struggled to execute these hydrogen plant build-out and construction efforts on budget and on time and, as a result, is frequently tasked with identifying additional sources of capital to fund its operations.

31. Despite the foregoing issues, Defendants assured investors throughout the Class Period that Plug was on a clear path to long-term growth and profitability, that the build-out and construction of its green hydrogen production plants remained "on track", and that the Company had identified multiple opportunities to continue to fund its operations. Relatedly, Defendants assured investors that Plug had enacted a diversification strategy to mitigate the potential negative impacts that, *inter alia*, supply chain constraints and material shortages could have or were having on the Company's business.

<u>Materially False and Misleading Statements Issued During the Class Period</u>

32. The Class Period begins on May 9, 2023, when Plug issued a shareholder letter during pre-market hours, announcing the Company's first quarter 2023 results (the "1Q23 Shareholder Letter"). The 1Q23 Shareholder Letter highlighted that Defendants were "Reaffirming 2023 Targets, [and were] focused on key initiatives to enable revenue growth and path to profitability". Particularly, with respect to Plug's green hydrogen plant build-out targets, the 1Q23 Shareholder Letter stated, *inter alia*:

- **Plug's Georgia Liquid Green Hydrogen Plant Will Complete Commissioning and Continue to Ramp to Liquid Production throughout Q2:** The plant has been brought online in less than a year since issuing the full EPC contract (engineering, procurement and construction contract), marking a new industry standard for the construction timeline of a liquid hydrogen plant. Gaseous hydrogen production has continued at the Georgia plant, with fills of our fleet of high-pressure tube trailers and customer trailers.

- **Green Hydrogen Buildout on Track:** Leveraging learnings from Georgia, we have been able to negotiate a lump sum turnkey construction contract for our Texas plant, and we have selected an EPC management company for New York. We are also working on optimizing our project execution strategy in Louisiana with our JV [joint venture] partner. Lastly, the decision on the location of our next plant is in the final stages. We believe these activities put us on track to reach 200 tons-per-day (TPD) under construction and/or commissioning by the end of 2023.

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- **Progress on 2023 Objectives Mark an Inflection Point for Plug:** Green hydrogen production, manufacturing scale, electrolyzer sales, fuel cell product growth and progress on other 2023 objectives have positioned Plug to achieve significant revenue and continued margin expansion throughout the year.

(Emphases in original.)

33. With further respect to Plug's green hydrogen plant build-out activities, the 1Q23 Shareholder Letter stated, in relevant part, that "Plug's speed of execution in our first-of-its-kind green hydrogen plants and commercialized fuel cell products remains unmatched"; and that "Plug's green hydrogen generation network buildout should accelerate the energy transition while driving meaningful margin enhancement for Plug."

34. With specific respect to Plug's progress in building out its U.S. hydrogen plant facilities, the 1Q23 Shareholder Letter stated, *inter alia*, that "Plug has made significant strides in ramping up liquid hydrogen production [in Georgia], with plans to begin production in the second quarter of 2023"; that in Louisiana, Plug's hydrogen plant "site broke ground in Q1 2023 and continues to make solid progress" and "[k]ey construction and commissioning activities are planned to take place during the remainder of 2023"; that "[w]e continue to make progress on our green hydrogen plant in New York to reach 75TPD of capacity to start commissioning in Q4 2023"; that "[t]he 45TPD plant in Texas broke ground in Q4 2022", with "[a]ll permits . . . in place, and long lead time items . . . scheduled to be completed well before commissioning"; and that "Plug is in the process of evaluating multiple sites for either new or expanded production for up to 45TPD of liquid hydrogen production."

35. With specific respect to Plug's progress in building out its European hydrogen plant facilities, the 1Q23 Shareholder Letter stated, in relevant part, that "Plug is actively developing three projects in Spain and Portugal as part of its JV with ACCIONA, including the site of its first

green hydrogen production plant in Spain, scheduled to commission in 2H 2024"; "Plug is making progress on its 35TPD green hydrogen plant at the Port of Antwerp, with inbound interest exceeding 10 times the plant's capacity"; and that "Plug is evaluating potential project sites in multiple locations with low-cost renewable electricity to produce low-cost green hydrogen and transport it to demand centers across the EU to support decarbonization efforts."

36. With respect to Plug's opportunities to secure external funding sources to finance its growth plans, the 1Q23 Shareholder Letter stated, *inter alia*:

> - **Multiple Non-dilutive Financing Opportunities Available to Support Anticipated Powerful Growth and the Buildout of our Green Hydrogen Network:** Plug is evaluating several financing options with counterparties, including but not limited to, the Department of Energy (DOE) Loan Program, strategic project investment partners, and asset-backed loan (ABL) facilities from major banks. Between the current cash position, a $5.7B balance sheet, and interest from multiple capital partners, we believe Plug is well positioned to fund forecasted growth.
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> Plug is evaluating multiple sources of low-cost and non-dilutive capital, as it continues to build out a global green hydrogen generation network. Currently, Plug is completing the second stage of due diligence with the DOE Loan Program Office. Concurrently, we are evaluating asset-backed loan (ABL) facilities from major banks. Finally, Plug continues to receive interest from strategic partners and infrastructure funds regarding interest to partner in our hydrogen plants, which could help accelerate our next generation of hydrogen plant development. Financing decisions around these opportunities will likely be made in the second half of this year. Plug has a strong unleveraged balance sheet and a profitable green hydrogen project pipeline which collectively create a strong liquidity position, giving us a significant runway to continue our plant buildout and scale our business. Longer-term capital needs are likely to be covered with operating cash flow and traditional project financing as the company and the green hydrogen industry continue to grow.

(Emphasis in original.)

37. Also on May 9, 2023, Plug filed a quarterly report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended March 31, 2023 (the

"1Q23 10-Q"). The 1Q23 10-Q downplayed the negative impacts that, *inter alia*, supply chain constraints and material shortages could have or were having on Plug's business, while simultaneously touting the Company's diversification efforts and overall mitigation strategy to address such issues, stating, in relevant part:

> Most components essential to our business are generally available from multiple sources; however, we believe there are some component suppliers and manufacturing vendors, particularly those that supply materials in very limited supply worldwide, whose loss to us could have a material adverse effect upon our business and financial condition. ***We are mitigating these potential risks by introducing alternate system architectures that we expect will allow us to diversify our supply chain with multiple fuel cell, electrolyzer stack and air supply component vendors. In addition, we continue to invest in our supply chain to improve its resilience with a focus on automation, dual sourcing of critical components and localized manufacturing when feasible. We are also working closely with these vendors and other key suppliers on coordinated product introduction plans, product and sales forecasting, strategic inventories, and internal and external manufacturing schedules and levels***; however, changes to our products designs or incorrect forecasting could present challenges to those strategies despite best efforts in leveraging supplier relationship and capabilities. Recent cost pressures from global energy prices and inflation have negatively impacted access to our key raw materials. In cases where we have single sourced suppliers (typically due to new technology and products) or there have been worldwide shortages due to global demand, ***we have worked to engineer alternatives in our product design or develop new supply sources while covering short- and medium-term risks with supply contracts, building up inventory, and development partnerships***.

(Emphases added.)

38. With respect to Plug's liquidity and capital resources, the 1Q23 10-Q stated, in relevant part:

> As of March 31, 2023 and December 31, 2022, the Company had $474.9 million and $690.6 million, respectively of cash and cash equivalents and $898.4 million and $858.7 million of restricted cash, respectively. Additionally, the Company had $1.0 billion and $1.3 billion of available-for-sale securities as of March 31, 2023 and December 21, 2022, respectively.

* * *

> The Company's working capital was $2.3 billion as of March 31, 2023, which included unrestricted cash and cash equivalents of $474.9 million. The Company plans to invest a portion of its available cash to expand its current production and manufacturing capacity, construction of hydrogen plants and to fund strategic acquisitions and partnerships and capital projects . . . . [T]he Company believes that its working capital and cash position will be sufficient to fund its operations for at least one year after the date the financial statements are issued.

39. Appended as exhibits to the 1Q23 10-Q were signed certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX"), wherein the Individual Defendants certified that the 1Q23 10-Q "does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;" and that "the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of [Plug] as of, and for, the periods presented in this report[.]"

40. On August 9, 2023, Plug issued a shareholder letter announcing the Company's second quarter 2023 results (the "2Q23 Shareholder Letter"). The 2Q23 Shareholder Letter highlighted that Plug's "[m]anufacturing scale, green hydrogen build out, and vertically integrated business model sets up an inflection point in both revenue and path to profitability."

41. With respect to Plug's progress in both building out its green hydrogen production facilities and funding these activities, the 2Q23 Shareholder Letter stated, *inter alia*:

> - **Plug's Georgia green hydrogen plant reaching major milestone:** We are continuing to optimize and ramp-up the plant. Final commissioning activities are underway to reach 17.5 tons per day (TPD) of production on site during Q3 2023. As Georgia produces at its full capacity, this is expected to cut our fuel margin loss by as much as half from Q2 to Q4 2023.
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> Plug is making significant strides towards achieving our target of 500 TPD by the close of 2025. Currently, we have four green hydrogen plants at various stages of

> construction, and a fifth plant is in the final evaluation phase. Leveraging insights gained from our experience in Georgia, we have refined our construction plans and plant design to optimize both capital expenditure and post-commissioning operations. Despite minor adjustments in production timelines of approximately 6 months across the Plug network development, our learnings from this process strengthens our long-term positioning as the global leader in green hydrogen production. We believe Plug's green hydrogen generation network stands to drive substantial margin expansion for Plug, as well as expedite the energy transition.
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> In the face of extraordinary global regulatory tailwinds, Plug's green hydrogen projects servicing industrial users through a 'build, own, and operate' framework have garnered notable traction. The project framework is carefully designed to tap into non-recourse debt and project financing, are strategically situated in close proximity to areas with sustained long-term demand and structured for firm offtake agreements from investment grade buyers. This should allow Plug to transition from funding projects from our balance sheet to assuming only 20% of the capex, thereby creating a 5 times multiplier on the capital we can allocate to expand our green hydrogen network.

(Emphasis in original.)

42. With specific respect to Plug's progress in building out its U.S. hydrogen plant facilities, the 2Q23 Shareholder Letter stated, *inter alia*, that "[w]e continue to optimize and ramp-up the [Georgia] plant" with "[f]inal commissioning activities . . . underway to reach 17.5 tons per day (TPD) of production on site in Q3 2023"; that in Louisiana, Plug's hydrogen plant "site broke ground in Q1 2023 and continues to make solid progress" with the Company "looking to produce in Q1 2024"; that in Texas, "we have executed a lump sum turnkey EPC contract . . . for our 45 TPD green hydrogen plant", which "sets the stage for one of the major key considerations from a financing standpoint of having secured a lump-sum EPC contract"; that "[p]rogress in New York continues as we work towards commissioning 74TPD of capacity in the first half of 2024" with "completed work related to on-site storage, all the major long lead time items hav[ing] been procured, and [that by] working with EPC management company and owner's engineer, we have been able to meaningfully optimize CAPEX per ton"; and that "Plug is actively evaluating several

sites for potential new or expanded production capabilities, with a focus on achieving up to 45 TPD of liquid hydrogen output."

43. With specific respect to Plug's progress in building out its European hydrogen plant facilities, the 2Q23 Shareholder Letter stated, in relevant part, that, in Finland, "Plug plans for three green hydrogen plants to leverage the region's abundant renewable energy sources", "aim[ing] for a total capacity of 850 TPD, with FID [final investment decision] by 2026"; that "[p]rogress continues on the design of the 35 TPD green hydrogen plant at the Port of Antwerp, with overwhelming interest surpassing the plant's capacity by over tenfold"; that "Plug's collaboration with ACCIONA in Spain and Portugal is actively advancing, encompassing three projects", with "[t]he first 15 TPD green hydrogen plant in Spain . . . on track for commissioning in the latter half of 2024"; and that "Plug is evaluating potential project sites, specifically targeting locales with cost-effective renewable electricity to facilitate the production of economic green hydrogen, which can then be transported to demand hubs across the broader EU landscape, bolstering . . . Plug's business objectives."

44. With respect to Plug's opportunities to secure external funding sources to finance its growth plans, the 2Q23 Shareholder Letter stated, in relevant part:

> - **Exploring multiple financing options to support anticipated growth:** Plug is evaluating several financing options with counterparties, including but not limited to, the DOE Loan Program, strategic project investment partners, and corporate debt facilities.
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> Plug is evaluating multiple sources of capital, as it continues to build out a global green hydrogen generation network. Currently, Plug is completing the second stage of due diligence with the DOE Loan Program Office. Concurrently, we are evaluating a range of corporate debt facilities from major banks and alternative infrastructure project funding, and ITC project financing solutions. Plug continues to receive interest from corporates and infrastructure funds to partner in our next generation of hydrogen plant development. Financing decisions around these

> opportunities will likely be made in the second half of this year. Plug has a strong balance sheet and a profitable green hydrogen project pipeline which collectively creates a strong liquidity position, giving the Company a significant runway to continue our plant buildout and scale our business. Longer-term capital needs are likely to be covered with operating cash flow and traditional project financing as the Company and the green hydrogen industry grow exponentially into the second half of the decade.

(Emphasis in original.)

45. Also on August 9, 2023, Plug filed a quarterly report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended June 30, 2023 (the "2Q23 10-Q"). The 2Q23 10-Q contained substantively the same statements as referenced in ¶ 37, *supra*, downplaying the negative impacts that, *inter alia*, supply chain constraints and material shortages could have or were having on Plug's business, while simultaneously touting the Company's diversification efforts and overall mitigation strategy to address such issues.

46. With respect to Plug's liquidity and capital resources, the 2Q23 10-Q stated, in relevant part:

> As of June 30, 2023 and December 31, 2022, the Company had $579.4 million and $690.6 million, respectively, of cash and cash equivalents and $973.9 million and $858.7 million of restricted cash, respectively. Additionally, the Company had $437.7 million and $1.3 billion of available-for-sale securities as of June 30, 2023 and December 31, 2022, respectively.
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> The Company's working capital was $1.8 billion as of June 30, 2023, which included unrestricted cash and cash equivalents of $579.4 million.
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> The Company plans to invest a portion of its available cash to expand its current production and manufacturing capacity, construct hydrogen plants and fund strategic acquisitions and partnerships and capital projects . . . . Given the Company's focus on continuing to invest in growth and our green hydrogen platform, the Company is actively soliciting debt capital solutions from varied parties with particular focus on corporate level debt solutions, large scale hydrogen generation infrastructure project financing, and/or investment tax credit ("ITC")

> related project financings. The Company targets closing on the most prudent solution in the near term. The Company's ability to continue investing in growth and its green hydrogen platform will depend on its ability to obtain additional financing. The Company believes that its working capital and cash position will be sufficient to fund its operations for at least one year after the date the financial statements are issued.

47. Appended as exhibits to the 2Q23 10-Q were substantively the same SOX certifications as referenced in ¶ 39, *supra*, signed by the Individual Defendants.

48. The statements referenced in ¶¶ 32-47 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 prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Plug overstated its ability and/or efforts to mitigate the negative impacts that, *inter alia*, supply chain constraints and material shortages could have or were having on the Company's hydrogen business, as well as the sufficiency of its cash and capital to fund its operations; (ii) Plug continued to experience delays related to its green hydrogen production facility build-out plans, as well as in securing external funding sources to finance its growth plans; (iii) Plug downplayed the true scope and severity of all the foregoing when these issues were eventually revealed; (iv) as a result of all the foregoing, Plug also overstated the near-term prospects of its hydrogen production operations, as well as the viability of expanding those operations; and (v) as a result, the Company's public statements were materially false and misleading at all relevant times.

The Truth Begins to Emerge

49. On November 9, 2023, during post-market hours, Plug issued a shareholder letter announcing the Company's third quarter 2023 results (the "3Q23 Shareholder Letter"). Therein, the Company reported third quarter GAAP EPS of -$0.47, missing consensus estimates by $0.16, and third quarter revenue of $198.71 million, missing consensus estimates by $23.02 million. In

discussing these results, the 3Q23 Shareholder Letter disclosed that Plug's "2023 overall financial performance has been negatively impacted by unprecedented supply challenges in the hydrogen network in North America." The 3Q23 10-Q described these challenges, stating, *inter alia*:

> - **The liquid hydrogen market in North America has been severely constrained by multiple frequent force majeure events, leading to volume constraints which has delayed Plug's deployments and service margin improvements:** Plug continues to manage through a historically difficult hydrogen supply environment by leveraging our logistics assets and team members to transport hydrogen across the US to support customer operations as well as implementing contingency plans in various regions of the country.
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> - **Service accrual charge reflects higher near-term cost projections, which have been impacted by delay in roll out of certain reliability investments:** In the third quarter of 2023, the Company has incurred a non-cash charge of $41.6 million. This charge reflects the projection for future costs to service our existing fleet through the remainder of their service contract. The ***severe hydrogen shortages*** have negatively affected direct cost of service as well as the timing for implementation of fleet upgrades into customer operated equipment. ***These factors have been compounded by certain cost increases from inflation impacts on labor, materials and overhead.*** The Company is continuing to monitor the current cost trends and hydrogen market dynamics. If these trends continue, the Company may have to record additional service loss provisions in future periods.
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> Given our forecasted capital expenditure and operating requirements under the current business plan, and the Company's existing cash and liquidity position, ***the Company will need to access additional capital in the market to fund its activities***. The Company is pursuing a number of debt capital and project financing solutions.

(Emphases in bold and italics added.)

50. In response to these disclosures, multiple analysts downgraded Plug's stock. For example, on November 10, 2023, in an article entitled "Plug Power sinks to lowest since April 2020 after dismal Q3 results, four analyst cuts", *Seeking Alpha* reported, in relevant part:

> Plug . . . [stock fell] -43.9% to a three-and-a-half year low in Friday's trading after reporting weak Q3 results and flagging going concern warnings, prompting at least four analyst downgrades on the stock.
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> Cutting Plug (PLUG) to Neutral from Overweight with a $6 price target, J.P. Morgan's Bill Peterson noted the company's short-term cash has been whittled down due to operational and scaling-up challenges and an unfavorable hydrogen supply market.
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> "While we believe Plug Power can cycle past its current cash flow issues, the current operating and capital markets environments are challenging and we believe PLUG shares are likely to be range bound over the next several quarters until clarity around its balance sheet are sorted out," Peterson wrote.
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> RBC Capital analyst Chris Dendrinos cut Plug (PLUG) to Sector Perform from Outperform with a $5 PT, noting company management is reviewing multiple options to bolster near-term liquidity, but it is "prudent to move to the sidelines and await execution of these events and until we see more material progress on initiatives to reduce cash burn and improve margins."
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> Oppenheimer's Colin Rusch conveyed a similar theme in downgrading his rating to Perform from Outperform with a $6 PT, saying while "we believe Plug has numerous options for augmenting its balance sheet and will reduce working capital... shares will likely be challenged until working capital normalizes, [gross margin] turns positive, and trajectory on growth is derisked."
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> Finally, Northland Capital cut Plug (PLUG) to Market Perform from Outperform with a $7 PT, given the challenging hydrogen market dynamics.

51. Following Plug's issuance of the 3Q23 Shareholder Letter and the multiple analyst downgrades, Plug's stock price fell $2.40 per share, or ***40.47%***, to close at $3.53 per share on November 10, 2023. Despite this decline in the Company's stock price, Plug securities continued trading at artificially inflated prices throughout the remainder of the Class Period because of Defendants' continued misstatements and omissions regarding the true scope and severity of the negative impacts that, *inter alia*, supply chain constraints, material shortages, delays related to Plug's build-out of its green hydrogen production facilities, and delays in securing external funding sources could have or were having on the Company's hydrogen business and future prospects.

52. For example, the 3Q23 Shareholder Letter asserted, *inter alia*, that "[w]e believe this hydrogen supply challenge is a transitory issue, especially as we expect our Georgia and Tennessee facilities to produce at full capacity by year-end"; that "[l]essons from ramping up our Georgia green hydrogen facility coupled with our manufacturing ramp, diversity of products, and major new customer wins reinforce Plug's leadership position in the global green hydrogen economy"; and that "[a]s Plug manages through short-term hydrogen supply disruption, we are focused on operational scale, in-house hydrogen generation and policy tailwinds to further the Company's position as a global leader in the green hydrogen industry."

53. With further respect to Plug's green hydrogen facility in Georgia, the 3Q23 Shareholder Letter stated, in relevant part:

- **Georgia green hydrogen plant nearing major milestone:** We are completing the final step of the commissioning process for the liquefiers/cold box. Liquid production is anticipated between November 15th and year-end. Also, developments at Louisiana, Texas and New York are expected to provide an additional step change in our fuel margin expansion. Our gas plant in Georgia has now been operating for almost a year supporting high pressure tube trailer filling for Plug as well as other customers. Unprecedented hydrogen supply challenges in the US only further reinforces our vertically integrated strategy and need for a resilient generation network to support multiple applications.

(Emphasis in original.)

54. With specific respect to Plug's progress in building out its U.S. hydrogen plant facilities, the 3Q23 Shareholder Letter stated, *inter alia*, that "[w]e are completing the final step of the commissioning process for the liquefiers/cold box" at the Company's green hydrogen facility in Georgia, with "[l]iquid production . . . anticipated between November 15th and year-end"; that in Louisiana, Plug's hydrogen plant "[c]onstruction continues with site grading, with the turnkey provider mobilizing for installation of the liquefaction package in November" and "[t]he commissioning plan . . . developed to ensure a smooth process from construction through

commissioning and start-up"; that in Texas, Plug's hydrogen plant "[c]onstruction began at the site with our hydrogen facility EPC contractor," and "[w]ork is ongoing for on-site grading, access roads, the power transmission line, and on-site substation"; that "[w]e continue to work in collaboration with New York Power Authority and National Grid to complete and energize the substation" at the Company's New York hydrogen plant, "which remains the gating item to achieve the full 74 TPD capacity in the first half of 2025"; and that "Plug is actively evaluating several sites for potential new or expanded production capabilities, with a focus on achieving up to 45 TPD of liquid hydrogen output."

55. With specific respect to Plug's progress in building out its European hydrogen plant facilities, the 3Q23 Shareholder Letter stated, in relevant part, that "[w]e expect all permits to be obtained in 2024 [for the Company's hydrogen facility in the Port of Antwerp], which would allow it to move to the construction phase in the course of the following year", "with the plant's targeted production already oversubscribed by over tenfold"; that Plug's Acciona joint venture "is actively advancing the development of our first three projects, which target curtailed renewable energy sources" and that "will be the first 15 MW green hydrogen plant in Spain, which we expect to be on track for commissioning in the latter half of 2024"; that in Finland, "[f]easibility studies are being finalized, with the aim to start the next engineering phase in the first quarter of 2024", "aim[ing] for a total capacity of 850 TPD, with FID expected by 2026"; and that "Plug is developing small-scale sites throughout Europe, driven by Plug customers' demand for hydrogen, notably in the United Kingdom and Germany."

56. With respect to Plug's ability to finance these expansion efforts, the 3Q23 Shareholder Letter provided "Future Funding Roadmaps", stating, in relevant part:

- **Corporate Debt Solutions:** We are evaluating varied debt financing solutions to support our growth.

- **US Department of Energy (DOE) Loan Program:** Currently, Plug is working towards a conditional commitment from the DOE Loan Program Office to finance plants in our green hydrogen network.
- **Project Finance and Plant Equity Partners:** Our MOU with Fortescue contemplates Fortescue having a 40% equity stake in Plug's Texas hydrogen plant and for Plug to take up to a 25% equity stake in Fortescue's Phoenix hydrogen plant. We will continue to evaluate partners to lower our capital expenditure needs.

(Emphases in original.)

57. Also on November 9, 2023, Plug filed a quarterly report on Form 10-Q with the SEC, reporting the Company's financial and operational results for the quarter ended September 30, 2023 (the "3Q23 10-Q"). With respect to Plug's liquidity and capital resources, the 3Q23 10-Q stated, in relevant part:

> The Company's working capital was $1.3 billion at September 30, 2023, which included unrestricted cash and cash equivalents of $110.8 million and restricted cash of $225.8 million. In addition, the Company had available-for-sale securities and equity securities of $388.8 million and $67.8 million, respectively, as of September 30, 2023.
>
> * * *
>
> In light of the Company's projected capital expenditure and operating requirements under its current business plan, the Company is projecting that its existing cash and available for sale and equity securities will not be sufficient to fund its operations through the next twelve months from the date of issuance of this Quarterly Report on Form 10-Q. These conditions and events raise substantial doubt about the Company's ability to continue as a going concern . . . . To alleviate the conditions and events that raise substantial doubt about the Company's ability to continue as a going concern, management is currently evaluating several different options to enhance the Company's liquidity position, including the sale of securities, incurrence of debt or other financing alternatives. The Company's plan includes various financing solutions from third parties with a particular focus on corporate level debt solutions, investment tax credit related project financings and loan guarantee programs, and/or large scale hydrogen generation infrastructure project financing. Those plans are not final and are subject to market and other conditions not within the Company's control.

58. Appended as exhibits to the 3Q23 10-Q were substantively the same SOX certifications as referenced in ¶ 39, *supra*, signed by the Individual Defendants.

59. The statements referenced in ¶¶ 52-58 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) Plug downplayed the true scope and severity of the negative impacts that, *inter alia*, supply chain constraints, material shortages, delays related to the build-out of the Company's green hydrogen production facilities, and delays in securing external funding sources could have or were having on its hydrogen business; (ii) accordingly, Plug overstated the near-term prospects of its hydrogen production operations, as well as the viability of expanding those operations; and (iii) as a result, the Company's public statements were materially false and misleading at all relevant times.

<u>The Truth Fully Emerges</u>

60. On November 16, 2023, in an article entitled "Plug Power slides as Citi cuts, seeing 'narrow way out' of near-term problems", *Seeking Alpha* reported, in relevant part:

> Plug . . . [stock fell] -7.1% in Thursday's trading as Citi downgraded the stock to Neutral from Buy with a $5 price target, slashed from $12.50, saying management's "subpar execution has led the company into liquidity challenges."
>
> "Although there is a narrow way out of the near-term issues, margin of error is small," Citi's Vikram Bagri wrote, adding the 45V PTC clarification, which was a potential catalyst, is "now a much-needed lifeline, which could also pose insurmountable challenges if unfavorable."
>
> The analyst estimated Plug (PLUG) will require $500M of cash over the next six months against line of sight to $930M in liquidity, and believes the company will need more cash by Q3 2024 at the latest.
>
> Plug . . . is poised as a leader of the nascent hydrogen economy with its vertical integration strategy and global partnerships, but Bagri believes margin expansion will take longer than expected to play out.

61. On this news, Plug's stock price fell $0.17 per share, or 3.91%, to close at $4.18 per share on November 16, 2023.

62. On December 6, 2023, in an article entitled "Plug Power cut to Sell equivalent at Morgan Stanley as hydrogen too reliant on subsidies", *Seeking Alpha* reported, in relevant part:

> Plug . . . [stock fell] -5.6% in Wednesday's trading as Morgan Stanley slashed its rating to Underweight from Equal Weight with a $3 price target, cut from $3.50, citing liquidity concerns and worsening hydrogen economics.
>
> Higher interest rates, rising renewable electricity prices and meaningful capex inflation have left green hydrogen economics increasingly reliant on subsidies, where visibility remains poor, which could delay project pipelines and slow adoption, Morgan Stanley's Arthur Sitbon and Andrew Percoco wrote.
>
> Plug (PLUG) has faced significant challenges in commissioning its first few green hydrogen plants, the analysts noted: Its first facility in Georgia is 11 months behind schedule and saw a near-doubling of capex, and its Texas and New York plants also have faced significant delays, in part due to Inflation Reduction Act uncertainty but also as a result of permitting and construction difficulties.

63. On this news, Plug's stock price fell $0.25 per share, or 5.9%, to close at $3.99 per share on December 6, 2023.

64. On January 11, 2024, during pre-market hours, Susquehanna downgraded Plug from a "Positive" to a "Neutral" rating, as well as cut its price target on the stock from $5.50 to $4.00. As *Bloomberg* reported, "[t]he downgrade for PLUG is due to 'delays related to both PLUG's green hydrogen production facility build-out and securing external funding sources to finance its growth plans[.]'"

65. On this news, Plug's stock price fell $0.32 per share, or 7.92%, to close at $3.72 per share on January 11, 2024.

66. On January 16, 2024, Plug announced that it would provide its annual business update on January 23, 2024.

67. Then, on January 17, 2024, in an article entitled "Plug Power plunges again as market resets expectations ahead of update call", *Seeking Alpha* reported, in relevant part:

> Plug [stock fell] -12.9% in Wednesday's trading to its lowest in more than four years, as the market appears to have reset expectations ahead of the company's planned January 23 business update with [the Individual Defendants].
>
> * * *
>
> Morgan Stanley analyst Andrew Percoco maintained his Underweight rating and $3 price target, anticipating downside to Plug's (PLUG) $2.1B revenue and 25% gross margin guidance for FY 2024 announced during its Q4 earnings call.
>
> Given recent sales trends and margin track record, Percoco forecasts $1.26B of revenue and a negative 8% gross margin in 2024, compared to Wall Street consensus estimates for $1.69B in revenues and positive 4% gross margin.
>
> The analyst thinks further delays at Plug's (PLUG) green hydrogen production facility in Georgia could be announced, which would add to pressure on the growth and profitability profile of the company's green hydrogen business model.
>
> Percoco also pointed to an increasing probability that Plug (PLUG) will need to raise $1B-$1.5B of equity and equity-like capital to fund its highly capital intensive business to provide itself runway to improve its margin and cash flow profile, which is not fully baked into the current share price.

68. On this news, Plug's stock price fell $0.30 per share, or 9.87%, to close at $2.74 per share on January 17, 2024.

69. 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.

SCIENTER ALLEGATIONS

70. During the Class Period, Defendants had both the motive and opportunity to commit fraud. They also had actual knowledge of the misleading nature of the statements they made, or acted in reckless disregard of the true information known to them at the time. In so doing, Defendants participated in a scheme to defraud and committed acts, practices, and participated in a course of business that operated as a fraud or deceit on purchasers of the Company's securities during the Class Period.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

71. 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 Plug 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.

72. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Plug 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 Plug 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.

73. 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.

74. 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.

75. 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 Plug;

- whether the Individual Defendants caused Plug 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 Plug 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.

76. 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.

77. 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;

- Plug 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 Plug 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.

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

79. 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)

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

81. 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.

82. 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 Plug securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Plug 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.

83. 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 Plug 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 Plug's finances and business prospects.

84. By virtue of their positions at Plug, 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.

85. 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 Plug, the Individual Defendants had knowledge of the details of Plug's internal affairs.

86. 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 Plug. 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 Plug'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 Plug securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Plug's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Plug 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.

87. During the Class Period, Plug 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 Plug 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 Plug securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Plug securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

88. 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.

89. 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)

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

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

92. 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 Plug's

financial condition and results of operations, and to correct promptly any public statements issued by Plug which had become materially false or misleading.

93. 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 Plug disseminated in the marketplace during the Class Period concerning Plug's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Plug to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of Plug 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 Plug securities.

94. Each of the Individual Defendants, therefore, acted as a controlling person of Plug. By reason of their senior management positions and/or being directors of Plug, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Plug to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Plug 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.

95. 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 Plug.

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: March 22, 2024

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