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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Plaintiffs,

v.

LUNA INNOVATIONS
INCORPORATED, SCOTT A.
GRAEFF, EUGENE J. NESTRO, and
GEORGE GOMEZ-QUINTERO,

Defendants.

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

CLASS ACTION

JURY TRIAL DEMANDED

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1 Plaintiff individually and on behalf of
2 all other persons similarly situated, by Plaintiff's undersigned attorneys, for
3 Plaintiff's complaint against Defendants (defined below), alleges the following
4 based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and
5 information and belief as to all other matters, based upon, among other things, the
6 investigation conducted by and through Plaintiff's attorneys, which included,
7 among other things, a review of the Defendants' public documents, public filings,
8 wire and press releases published by and regarding Luna Innovations Incorporated
9 ("Luna Innovations" or the "Company"), and information readily obtainable on the
10 Internet. Plaintiff believes that substantial evidentiary support will exist for the
11 allegations set forth herein after a reasonable opportunity for discovery.

12 I. NATURE OF THE ACTION

13 1. This is a class action on behalf of persons or entities who purchased or
14 otherwise acquired publicly traded Luna Innovations securities between May 16,
15 2022 and April 19, 2024, inclusive (the "Class Period"). Plaintiff seeks to recover
16 compensable damages caused by Defendants' violations of the federal securities
17 laws under the Securities Exchange Act of 1934 (the "Exchange Act").

18 II. JURISDICTION AND VENUE

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

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

25 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
26 and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged
27 misstatements entered and the subsequent damages took place in this judicial
28 district.

1 5. In connection with the acts, conduct and other wrongs alleged in this
2 complaint, Defendants (defined below), directly or indirectly, used the means and
3 instrumentalities of interstate commerce, including but not limited to, the United
4 States mails, interstate telephone communications and the facilities of the national
5 securities exchange.

6 III. PARTIES

7 6. Plaintiff, as set forth in the accompanying certification, incorporated
8 by reference herein, purchased Luna Innovations securities during the Class Period
9 and was economically damaged thereby.

10 7. Defendant Luna Innovations is a technology company that is focused
11 on fiber optics. It creates products targeted towards the aerospace, automotive, and
12 communications industries, among others.

13 8. Luna Innovations is incorporated in Delaware and its principal
14 executive offices are located at 301 1st Street, SW, Suite 200, Roanoke, VA 24011.
15 The Company's common stock trades on the NASDAQ exchange under the ticker
16 symbol "LUNA."

17 9. Defendant Scott A. Graeff ("Graeff") served as the Company's Chief
18 Executive Officer ("CEO") and President from prior to the Class Period until
19 March 25, 2024.

20 10. Defendant Eugene J. Nastro ("Nastro") served as the Company's Chief
21 Financial Officer ("CFO") from prior to the Class Period until October 16, 2023.

22 11. Defendant George Gomez-Quintero ("Gomez-Quintero") has served as
23 the Company's CFO since October 17, 2023.

24 12. Defendants Graeff, Nastro, and Gomez-Quintero are collectively
25 referred to herein as the "Individual Defendants."

26 13. Each of the Individual Defendants:

27 (a) directly participated in the management of the Company;

28

- 1 (b) was directly involved in the day-to-day operations of the
2 Company at the highest levels;
- 3 (c) was privy to confidential proprietary information concerning the
4 Company and its business and operations;
- 5 (d) was directly or indirectly involved in drafting, producing,
6 reviewing and/or disseminating the false and misleading
7 statements and information alleged herein;
- 8 (e) was directly or indirectly involved in the oversight or
9 implementation of the Company’s internal controls;
- 10 (f) was aware of or recklessly disregarded the fact that the false and
11 misleading statements were being issued concerning the
12 Company; and/or
- 13 (g) approved or ratified these statements in violation of the federal
14 securities laws.

15 14. The Company is liable for the acts of the Individual Defendants and its
16 employees under the doctrine of *respondeat superior* and common law principles of
17 agency because all of the wrongful acts complained of herein were carried out
18 within the scope of their employment.

19 15. The scienter of the Individual Defendants and other employees and
20 agents of the Company is similarly imputed to Luna Innovations under *respondeat*
21 *superior* and agency principles.

22 16. Defendant Luna Innovations and the Individual Defendants are
23 collectively referred to herein as “Defendants.”

24 IV. SUBSTANTIVE ALLEGATIONS

25 A. Materially False and Misleading Statements Issued During the Class 26 Period

27 17. The Class Period begins on May 16, 2022, when Luna filed its
28 financial statements on Form 10-Q for the quarter ended March 31, 2022 (the

1 “1Q22 Report”). The Company reported revenues of about \$22.48 million and net
2 income of about \$9.58 million for the quarter. The 1Q22 Report attached Sarbanes-
3 Oxley certifications by Defendants Graef and Nestro assuring investors that “this
4 report does not contain any untrue statement of a material fact or omit to state a
5 material fact necessary to make the statements made, in light of the circumstances
6 under which such statements were made, not misleading with respect to the period
7 covered by this report.” The certifications also assured investors that Luna’s
8 disclosure controls and procedures and internal control over financial reporting
9 “provide[s] reasonable assurance regarding the reliability of financial reporting and
10 the preparation of financial statements for external purposes in accordance with
11 generally accepted accounting principles[.]” The 1Q22 Report separately assured
12 investors that the Company’s disclosure controls and procedures are “effective.”

13 18. On August 12, 2022, Luna filed its financial statements on Form 10-Q
14 for the quarter ended June 30, 2022 (the “2Q22 Report”). The Company reported
15 revenues of about \$26.12 million and a net loss of about \$2.35 million for the
16 quarter. The 2Q22 Report attached Sarbanes-Oxley certifications by Defendants
17 Graef and Nestro assuring investors of the same matters as alleged in paragraph 17
18 above. Similarly, the 2Q22 Report further separately assured investors that the
19 Company’s disclosure controls and procedures are “effective.”

20 19. On November 10, 2022, Luna filed its financial statements on Form
21 10-Q for the quarter ended September 30, 2022 (the “3Q22 Report”). The Company
22 reported revenues of about \$29.15 million and net income of about \$1.19 million
23 for the quarter. The 3Q22 Report attached Sarbanes-Oxley certifications by
24 Defendants Graef and Nestro assuring investors of the same matters as alleged in
25 paragraph 17 above. Similarly, the 3Q22 Report separately assured investors that
26 the Company’s disclosure controls and procedures are “effective.”

27 20. On March 16, 2023, Luna filed its financial statements on Form 10-K
28 for the year ended December 31, 2022 (the “FY22 Report”). The Company reported

1 revenues of about \$109.49 million and net income of about \$9.28 million for the
2 year. The FY22 Report attached Sarbanes-Oxley certifications by Defendants Graef
3 and Nestro assuring investors of the same matters as alleged in paragraph 17 above.
4 Similarly, the FY22 Report separately assured investors that the Company's
5 disclosure controls and procedures are "effective."

6 21. On May 9, 2023, Luna filed its financial statements on Form 10-Q for
7 the quarter ended March 31, 2023 (the "1Q23 Report"). The Company reported
8 revenues of about \$25.04 million and a net loss of about \$1.84 million for the
9 quarter. The Q123 Report attached Sarbanes-Oxley certifications by Defendants
10 Graef and Nestro assuring investors of the same matters as alleged in paragraph 17
11 above. Similarly, the 1Q23 Report separately assured investors that the Company's
12 disclosure controls and procedures are "effective."

13 22. On August 10, 2023, Luna filed its financial statements on Form 10-Q
14 for the quarter ended June 30, 2023 (the "2Q23 Report"). The Company reported
15 revenues of about \$29.16 million and a net loss of about \$1.59 million for the
16 quarter. The 2Q23 Report attached Sarbanes-Oxley certifications by Defendants
17 Graef and Nestro assuring investors of the same matters as alleged in paragraph 17
18 above. Similarly, the 2Q23 Report separately assured investors that the Company's
19 disclosure controls and procedures are "effective."

20 23. On November 14, 2023, Luna filed its financial statements on Form
21 10-Q for the quarter ended September 30, 2023 (the "3Q23 Report"). The Company
22 reported revenues of about \$30.7 million and net income of about \$461 thousand
23 for the quarter. The 3Q23 Report attached Sarbanes-Oxley certifications by
24 Defendants Graef and Gomez-Quintero assuring investors of the same matters as
25 alleged in paragraph 17 above. Similarly, the 3Q23 separately assured investors that
26 the Company's disclosure controls and procedures are "effective."

27 24. The statements alleged in paragraphs 17-23 above were all materially
28 false and misleading because they omitted to disclose that: (1) Luna's 1Q – 3Q22,

1 FY22, and 1Q – 3Q23 Reports contained unearned revenues that should not have
2 been recognized; (2) Luna would need to restate financial statements that it filed
3 during May 16, 2022 through and including November 14, 2023; (3) Luna’s
4 disclosure controls and procedures did not provide reasonable assurance regarding
5 the reliability of financial reporting and the preparation of financial statements for
6 external purposes in accordance with generally accepted accounting principles;
7 (4) Luna’s disclosure controls and procedures were not effective; and (5) as a result,
8 Defendants’ statements about its business, operations, and prospects, were
9 materially false and misleading and/or lacked a reasonable basis at all times.

10 V. THE TRUTH BEGINS TO EMERGE

11 25. On March 12, 2024, after the market closed, Luna Innovations filed
12 with the SEC a current report on Form 8-K announcing it would need to restate its
13 financial statements for the second and third quarters of 2023 (the “First
14 Restatement Announcement”) because the Company improperly recognized
15 revenues during these periods.

16 26. The First Restatement Announcement stated the following:

17 A Special Committee of the Board of Directors (the “Board”) of Luna
18 Innovations Incorporated (the “Company”) is conducting an
19 independent review, with the assistance of external legal and financial
20 advisors, *of certain transactions for which revenue was recognized in*
21 *the second and third quarters of 2023 that did not qualify for revenue*
22 *recognition under U.S. generally accepted accounting principles.* The
23 Special Committee is examining the circumstances surrounding these
24 issues and is evaluating, among other things, the Company’s disclosure
25 controls and internal control over financial reporting and whether
26 changes in accounting policies or other policies are necessary.

27 While the independent review is ongoing, on March 12, 2024, the Audit
28 Committee (the “Audit Committee”) of the Board, *based on*
preliminary findings of the review, and after consultation with, the
Company’s management and the Special Committee’s external legal
and financial advisors, concluded that the Company’s previously
issued unaudited interim condensed consolidated financial statements
for the quarters ended June 30, 2023, and September 30, 2023, as
previously filed with the Securities and Exchange Commission (the
“SEC”), should no longer be relied upon and should be restated.

1 *In connection with the independent review, the Company has*
2 *identified material weaknesses in its internal control over financial*
3 *reporting that existed as of June 30, 2023, and September 30, 2023,*
4 *and has re-evaluated the effectiveness of the Company's disclosure*
5 *controls and procedures as of those dates.* Based on this assessment,
6 the Company's disclosure controls and procedures were ineffective for
7 the quarters ended June 30, 2023, and September 30, 2023. The
8 Company is continuing to evaluate its internal control over financial
9 reporting and will report its remediation plan and further information
10 regarding the material weaknesses when it reports its restated results for
11 the affected periods.

12 As the independent review remains ongoing, the Company has not yet
13 determined the full extent of the impact on the second and third quarters
14 of 2023 and whether and to what extent there may be an impact on
15 financial statements for any other periods.

16 The Company's management and the Audit Committee have discussed
17 the matters disclosed in this current report on Form 8-K with Ernst &
18 Young LLP, the Company's independent registered public accounting
19 firm.

20 (Emphasis added).

21 27. Also on March 12, 2024, after the market closed, the Company filed
22 with the SEC a late filing notice on Form NT 10-K (the "Late Filing Notice"). The
23 Late Filing Notice stated the following:

24 Luna Innovations Incorporated (the "Company") is filing this
25 Notification of Late Filing on Form 12b-25 with respect to its Annual
26 Report on Form 10-K for the fiscal year ended December 31, 2023 (the
27 "Form 10-K"). *The Company is unable to file the Form 10-K within*
28 *the prescribed time period without unreasonable effort or expense.*

As announced on March 12, 2024, a Special Committee of the
Company's Board of Directors (the "Special Committee") is conducting
an independent review, with the assistance of external legal and
financial advisors, *of certain transactions for which revenue was*
recognized in the second and third quarters of 2023 that did not
qualify for revenue recognition under U.S. generally accepted
accounting principles. The Special Committee is examining the
circumstances surrounding these issues and is evaluating, among other
things, the Company's disclosure controls and internal control over
financial reporting and whether changes in accounting policies or other
policies are necessary. The Company currently anticipates reporting
material weaknesses in internal controls related to evaluating customer

1 arrangements for proper revenue recognition and other controls and will
2 be working to remediate these issues.

3 Additional time is needed to complete tasks and steps necessary to
4 prepare and finalize the Company's annual financial statements and
5 other disclosures required to be included in the Form 10-K, as well as to
6 complete the ongoing review of recognition of revenue. There can be no
7 assurance as to how long the review will take or when the Company will
8 be able to complete the preparation and filing of the Form 10-K.
9 However, the Company currently does not expect to file the Form 10-K
10 within the extension period of fifteen calendar days provided under Rule
11 12b-25 under the Securities Exchange Act of 1934, as amended. In
12 addition, the review is ongoing and the Company has not yet determined
13 the full extent of the impact on the second and third quarters of 2023
14 and whether and to what extent there may be an impact on financial
15 statements for any other periods.

16 (Emphasis added).

17 28. On this news, the price of Luna Innovations stock fell \$2.24 per share,
18 or 35.78%, to close at \$4.02 on March 13, 2024.

19 29. Then, on March 25, 2024, after the market closed, the Company filed
20 with the SEC a current report on Form 8-K (the "March 25 Form 8-K") which
21 announced that Defendant Graeff had retired, effective immediately. Upon
22 information and belief, Defendant Graeff retired as a result of the misconduct
23 detailed in this complaint. The March 25 Form 8-K stated the following:

24 *Retirement of Scott Graeff as President and Chief Executive Officer and
25 as a Board Member*

26 On March 24, 2024, **Scott Graeff retired as the President and Chief
27 Executive Officer of the Company and as a member of the Board,
28 effective immediately.** After consideration of various alternatives,
including termination with or without cause, **the Board exercised its
discretion in determining that it was in the best interests of the
Company and its stockholders to accept Mr. Graeff's retirement
and provide benefits to Mr. Graeff in exchange for his continued
assistance and compliance with other obligations as set forth in a
separation agreement** (the "Separation Agreement"), which the
Company and Mr. Graeff entered into on March 24, 2024 (the
"Separation Date").

1 Subject to Mr. Graeff's release of claims and his compliance with the
2 Separation Agreement and his continuing obligations to the Company
3 under his employment agreement and Confidential Information,
4 Inventions Assignment, Non-competition and Non-Solicitation
5 Agreement, the Company has agreed to provide Mr. Graeff with the
6 following severance benefits: (a) severance payments in the form of
7 continuation of his base salary for a period of nine months following the
8 Separation Date, payable in accordance with the Company's normal
9 payroll practices, (b) payment of his COBRA premium, if applicable,
10 for up to nine months, and (c) accelerated vesting of 10,000 shares
11 underlying Mr. Graeff's unvested RSUs. The remainder of Mr. Graeff's
12 unvested equity awards were forfeited as of the Separation Date.

13 The Separation Agreement also contains certain covenants that are
14 binding upon Mr. Graeff, **including a covenant to cooperate with the**
15 **Company in connection with any investigation of any claims or**
16 **demands asserted against it and with respect to matters arising**
17 **from events that occurred during his period of employment with the**
18 **Company.** Mr. Graeff also agreed to refrain from taking certain actions
19 regarding the Company and its management and stockholders in light of
20 Mr. Graeff's status as a holder of the Company's common stock. The
21 Separation Agreement also contains a release of claims in favor of the
22 Company, subject to customary exceptions, and mutual covenants not
23 to disparage, subject to certain exceptions. In addition, the Separation
24 Agreement contains clawback provisions pursuant to which, in addition
25 to any required clawback under applicable law or listing requirements
26 and the Company's clawback policies, 100% of all cash severance
27 payments and accelerated RSUs provided to Mr. Graeff under the
28 Separation Agreement are subject to clawback upon (a) the Board's
determination, in its reasonable good faith discretion, that Mr. Graeff
engaged in conduct that constituted "Cause" under his employment
agreement, (b) the Board's determination, in its reasonable good faith
discretion, that Mr. Graeff materially breached his continued
obligations to the Company, or (c) a finding by a court that Mr. Graeff
engaged in bad faith conduct.

(Emphasis added).

30. On this news, the price of Luna Innovations stock fell by \$0.41 per
share, or 11.54%, to close at \$3.14 on March 26, 2024.

31. On April 19, 2024, Luna filed its Form 8-K which announced that, in
addition to non-reliance on its 2Q23 and 3Q23 Reports, investors should no longer
rely on its previously filed financial statements contained in its 1Q22, 2Q22, 3Q22,

1 FY22, and 1Q23 Reports (the “Second Restatement Announcement”) because the
2 Company improperly recognized revenues in each of these Reports too.

3 32. The Second Restatement Announcement stated the following:

4 As previously reported in the Current Report on Form 8-K (the “Initial
5 8-K”) filed by Luna Innovations Incorporated (the “Company”) with the
6 Securities and Exchange Commission (the “SEC”) on March 12, 2024,
7 a Special Committee (the “Special Committee”) of the Board of
8 Directors (the “Board”) of the Company has been conducting an
9 independent review, with the assistance of external legal and financial
10 advisors, of certain revenue recognition matters in connection with the
11 Company’s previously issued financial statements. As disclosed in the
12 Initial 8-K, the Audit Committee (the “Audit Committee”) of the Board,
13 based on preliminary findings of the review, and after consultation with
14 the Company’s management and the Special Committee’s external legal
15 and financial advisors, concluded that the Company’s previously issued
interim unaudited condensed consolidated financial statements for the
quarters ended June 30, 2023 and September 30, 2023 (the “Q2 and Q3
2023 Financial Statements”), as previously filed with the SEC, should
no longer be relied upon and should be restated due to the recognition
of revenue with respect to certain transactions in those periods that did
not qualify for revenue recognition under U.S. generally accepted
accounting principles.

16 While the independent review is continuing, on April 15, 2024, the
17 Audit Committee, based on additional preliminary findings of the
18 review, and after consultation with the Company’s management and the
19 Special Committee’s external legal and financial advisors, concluded
20 that the Company’s previously issued audited consolidated financial
21 statements as of and for the year ended December 31, 2022 (the “2022
22 Annual Financial Statements”), as well as the Company’s previously
23 issued interim unaudited condensed consolidated financial statements as
24 of and for each of the three months ended March 31, 2022, the three and
25 six months ended June 30, 2022 and the three and nine months ended
26 September 30, 2022 (collectively, the “2022 Interim Financial
27 Statements” and, together with the 2022 Annual Financial Statements,
28 the “2022 Financial Statements”) as well as the interim unaudited
condensed consolidated financial statements as of and for the three
months ended March 31, 2023 (together with the Q2 and Q3 2023
Financial Statements and the 2022 Financial Statements, the “Affected
Financial Statements”), should no longer be relied upon and should be
restated due to identified accounting errors in each of the Affected
Financial Statements relating to revenue recognition. Similarly, any
previously issued or filed reports, press releases, earnings releases,
investor presentations or other communications of the Company
describing the Company’s financial results or other financial

1 information relating to the periods covered by the Affected Financial
2 Statements should no longer be relied upon. In addition, the report of
3 Ernst & Young LLP included in the previously issued 2022 Annual
4 Financial Statements should no longer be relied upon.

5 In addition, the Company is assessing the effect of the matters identified
6 to date on the Company's internal control over financial reporting and
7 its disclosure controls and procedures. In connection with the review
8 and the identification of the accounting errors described in this report,
9 the Audit Committee identified material weaknesses in the Company's
10 internal control over financial reporting that existed during the periods
11 covered by each of the Affected Financial Statements, and has re-
12 evaluated the effectiveness of the Company's disclosure controls and
13 procedures as of each quarter end included in the Affected Financial
14 Statements (the "Affected Balance Sheet Dates"). Based on this
15 assessment, the Audit Committee has determined that the Company's
16 disclosure controls and procedures were ineffective as of each of the
17 Affected Balance Sheet Dates. The Audit Committee has also concluded
18 that, based on its determination that the Company's internal control over
19 financial reporting was not effective as of December 31, 2022,
20 Management's Report on Internal Control over Financial Reporting
21 included in the Company's Annual Report on Form 10-K for the year
22 ended December 31, 2022 should no longer be relied upon.

23 The description of the restatements and accounting errors in this report
24 is preliminary, unaudited and subject to further change in connection
25 with the ongoing review and the completion of the restatements of the
26 Affected Financial Statements. Additionally, as the independent review
27 remains ongoing, the Company has not yet determined the full extent of
28 the impact on the Affected Financial Statements and whether and to
what extent there may be an impact on financial statements for any other
periods. Accordingly, there can be no assurance as to the actual effects
of the restatements or that the Company will not determine to restate
any financial statements in addition to the Affected Financial Statements
or with respect to any additional accounting errors.

Although the Company cannot at this time estimate when it will file its
restated financial statements, the Company is diligently pursuing
completion of the restatements and intends to make such filings as soon
as reasonably practicable following the completion of the review and
the restatements.

The Company's management and the Audit Committee have discussed
the matters disclosed in this Item 4.02 with the Company's independent
registered public accounting firm, Ernst & Young LLP.

1 33. This news drove the price of Luna shares down \$0.36 (12.8%) during
2 the two trading days ended April 22, 2024.

3 34. As a result of Defendants' wrongful acts and omissions, and the
4 precipitous decline in the market value of the Company's common shares, Plaintiff
5 and other Class members have suffered significant losses and damages.

6 VI. POST-CLASS PERIOD REVELATIONS

7 35. On May 1, 2024, Luna announced that on April 26, 2024 its Board of
8 Directors "approved the termination of the employment of Brian Soller, the Chief
9 Technology Officer and Executive Vice President of Corporate Development of the
10 Company, for cause, effective as of May 1, 2024."

11 36. In addition, Luna revealed that "[o]n April 29, 2024, George Gomez-
12 Quintero, the Chief Financial Officer of the Company, notified the Company of his
13 resignation, effective May 1, 2024[]" and "[i]n connection with his resignation,
14 Mr. Gomez-Quintero is not entitled to receive any severance or other benefits upon
15 his separation from the Company."

16 37. With respect to former CEO Scott Graeff, Luna also disclosed that his
17 conduct triggered certain clawback provisions in his separation agreement:

18 As previously disclosed, the Company entered into an Agreement with
19 Scott Graeff, the Company's former President and Chief Executive
20 Officer, on March 24, 2024 (the "Graeff Separation Agreement").
21 Pursuant to the Graeff Separation Agreement, all cash severance
22 payments under the Graeff Separation Agreement and all shares
23 underlying the restricted stock units that were accelerated pursuant to
24 the Graeff Separation Agreement were subject to recoupment or
25 immediate forfeiture by the Company upon a written determination in
26 the reasonable, good faith discretion of the Board that Mr. Graeff
27 engaged in conduct that constituted "Cause" under Mr. Graeff's
28 employment agreement. On April 26, 2024, the Board determined that
29 Mr. Graeff engaged in conduct that constituted Cause and the Company
30 will cancel all future severance payments and Mr. Graeff will forfeit all
31 shares underlying the accelerated vesting of the 10,000 restricted stock
32 units under the Graeff Separation Agreement.

33 38. In addition, Luna said "[o]n May 1, 2024, in connection with the
34 previously announced independent review of the Company's historical financial

1 statements being undertaken by a special committee of the Board, in addition to the
2 other personnel actions described in this report, the Company terminated the
3 employment of seven additional employees, effective immediately.”

4 39. Lastly, Luna disclosed that its Board “will consider a wide range of
5 options for the Company including, among other things, a potential sale, merger or
6 other strategic transaction.”

7 VII. PLAINTIFF’S CLASS ACTION ALLEGATIONS

8 40. Plaintiff brings this action as a class action pursuant to Federal Rule of
9 Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other
10 than Defendants who acquired the Company’s securities publicly traded on
11 NASDAQ during the Class Period, and who were damaged thereby (the “Class”).
12 Excluded from the Class are Defendants, the officers and directors of the Company,
13 members of the Individual Defendants’ immediate families and their legal
14 representatives, heirs, successors or assigns and any entity in which Defendants
15 have or had a controlling interest.

16 41. The members of the Class are so numerous that joinder of all members
17 is impracticable. Throughout the Class Period, the Company’s securities were
18 actively traded on NASDAQ. While the exact number of Class members is
19 unknown to Plaintiff at this time and can be ascertained only through appropriate
20 discovery, Plaintiff believes that there are hundreds, if not thousands of members in
21 the proposed Class.

22 42. Plaintiff’s claims are typical of the claims of the members of the Class
23 as all members of the Class are similarly affected by Defendants’ wrongful conduct
24 in violation of federal law that is complained of herein.

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

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

- 4 • whether the Exchange Act was violated by Defendants' acts as
5 alleged herein;
- 6 • whether statements made by Defendants to the investing public
7 during the Class Period misrepresented material facts about the
8 business and financial condition of the Company;
- 9 • whether Defendants' public statements to the investing public
10 during the Class Period omitted material facts necessary to make
11 the statements made, in light of the circumstances under which they
12 were made, not misleading;
- 13 • whether the Defendants caused the Company to issue false and
14 misleading filings during the Class Period;
- 15 • whether Defendants acted knowingly or recklessly in issuing false
16 filings;
- 17 • whether the prices of the Company securities during the Class
18 Period were artificially inflated because of the Defendants' conduct
19 complained of herein; and
- 20 • whether the members of the Class have sustained damages and, if
21 so, what is the proper measure of damages.

22 45. A class action is superior to all other available methods for the fair and
23 efficient adjudication of this controversy since joinder of all members is
24 impracticable. Furthermore, as the damages suffered by individual Class members
25 may be relatively small, the expense and burden of individual litigation make it
26 impossible for members of the Class to individually redress the wrongs done to
27 them. There will be no difficulty in the management of this action as a class action.
28

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

- 3 • the Company's shares met the requirements for listing, and were
4 listed and actively traded on NASDAQ, an efficient market;
- 5 • as a public issuer, the Company filed periodic public reports;
- 6 • the Company regularly communicated with public investors via
7 established market communication mechanisms, including through
8 the regular dissemination of press releases via major newswire
9 services and through other wide-ranging public disclosures, such as
10 communications with the financial press and other similar reporting
11 services;
- 12 • the Company's securities were liquid and traded with moderate to
13 heavy volume during the Class Period; and
- 14 • the Company was followed by a number of securities analysts
15 employed by major brokerage firms who wrote reports that were
16 widely distributed and publicly available.

17 47. Based on the foregoing, the market for the Company's securities
18 promptly digested current information regarding the Company from all publicly
19 available sources and reflected such information in the prices of the shares, and
20 Plaintiff and the members of the Class are entitled to a presumption of reliance
21 upon the integrity of the market.

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

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COUNT I

**For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder
Against All Defendants**

49. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

50. This Count is asserted against Defendants 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.

51. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

52. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or 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; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of the Company’s securities during the Class Period.

53. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially

1 participated, or acquiesced in the issuance or dissemination of such statements or
2 documents as primary violations of the securities laws. These defendants by virtue
3 of their receipt of information reflecting the true facts of the Company, their control
4 over, and/or receipt and/or modification of the Company's allegedly materially
5 misleading statements, and/or their associations with the Company which made
6 them privy to confidential proprietary information concerning the Company,
7 participated in the fraudulent scheme alleged herein.

8 54. Individual Defendants, who are the senior officers of the Company,
9 had actual knowledge of the material omissions and/or the falsity of the material
10 statements set forth above, and intended to deceive Plaintiff and the other members
11 of the Class, or, in the alternative, acted with reckless disregard for the truth when
12 they failed to ascertain and disclose the true facts in the statements made by them or
13 any other of the Company's personnel to members of the investing public,
14 including Plaintiff and the Class.

15 55. As a result of the foregoing, the market price of the Company's
16 securities was artificially inflated during the Class Period. In ignorance of the
17 falsity of Defendants' statements, Plaintiff and the other members of the Class
18 relied on the statements described above and/or the integrity of the market price of
19 the Company's securities during the Class Period in purchasing the Company's
20 securities at prices that were artificially inflated as a result of Defendants' false and
21 misleading statements.

22 56. Had Plaintiff and the other members of the Class been aware that the
23 market price of the Company's securities had been artificially and falsely inflated
24 by Defendants' misleading statements and by the material adverse information
25 which Defendants did not disclose, they would not have purchased the Company's
26 securities at the artificially inflated prices that they did, or at all.

27 57. As a result of the wrongful conduct alleged herein, Plaintiff and other
28 members of the Class have suffered damages in an amount to be established at trial.

1 58. By reason of the foregoing, Defendants have violated Section 10(b) of
2 the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff
3 and the other members of the Class for substantial damages which they suffered in
4 connection with their purchase of the Company's securities during the Class Period.

5 6 **COUNT II**

7 **Violations of Section 20(a) of the Exchange Act** 8 **Against the Individual Defendants**

9 59. Plaintiff repeats and realleges each and every allegation contained in
10 the foregoing paragraphs as if fully set forth herein.

11 60. During the Class Period, the Individual Defendants participated in the
12 operation and management of the Company, and conducted and participated,
13 directly and indirectly, in the conduct of the Company's business affairs. Because
14 of their senior positions, they knew the adverse non-public information about the
15 Company's false financial statements.

16 61. As officers of a publicly owned company, the Individual Defendants
17 had a duty to disseminate accurate and truthful information with respect to the
18 Company's financial condition and results of operations, and to correct promptly
19 any public statements issued by the Company which had become materially false or
20 misleading.

21 62. Because of their positions of control and authority as senior officers,
22 the Individual Defendants were able to, and did, control the contents of the various
23 reports, press releases and public filings which the Company disseminated in the
24 marketplace during the Class Period concerning the Company's results of
25 operations. Throughout the Class Period, the Individual Defendants exercised their
26 power and authority to cause the Company to engage in the wrongful acts
27 complained of herein. The Individual Defendants, therefore, were "controlling
28 persons" of the Company within the meaning of Section 20(a) of the Exchange Act.

1 In this capacity, they participated in the unlawful conduct alleged which artificially
2 inflated the market price of the Company's securities.

3 63. By reason of the above conduct, the Individual Defendants are liable
4 pursuant to Section 20(a) of the Exchange Act for the violations committed by the
5 Company.

6 **VIII. PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for
8 judgment and relief as follows:

9 (a) declaring this action to be a proper class action, designating Plaintiff as
10 Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the
11 Federal Rules of Civil Procedure and designating Plaintiff's counsel as Lead
12 Counsel;

13 (b) awarding damages in favor of Plaintiff and the other Class members
14 against all Defendants, jointly and severally, together with interest thereon;

15 (c) awarding Plaintiff and the Class reasonable costs and expenses
16 incurred in this action, including counsel fees and expert fees; and

17 (d) awarding Plaintiff and other members of the Class such other and
18 further relief as the Court may deem just and proper.

19 **IX. JURY TRIAL DEMANDED**

20 Plaintiff hereby demands a trial by jury.
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