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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

v.

AQUA METALS, INC., STEPHEN R.
CLARKE, THOMAS MURPHY, and
MARK WEINSWIG,

Defendants.

Case No.:

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

JURY TRIAL DEMANDED

1 Plaintiff _____ (“Plaintiff”), by and through his attorneys, alleges the following
2 upon information and belief, except as to those allegations concerning Plaintiff, which are alleged
3 upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his
4 counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory
5 filings made by Aqua Metals, Inc. (“Aqua Metals” or the “Company”) with the United States
6 (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases
7 and media reports issued by and disseminated by Aqua Metals; and (c) review of other publicly
8 available information concerning Aqua Metals.

9 **NATURE OF THE ACTION AND OVERVIEW**

10 1. This is a class action on behalf of persons and entities that acquired Aqua Metals
11 securities between February 9, 2017 and November 9, 2017, inclusive (the “Class Period”),
12 against the Defendants,¹ seeking to pursue remedies under the Securities Exchange Act of 1934
13 (the “Exchange Act”).

14 2. Aqua Metals was purportedly formed to engage in the business of recycling lead
15 through a novel process called “AquaRefining.” The Company claims that it has focused its
16 efforts on developing and testing the AquaRefining process, developing a business plan, raising
17 working capital, and developing its initial lead acid battery, or LAB, recycling facility in the
18 Tahoe Regional Industrial Center, in McCarran, Nevada.

19 3. On May 9, 2017, after the market closed, Aqua Metals issued a press release
20 entitled “Aqua Metals Provides First Quarter 2017 Corporate Update.” Therein, the Company
21 stated that it was “currently in the process of scaling up production of AquaRefined lead to 120
22 tons/day by the end of 2017.”

23 4. On the same day, the Company held a conference call to discuss its Q1 2017
24 results. On the call, Defendant Stephen R. Clarke (“Clarke”), the Chairman and Chief Executive
25 Officer (“CEO”) of Aqua Metals, stated that the Company experienced some “issues” and
26 “challenges” as it ramped up its recycling process. Specifically, Clarke stated that “it took longer
27 than we planned to get the breaking and separation up and running” since the Company’s

28

¹ The “Defendants” are Aqua Metals, Stephen R. Clarke, Thomas Murphy, and Mark Weinswig.

1 AquaRefining process “needed to achieve [a] much higher degree of separation than is normal in
2 this industry.” Another challenge was that the Company “needed to rethink and rework the input
3 conveyor to the breaker to upgrade it to support the higher feed rates that we want to achieve to
4 manage 160 tons a day of lead production.”

5 5. On this news, the Company’s stock price fell \$4.34 per share, or 26%, to close at
6 \$12.31 per share on May 10, 2017, on unusually heavy trading volume.

7 6. On August 9, 2017, after the market closed, Aqua Metals issued a press release
8 entitled “Aqua Metals Provides Second Quarter 2017 Corporate Update.” Therein, the Company
9 revealed that it was “currently in the process of scaling up AquaRefining operations to include 16
10 modules by the end of 2017,” but made no mention of “120 tons/day” as it did in its Q1 2017 press
11 release.

12 7. On the same day, the Company held a conference call to discuss its Q2 2017
13 results. On the call, Clarke stated that “AquaRefining works. We’ve got four modules operating
14 now.” Clarke also disclosed that the Company was considering “operat[ing] the overall facility
15 with an output of less than 120 tons a day” in order to optimize profitability. Clarke further
16 disclosed that, contrary to the Company’s earlier representation that breaking and separation were
17 “up and running,” in fact, the Company had made and installed improvements such that “breaking
18 and separation is now operational,” and “breaking and separation is operating reliably.”

19 8. On this news, the Company’s stock price fell \$2.56 per share, or 23.6%, to close at
20 \$8.31 per share on August 10, 2017, on unusually heavy trading volume.

21 9. On October 23, 2017, the Company issued a press release entitled “Aqua Metals
22 Provides Update on Plant’s Operations.” Therein, the Company stated that “[f]our modules are
23 assembled, commissioned and are being used to determine the optimal operating parameters,
24 including electrolyte pH, lead concentration, operating temperature, electrolyte flow rate and free
25 acid levels.” However, the Company disclosed that Aqua Metals had only “produced small
26 quantities of AquaRefined lead during the commissioning process” and that “under certain
27 conditions, the operators would need to periodically assist the lead removal.” The Company
28 further stated that “Aqua Metals’ production process has multiple stages prior to AquaRefining,

1 including battery breaking, separation, desulphurization, and electrolyte production” and disclosed
2 that it was “in the process of synchronizing all of these stages, which is critical to maximizing
3 efficiency, optimizing working procedures and minimizing waste.”

4 10. On this news, the Company’s stock price fell \$0.96 per share, or 17.9%, to close at
5 \$4.41 per share on October 23, 2017, on unusually heavy trading volume. The stock price
6 continued to decline on the following day, falling \$0.40 per share, or 9.1%, to close at \$4.01 per
7 share on October 24, 2017, on unusually heavy trading volume.

8 11. On November 9, 2017, after the market closed, Aqua Metals issued a press release
9 entitled “Aqua Metals Provides Third Quarter 2017 Corporate Update.” Therein, the Company
10 revealed that it “faced . . . many challenges as [it] worked to ramp up production.”

11 12. On the same day, the Company held a conference call to discuss its Q3 2017
12 results. On the call, Clarke revealed that “the four operating modules are being used to . . .
13 accelerate updates aimed at providing a level of robustness suitable for operating by third parties
14 with non-specialist operators,” and to “map out operating parameters and performance over the
15 full range of operating conditions.” An analyst asked Clarke about the “utilization rate” of the
16 four modules. Clarke responded by stating that “[w]e’re not providing individual tonnage per day,
17 utilization rates or any of that data.” Clarke also stated on the call that “the battery breaker is now
18 running consistently seven days a week.” An analyst asked “how many tons per day are you guys
19 currently running through the battery breaking system and through the entire process?” Clarke
20 responded: “No. At this time we have provided all the color that we’re willing to provide at this
21 point.”

22 13. On this news, the Company’s stock price fell \$0.08 per share, or 2.1%, to close at
23 \$3.71 per share on November 10, 2017. The stock price continued to decline on the following
24 trading days, falling \$0.13 per share (3.5%) on November 13, 2017, and \$0.58 per share (16.2%)
25 on November 14, 2017, to close at \$3.00 per share on November 14, 2017.

26 14. Throughout the Class Period, Defendants made materially false and/or misleading
27 statements, as well as failed to disclose material adverse facts about the Company’s business,
28 operations, and prospects. Specifically, Defendants failed to disclose: (1) that Aqua Metals’

1 breaking and separating process was facing substantial obstacles due to AquaRefining’s need for a
2 much higher degree of separation than is normal in the industry; (2) that the Company’s breaking
3 and separating process was not operating reliably or efficiently; (3) that the breaking and
4 separating obstacles and issues were negatively impacting the Company’s output; (4) that the
5 Company’s four “operating modules” were being used primarily for experimentation, rather than
6 production; (5) that module operators were assisting with lead removal; (6) that, as a result of the
7 foregoing, the ramp up of the Company’s recycling process was being significantly hindered and
8 delayed; and (7) that, as a result of the foregoing, Defendants’ statements about Aqua Metals’
9 business, operations, and prospects, were materially false and/or misleading and/or lacked a
10 reasonable basis.

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

14 **JURISDICTION AND VENUE**

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

18 17. This Court has jurisdiction over the subject matter of this action pursuant to 28
19 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

20 18. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and
21 Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the
22 alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts
23 charged herein, including the dissemination of materially false and/or misleading information,
24 occurred in substantial part in this Judicial District. In addition, the Company’s principal
25 executive offices are in this Judicial District.

26 19. In connection with the acts, transactions, and conduct alleged herein, Defendants
27 directly and indirectly used the means and instrumentalities of interstate commerce, including the
28 United States mail, interstate telephone communications, and the facilities of a national securities

1 exchange.

2 **PARTIES**

3 20. Plaintiff _____, as set forth in the accompanying certification,
4 incorporated by reference herein, purchased Aqua Metals securities during the Class Period, and
5 suffered damages as a result of the federal securities law violations and false and/or misleading
6 statements and/or material omissions alleged herein.

7 21. Defendant Aqua Metals, Inc. is incorporated in Delaware and its principal
8 executive offices are in Alameda, California. Aqua Metals' common stock trades on the
9 NASDAQ Stock Market ("NASDAQ") under the symbol "AQMS."

10 22. Defendant Stephen R. Clarke was the Chief Executive Officer of Aqua Metals at all
11 relevant times.

12 23. Defendant Thomas Murphy ("Murphy") was the Chief Financial Officer ("CFO")
13 of Aqua Metals until August 10, 2017.

14 24. Defendant Mark Weinswig ("Weinswig") was the CFO of Aqua Metals from
15 August 10, 2017, through the end of the Class Period.

16 25. Defendants Clarke, Murphy, and Weinswig (collectively the "Individual
17 Defendants"), because of their positions with the Company, possessed the power and authority to
18 control the contents of Aqua Metals' reports to the SEC, press releases and presentations to
19 securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. The
20 Individual Defendants were provided with copies of the Company's reports and press releases
21 alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and
22 opportunity to prevent their issuance or cause them to be corrected. Because of their positions and
23 access to material non-public information available to them, the Individual Defendants knew that
24 the adverse facts specified herein had not been disclosed to, and were being concealed from, the
25 public, and that the positive representations which were being made were then materially false
26 and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

27
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1 **SUBSTANTIVE ALLEGATIONS**

2 **Background**

3 26. Aqua Metals was purportedly formed to engage in the business of recycling lead
4 through a novel process called “AquaRefining.” The Company claims that it has focused its
5 efforts on developing and testing the AquaRefining process, developing a business plan, raising
6 working capital, and developing its initial lead acid battery, or LAB, recycling facility in the
7 Tahoe Regional Industrial Center, in McCarran, Nevada.

8 **Materially False and Misleading**
9 **Statements Issued During the Class Period**

10 27. The Class Period begins on February 9, 2017. On that day, the Company issued a
11 press release entitled “Johnson Controls and Aqua Metals sign break-through battery recycling
12 technology partnership.” Therein, the Company, in relevant part, stated:

13 Johnson Controls (NYSE: JCI), finalized an agreement covering North
14 America, China and Europe for a cutting-edge electrochemical battery recycling
15 technology. Under terms of a multi-faceted deal, the company is investing in Aqua
16 Metals (NASDAQ: AQMS).

17 “Our partnership with Johnson Controls is a tremendous step forward and is an
18 opportunity for us to work with the global leader in automotive battery
19 manufacturing and responsible recycling,” said Dr. Stephen Clarke, chairman and
20 CEO of Aqua Metals. “We will build on this exciting relationship in order to enable
21 clean and efficient battery recycling around the world.”

22 Under the agreement Johnson Controls will also:

- 23 • Become the first licensee for AquaRefining™ technology
- 24 • Supply Aqua Metals with batteries to recycle as a service, as part of the
25 Johnson Controls closed-loop network
- 26 • Purchase AquaRefined™ metals produced from Aqua Metals’ facilities
- 27 • Acquire just under 5 percent of Aqua Metals outstanding shares

28 “Agreements like this are a part of our continuing strategy to invest in clean
technologies, building on our commitment to create a more sustainable and
environmentally responsible industry,” said Joe Walicki, president of Johnson
Controls Power Solutions.

Aqua Metals, which recently opened its first plant in McCarran, Nevada, uses an
advanced electrochemical process for recycling batteries. As it scales up capacity,
Aqua Metals plans to hire hundreds of employees for existing and future operations
across the United States.

About Aqua Metals

Aqua Metals (NASDAQ: AQMS) is reinventing lead recycling with its patent-

1 pending AquaRefining™ technology. Unlike smelting, AquaRefining is a room
2 temperature, water-based process that is fundamentally non-polluting. These
3 modular systems allow the lead-acid battery industry to simultaneously improve
4 environmental impact and scale production to meet rapidly growing demand. Aqua
5 Metals is based in Alameda, California, and has built its first recycling facility
6 in Nevada’s Tahoe Reno Industrial Complex.

7
8 28. On February 14, 2017, Aqua Metals issued a press release entitled “Aqua Metals
9 Provides Fourth Quarter and Year End Corporate Update.” Therein, the Company, in relevant
10 part, stated:

11 Aqua Metals, Inc. (NASDAQ:AQMS), which is commercializing a non-polluting
12 electrochemical lead recycling technology called AquaRefining™, has provided a
13 corporate update and announced results for the fourth quarter and fiscal year ended
14 December 31, 2016.

15 **Company Highlights:**

- 16 • Successfully commissioned and in the process of scaling up production of
17 AquaRefined lead at AquaRefinery 1 in McCarran, Nevada at the Tahoe
18 Reno Industrial Center (TRIC)
- 19 • Signed a strategic partnership covering North America, China and Europe
20 with Johnson Controls, the world’s largest manufacturer of automotive
21 batteries. Under the agreements, Johnson Controls has invested \$10.6
22 million for approximately 5% of Aqua Metals outstanding shares; become
23 the first licensee for AquaRefining technology; agreed to supply Aqua
24 Metals with batteries to recycle as a service; and agreed to purchase
25 AquaRefined metals produced from Aqua Metals’ facilities.
- 26 • Signed a strategic partnership with Interstate Batteries, the No. 1
27 replacement battery brand, the largest independent battery distribution
28 system in North America and the country’s leading battery recycler. Under
the agreements, Interstate Batteries made a strategic investment of
approximately \$10.0 million into Aqua Metals, and agreed to supply lead-
acid batteries as feedstock to Aqua Metals.

29 **Management Commentary**

30 “2016 was a pivotal year for the company, as we successfully built, commissioned
31 and began producing products at the world’s first AquaRefinery and deepened our
32 strategic relationships with major players throughout the industry,” said Dr.
33 Stephen Clarke, Chairman and CEO of Aqua Metals. “Our partnerships, most
34 recently with Johnson Controls -- the global leader in automotive battery
35 manufacturing and responsible recycling -- and Interstate Batteries -- the largest
36 independent battery distribution system in North America and the country’s leading
37 battery recycler. -- and Battery Systems Inc. -- one of the largest independent
38 battery distributors in the U.S. effectively rounds out a sustainable ecosystem for
the automotive lead acid battery industry and provides a level of supply and off-
take to support our expansion of AquaRefinery 1 and the construction of additional
facilities.

“As we move through 2017, we will continue the expansion of AquaRefinery 1,

1 look to build additional AquaRefineries and build out our licensing program. This
2 will include progressing discussions to conclusion with providers of debt or other
3 non-diluting finance for additional AquaRefineries, evaluating complementary
4 licensing opportunities and beginning work on higher value products and markets.”

5 29. On the same day, February 14, 2017, the Company held a conference call to discuss
6 its Q4 2016 FY 2016 financial results. On the call, the Defendant Clarke, in relevant part, stated:

7 One of the headlines today is that the first ever AquaRefinery located at the Tahoe
8 Reno Industrial Center, has moved from commissioning to operational. That means
9 that we are breaking batteries and making lead from the batteries that we’ve
10 broken, both from – both metallic lead and Aqua refined lead. It’s continuing to
11 ramp up,

12 ...

13 [I]t typically takes 18 months to install commission and dial-in a battery breaking
14 and separations machine and we’ve done that in less than six months. And the
15 reason we’ve been able to do that, is entirely down to the insights and hard work
16 and dedication of the management team, at the Tahoe Reno Centre, of Mike
17 Krickel and his staff, incredibly experienced battery recycling individuals. And
18 that’s been backed up with pretty strong team of leading the electrochemical
19 engineers who have operated a large plant.

20 ...

21 [W]e spent some time dealing with jams on the conveyor belt for the breaker,
22 calibrating the several sourcing steps in that. We had some issues with seals and
23 bearing which required redesigns and change outs. And we accomplished all of that
24 in six months, which I believe is quite remarkable given industry standards.

25 30. On March 2, 2017, the Company filed its annual report on Form 10-K for the year
26 ended December 31, 2016. The 10-K was signed by Defendant Clarke, and reaffirmed the
27 Company’s statements about its financial results contained in the press release issued on February
28 14, 2017.

31. The above statements identified in ¶¶27-30 were materially false and/or misleading,
and failed to disclose material adverse facts about the Company’s business, operations, and
prospects. Specifically, Defendants failed to disclose: (1) that Aqua Metals’ breaking and
separating process was facing substantial obstacles due to AquaRefining’s need for a much higher
degree of separation than is normal in the industry; (2) that the Company’s breaking and
separating process was not operating reliably or efficiently; (3) that the breaking and separating
obstacles and issues were negatively impacting the Company’s output; (4) that, as a result of the
foregoing, the ramp up of the Company’s recycling process was being significantly hindered and

1 delayed; and (5) that, as a result of the foregoing, Defendants' statements about Aqua Metals'
2 business, operations, and prospects, were materially false and/or misleading and/or lacked a
3 reasonable basis.

4 32. On May 9, 2017, after the market closed, Aqua Metals issued a press release
5 entitled "Aqua Metals Provides First Quarter 2017 Corporate Update." Therein, the Company
6 stated that it was "currently in the process of scaling up production of AquaRefined lead to 120
7 tons/day by the end of 2017." In greater part, the Company stated:

8 Aqua Metals, Inc. (NASDAQ:AQMS), which is commercializing a non-polluting
9 electrochemical lead recycling technology called AquaRefining™, has provided a
corporate update and announced results for the first quarter ended March 31, 2017.

10 **Company Highlights**

- 11 • Began production at AquaRefinery 1 in McCarran, Nevada at the Tahoe
12 Reno Industrial Center (TRIC). The company is currently in the process of
scaling up production of AquaRefined lead to 120 tons/day by the end of
13 2017.
- 14 • In the first quarter of 2017, signed a strategic partnership covering North
15 America, China and Europe with Johnson Controls, the world's largest
16 manufacturer of automotive batteries. Under the agreements, Johnson
17 Controls invested \$10.6 million for approximately 5% of Aqua Metals
outstanding shares, and agreed to become the first licensee for
AquaRefining technology, supply Aqua Metals with batteries to recycle as a
service and purchase AquaRefined metals produced from Aqua Metals'
18 facilities.
- 19 • Acquired UK-based Ebonex IPR Limited (Ebonex), an IP-based company
20 that has developed patented technology in the field of advanced materials
21 and manufacturing methods for advanced lead acid batteries. This
22 acquisition provides Aqua metals with the potential to accelerate its
development of lead nano-fibers as a high performance active material. It
also provides ownership of patents, know-how, tooling and equipment to
23 produce high performance battery electrodes and advanced "bipolar" lead
acid battery technologies.
- 24 • Evaluating alternative strategies for additional AquaRefineries, to accelerate
their deployment.
- 25 • Arranged an invitational sell-side analyst day during May and planning
additional invitationals for buy-side analysts and key investors.

26 **Management Commentary**

27 "With the world's first AquaRefinery now in commercial operation and generating
28 revenue, we are aggressively scaling up operations and ramping our capacity to
reach 120 metric tonnes per day by the end of 2017," said Dr. Stephen Clarke,
Chairman and CEO of Aqua Metals. "We currently have shifts A and B completely

1 One of the challenges that was unique to us that we faced is that, because we don't
2 have a smelter, we don't have a furnace, we needed to achieve much higher degree
3 of separation than is normal in this industry. And what I mean by that is our plastic
4 had to be clean plastic with no lead oxide and no lead dust on it. Our metallic lead
5 had to be metallic lead with no plastic and no lead oxide and no lead sulfate on it.
6 Our lead compounds had to be lead oxide, lead sulfate and other lead compounds
7 with no plastic and no metallic lead in it. That's a really tough order and we
8 achieved it. And we worked very closely with Wirtz Engineering who have been
9 tremendous in this operation. We asked them to do things that no other battery
10 breaking Company has ever been asked to do. It took us a while to get there but we
11 achieved it and we developed and implemented numerous, far too numerous to
12 mention, upgrades to support what is essentially an industry-leading level of
13 separation. And we think that's something that we are working actually on
14 developing to know how and maybe even some IP down the line. But when we talk
15 about breaking and separation we are operating at levels of separation that we don't
16 know of anybody else in the industry even close to.

17 One of the other things that we -- well, a couple of other things that we have done
18 in the breaking and separation areas, we figured out fairly early on that to be able to
19 operate over 24 hours and match timing of phasing between breaking and the next
20 stages down the line, we needed to improve and upgrade our holding tanks, which
21 we are doing, with higher capacity holding tanks with better mixing. One of the
22 other issues that we faced, we needed to rethink and rework the input conveyor to
23 the breaker to upgrade it to support the higher feed rates that we want to achieve to
24 manage 160 tonnes a day of lead production. Initially we undersized that because
25 we planned for 80 tonnes a day. And rather than stop when we are at scale we
26 thought we would upgrade it sooner rather than later.

27 34. On this news, the Company's stock price fell \$4.34 per share, or 26%, to close at
28 \$12.31 per share on May 10, 2017, on unusually heavy trading volume.

35. On May 10, 2017, after the market closed, the Company filed its quarterly report on
Form 10-Q for the quarter ended March 31, 2017. The 10-Q was signed by Defendants Clarke
and Murphy, and reaffirmed the Company's statements about its financial results contained in the
press release issued on May 9, 2017.

36. The above statements identified in ¶¶32, 33, 35 were materially false and/or
misleading, and failed to disclose material adverse facts about the Company's business,
operations, and prospects. Specifically, Defendants failed to disclose: (1) that Aqua Metals'
breaking and separating process was facing substantial obstacles due to AquaRefining's need for a
much higher degree of separation than is normal in the industry; (2) that the Company's breaking
and separating process was not operating reliably or efficiently; (3) that the breaking and
separating obstacles and issues were negatively impacting the Company's output; (4) that, as a
result of the foregoing, the ramp up of the Company's recycling process was being significantly

1 hindered and delayed; and (5) that, as a result of the foregoing, Defendants’ statements about
2 Aqua Metals’ business, operations, and prospects, were materially false and/or misleading and/or
3 lacked a reasonable basis.

4 37. On August 9, 2017, after the market closed, Aqua Metals issued a press release
5 entitled “Aqua Metals Provides Second Quarter 2017 Corporate Update.” Therein, the Company
6 revealed that it was “currently in the process of scaling up AquaRefining operations to include 16
7 modules by the end of 2017,” but made no mention of “120 tons/day” as it did in its Q1 2017 press
8 release. The press release also revealed that the Company “faced . . . many challenges as [it]
9 worked to ramp up production.” In greater part, the Company stated:

10 Aqua Metals, Inc. (NASDAQ:AQMS), which is commercializing a non-polluting
11 electrochemical lead recycling technology called AquaRefining™, has provided a
corporate update and announced results for the second quarter ended June 30, 2017.

12 **Company Highlights**

- 13 • Recognized our first revenues from AquaRefinery 1 at the Tahoe Reno
14 Industrial Center (TRIC) in McCarran, Nevada.
- 15 • As of July, the Company had four AquaRefining modules commissioned
16 and in operation. The Company is currently in the process of scaling up
17 AquaRefining operations to include 16 modules by the end of 2017.
- 18 • Secured international patents in Korea (Korea Patent No. 10-1739414) and
19 Australia (Australia Patent No. AU2014353227) for “Devices and Method
20 for Smelterless Recycling of Lead Acid Batteries.” The Company’s IP
21 Strategy includes planned filings for more than 20 patents, organized into
22 several families covering “matter,” “devices” and “processes”, in up to 20
23 different regions.
- 24 • Appointed Mark Weinswig as Chief Financial Officer, effective August
25 10th, who joins Aqua Metals with extensive strategic and operational
26 financial leadership, including nearly 20 years with technology
27 manufacturing companies, such as Emcore, Coherent and Oclaro. Mr.
28 Weinswig succeeds Thomas Murphy, who is retiring from the position. Mr.
Murphy will remain a consultant to the Company on a number of matters
and to ensure a smooth transition.
- Acquired UK-based Ebonex IPR Limited (Ebonex), an IP-based company
that has developed patented technology in the rapidly developing market for
advanced 48V bipolar lead acid batteries for automotive use. This
acquisition provides Aqua Metals with the opportunity to accelerate its
development of lead nano-fibers as a high performance active material and
secured ownership of highly corrosion resistant electrode substrate
materials. This acquisition is complementary to the work Aqua Metals has
begun with 3rd parties.

- Successfully hosted several invitational investor and analyst days at AquaRefinery 1 in late May and early August. These events showcased the production process at the AquaRefinery, including battery feedstock deliveries, battery breaking and separation, desulfurization and pre-AquaRefining digestion processes and AquaRefining on four running AquaRefining modules.
- Received several accolades, including the Platts Global Metals Award, presented by S&P Global Platts, for the Breakthrough Solution of the Year, as well as the San Francisco Business Times Technology and Innovation Award.

Management Commentary

“In the second quarter, the company faced and overcame many challenges as we worked to ramp up production. With four AquaRefining modules now on-line and our front-end processes operational, we are totally focused on commissioning the balance of the 16 AquaRefining modules and the production of AquaRefined lead. With the operational experience we have gained, we are able to start planning the supply of modules to licensees. The progress that we made is all down to the hard work, creativity and dedication of the team we have built and the continued support of our partners,” said Dr. Stephen Clarke, Chairman and CEO of Aqua Metals.

Second Quarter 2017 Financials

Total revenues in the second quarter of 2017 were \$603,000, which represents the first commercial revenues generated by the company.

The Company incurred an operating loss of \$8.0 million during the second quarter of 2017 compared to an operating loss of \$2.8 million in the second quarter of 2016.

Net loss for the second quarter of 2017 was \$8.4 million, or (\$0.42) per basic and diluted share, compared to a net loss of \$2.9 million, or (\$0.20) per basic and diluted share, in the second quarter of 2016.

The Company had \$22.0 million in cash and cash equivalents as of June 30, 2017, compared to \$30.6 million as of March 31, 2017.

38. On the same day, the Company held a conference call to discuss its Q2 2017 results. On the call, Defendant Clarke, in relevant part, stated:

And I’m going to start off with a summary of the operational update for the facility. So, the headlines there are the breaking and separation is now operational. We mentioned before in previous earnings calls that we would identify some issues around conventional breaking and we were making some improvements - and we’ve done that, they are installed successfully on - and I’m pleased to say that breaking this operation is operated reliably.

...

So I’m going to expand on some of those points. Now I’m going to start off with the breaking and separation area, and I will move to the slide that shows a

1 photograph of the battery breaking equipment as it is now configured.

2 What you're looking at is a photograph of the breakup which is a box at the top of
3 the equipment in the photograph. And first thing I'd like to point out is that unlike
4 pretty much any other battery breaking equipment in the world, we've chosen to
5 put our inside a soundproof and environment contained box essentially that reduces
6 the noise levels in a facility, but more importantly it provides an atmospheric
7 control around the breaking equipment to control dust.

8 And so you noticed that how clean the equipment is in our photograph, that's
9 normal for us, but quite unusual in many parts of the battery breaking industry. And
10 what you can see also in our photograph is various feed strings leading into super
11 sac which are collecting plastic separators and some of the lead components.

12 So the key point here is that as I mentioned in the last earnings call, we determine
13 there was a need for us to operate our breaker at a higher level of separation that is
14 common in the battery recycling industry. And the reason for that is in the
15 conventional breaking operation all of the output goes into a smelter and we are a
16 smelter free operation. We don't have the ability to take materials that we can't find
17 at home for and put them in the smelter. So we have to operate our smelter at much
18 higher standard.

19 And what we did to get there was we leverage not only the battery recycling
20 industry, we looked at the best that we could find, we looked at best-in-class. And
21 then we went outside the battery breaking industry and we brought technologies
22 and know-how and in some cases personnel from advanced materials handling and
23 mining industries.

24 And I'm pleased to say that right now we're operating what we believe to be the
25 best-in-class in battery breaking and separation. And in fact, I didn't expect this to
26 be at this position in having our own IP around battery breaking and separation and
27 this is important to us in the sense that if we are building our own standalone
28 AquaRefining facilities, than we need the ability to break and separate batteries at a
29 far higher standard than its currently commercially available elsewhere and we will
30 achieve that, that's important.

31 Those improvements will continue and our expectation is that over the next two or
32 three years will be continuing to make improvements in battery breaking and
33 separation and that will add additional intellectual property and services that we can
34 provide to our customers.

35 ...

36 AquaRefining works. We've got four modules operating now. We expect to have
37 16 operating by the end of 2017.

38 ...

39 However, as you'll see in our numbers, the lead compounds have a low value in the
40 less established market than lead alloys. And moving forward, our focus is really
41 about the AquaRefined products and the licensing of AquaRefining equipment.

42 So it's all about AquaRefining but optimal product mix and profitability. We're
43 focused on running all of our AquaRefining modules to the maximum benefit. And
44 that means that we may choose to operate the overall facility with an output of less

1 than 120 tons a day, but with maximized AquaRefining. And we're looking to
2 change our product mix to a higher level of AquaRefining product.

3 39. On the same day, August 9, 2017, after the market closed, the Company filed its
4 quarterly report on Form 10-Q for the quarter ended June 30, 2017. The 10-Q was signed by
5 Defendants Clarke and Murphy, and reaffirmed the Company's statements about its financial
6 results contained in the press release issued on the same day.

7 40. On this news, the Company's stock price fell \$2.56 per share, or 23.6%, to close at
8 \$8.31 per share on August 10, 2017, on unusually heavy trading volume.

9 41. The above statements identified in ¶¶37-39 were materially false and/or misleading,
10 and failed to disclose material adverse facts about the Company's business, operations, and
11 prospects. Specifically, Defendants failed to disclose: (1) that Aqua Metals' breaking and
12 separating process was facing substantial obstacles due to AquaRefining's need for a much higher
13 degree of separation than is normal in the industry; (2) that the Company's breaking and
14 separating process was not operating reliably or efficiently; (3) that the breaking and separating
15 obstacles and issues were negatively impacting the Company's output; (4) that the Company's
16 four "operating modules" were being used primarily for experimentation, rather than production;
17 (5) that module operators were assisting with lead removal; (6) that, as a result of the foregoing,
18 the ramp up of the Company's recycling process was being significantly hindered and delayed;
19 and (7) that, as a result of the foregoing, Defendants' statements about Aqua Metals' business,
20 operations, and prospects, were materially false and/or misleading and/or lacked a reasonable
21 basis.

22 42. On October 23, 2017, the Company issued a press release entitled "Aqua Metals
23 Provides Update on Plant's Operations." Therein, the Company disclosed that "[f]our modules are
24 assembled, commissioned and are being used to determine the optimal operating parameters,
25 including electrolyte pH, lead concentration, operating temperature, electrolyte flow rate and free
26 acid levels" but that it had only "produced small quantities of AquaRefined lead during the
27 commissioning process." The Company further stated that "Aqua Metals' production process has
28 multiple stages prior to AquaRefining, including battery breaking, separation, desulphurization,

1 and electrolyte production” and disclosed that it was “in the process of synchronizing all of these
2 stages, which is critical to maximizing efficiency, optimizing working procedures and minimizing
3 waste.” In greater part, the Company stated:

4 Aqua Metals, Inc. (NASDAQ:AQMS), (“Aqua Metals” or the “Company”), which
5 is proceeding to commercialize its proprietary electrochemical lead recycling
6 technology called AquaRefining™, has provided the following update on
7 operations at its McCarran, Nevada facility.

8 Aqua Metals continues to make progress on the world’s first AquaRefining lead
9 recycling facility. The Company now has a total of 15 AquaRefining modules on-
10 site and in-place, with one to be shipped.

11 Four modules are assembled, commissioned and are being used to determine the
12 optimal operating parameters, including electrolyte pH, lead concentration,
13 operating temperature, electrolyte flow rate and free acid levels.

14 An additional four modules are close to being fully assembled and the balance of
15 the modules are in the process of assembly. Accordingly, the Company expects to
16 have all 16 modules installed and commissioned by the end of the year.

17 The Company has produced small quantities of AquaRefined lead during the
18 commissioning process. Ramp up of AquaRefined lead production is expected to
19 continue through the fourth quarter of 2017 and into 2018 as modules are brought
20 on-line and shifts are added.

21 An important part of the commissioning process is to operate the modules
22 consistently at progressively higher electrical currents to determine the appropriate
23 control parameters and operating procedures. Once completed these parameters
24 and procedures can be replicated across all modules. During module
25 commissioning, the Company also found that under certain conditions, the
26 operators would need to periodically assist the lead removal. Several solutions
27 have now been tested and the Company is evaluating which options are best for
28 long term use.

Aqua Metals’ production process has multiple stages prior to AquaRefining,
including battery breaking, separation, desulphurization, and electrolyte
production. The final stage of production involves processing AquaRefined lead
and the metallic lead recovered from batteries through an ingot production line. The
Company is in the process of synchronizing all of these stages, which is critical to
maximizing efficiency, optimizing working procedures and minimizing waste.

For over six months, Aqua Metals has been breaking batteries and selling lead
compounds. Aqua Metals is currently in the process of taking the next major step
by transitioning to the production of lead ingots that are produced from battery
grids and a small amount of AquaRefined lead. These lead ingots will be sold as
lead “bullion”. The next step will be to produce and sell ingots of lead alloy, and
the last step will be to produce and sell ingots of AquaRefined lead. Aqua Metals
expects to ramp lead production of its AquaRefining modules in the first quarter of
2018.

43. On this news, the Company’s stock price fell \$0.96 per share, or 17.9%, to close at

1 \$4.41 per share on October 23, 2017, on unusually heavy trading volume. The stock price
2 continued to decline on the following day, falling \$0.40 per share, or 9.1%, to close at \$4.01 per
3 share on October 24, 2017, on unusually heavy trading volume.

4 44. The above statements identified in ¶42 were materially false and/or misleading, and
5 failed to disclose material adverse facts about the Company’s business, operations, and prospects.
6 Specifically, Defendants failed to disclose: (1) that Aqua Metals’ breaking and separating process
7 was facing substantial obstacles due to AquaRefining’s need for a much higher degree of
8 separation than is normal in the industry; (2) that the Company’s breaking and separating process
9 was not operating reliably or efficiently; (3) that the breaking and separating obstacles and issues
10 were negatively impacting the Company’s output; (4) that, as a result of the foregoing, the ramp
11 up of the Company’s recycling process was being significantly hindered and delayed; and (5) that,
12 as a result of the foregoing, Defendants’ statements about Aqua Metals’ business, operations, and
13 prospects, were materially false and/or misleading and/or lacked a reasonable basis.

14 **Disclosures at the End of the Class Period**

15 45. On November 9, 2017, after the market closed, Aqua Metals issued a press release
16 entitled “Aqua Metals Provides Third Quarter 2017 Corporate Update.” Therein, the Company
17 revealed that, contrary to its earlier representation that it had “four modules operating now,” in
18 reality, it had “a total of 16 AquaRefining modules on-site and in-place,” eight “in the final stages
19 of on-site assembly,” four “fully assembled but not yet in operation,” and the remaining four
20 “assembled and being used to determine the optimal operating parameters for all 16 modules.” In
21 greater part, the Company stated:

22 Aqua Metals, Inc. (NASDAQ:AQMS), (“Aqua Metals” or the “Company”), which
23 is proceeding to commercialize its proprietary electrochemical lead recycling
24 technology called AquaRefining™, has provided a corporate update and announced
25 results for the third quarter ended September 30, 2017.

26 **Company Highlights**

- 27
- 28 • The Company currently has a total of 16 AquaRefining modules on-site and in-place. Eight modules are in the final stages of on-site assembly. Four modules are fully assembled but not yet in operation, and the remaining four modules are assembled and being used to determine the optimal operating parameters for all 16 modules.

- 1 • The ingot production line has cast lead ingots, which will be sent to
2 customers in the fourth quarter of 2017.
- 3 • The Company overcame significant challenges with breaking and
4 separation, and has significantly increased the amount of throughput.
- 5 • Delivered written notice and commenced discussions with the Company’s
6 strategic partner, Johnson Controls (JCI), concerning the retrofit of an
7 existing JCI smelter-based facility whereby Aqua Metals will provide
8 AquaRefining technology, engineering and systems integration.
- 9 • Received Notice of Allowance for Aqua Metals’ first U.S. patent
10 application from the United States Patent and Trademark Office (USPTO),
11 as well as Notice of Allowance for the first Canadian patent application
12 from the Canadian Intellectual Property Office (CIPO). The Company also
13 secured international patents in Australia, Japan and Korea. The Company’s
14 IP strategy includes filings for multiple patents, organized into several
15 families covering “matter,” “devices” and “processes,” in multiple regions.
- 16 • Appointed Mark Weinswig as Chief Financial Officer, who joined Aqua
17 Metals with extensive strategic and operational financial leadership.
- 18 • Received several accolades for AquaRefining technology, such as winning
19 the *Popular Sciences*’ best of “What’s New” award in the engineering
20 category, as well as AquaRefining being named a finalist for the 2017 I.
21 Chem. E Global Awards’ “Innovative Product” category.

15 **Management Commentary**

16 “During the third quarter, we made significant progress towards scaling operations
17 at the world’s first AquaRefining facility. We are currently in the process of
18 transitioning to the production of lead ingots that are produced from battery grids
19 and a small amount of AquaRefined lead,” said Dr. Stephen Clarke, Chairman and
20 CEO of Aqua Metals.

21 Clarke, continued: “Looking ahead, we still anticipate having all 16 AquaRefinery
22 modules installed and operational by the end of the year and from there will
23 transition them to continuous operation. Ramp up of AquaRefined lead production
24 is expected to continue through the fourth quarter of 2017 and into 2018 as
25 modules are brought on-line and shifts are added. We faced and overcame multiple
26 challenges during the quarter, and should expect more as we work to scale
27 production.

28 “Over the last several months, we have strengthened our management and technical
team and refocused technology priorities. At this point we strongly believe that
investing the resources to fully optimize the operating parameters for our process
will better prepare us for both our own operations and the supply of AquaRefining
equipment and services to 3rd parties. To that latter point, during the third quarter
we commenced discussions regarding the supply of AquaRefining equipment,
engineering and other services to support the addition of AquaRefining to a facility
owned and operated by our strategic partner, Johnson Controls. We expect this
aspect of our business to expand and drive shareholder value over the long term.”

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Third Quarter 2017 Financials

Total revenues in the third quarter of 2017 were \$0.6 million, compared to \$0.6 million in the second quarter of 2017 and no revenue in the third quarter of 2016.

The Company incurred an operating loss of \$5.8 million during the third quarter of 2017 compared to an operating loss of \$3.3 million in the third quarter of 2016.

Net loss for the third quarter of 2017 was \$6.3 million, or (\$0.31) per diluted share, compared to a net loss of \$3.5 million, or (\$0.23) per diluted share, in the third quarter of 2016.

The Company had \$17.5 million in cash and cash equivalents as of September 30, 2017, compared to \$22.1 million as of June 30, 2017.

46. On the same day, the Company held a conference call to discuss its Q3 2017 results. On the call, Defendant Clarke made statements and answered analysts' questions. In relevant part, Clarke stated:

Now I want to focus on our Reno facility to walk through each of the different process steps and provide an update on the status of each. As we've discussed before, our first process includes five steps. Our first step is our battery breaker and material separation system.

Previously, we reported difficulties and delays associated with this first step. So I'm pleased to note that we have achieved very significant improvements in reliability and throughput over the past few months, and the battery breaker is now running consistently seven days a week.

...

Currently, the four operating modules are being used to achieve the following: The first thing is to accelerate updates aimed at providing a level of robustness suitable for operating by third parties with non-specialist operators. The second feature -- purpose is to map out operating parameters and performance over the full range of operating conditions. The objective is to achieve the highest level of operational flexibility. We believe both activities are coming to a successful conclusion, after which we will apply the control parameters across all 16 modules.

...

Analyst:

Quickly, on some of the details of the current operations, could you maybe provide some additional color on—as to how many tons per day are you guys currently running through the battery breaking system and through the entire process?

Clarke

No. At this time we provided all the color that we're willing to provide at this point.

...

1 notified of the pendency of this action by mail, using the form of notice similar to that customarily
2 used in securities class actions.

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

6 51. Plaintiff will fairly and adequately protect the interests of the members of the Class
7 and has retained counsel competent and experienced in class and securities litigation.

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

11 (a) whether the federal securities laws were violated by Defendants' acts as alleged
12 herein;

13 (b) whether statements made by Defendants to the investing public during the Class
14 Period omitted and/or misrepresented material facts about the business, operations, and prospects
15 of Aqua Metals; and

16 (c) to what extent the members of the Class have sustained damages and the proper
17 measure of damages.

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

24 **UNDISCLOSED ADVERSE FACTS**

25 54. The market for Aqua Metals' securities was open, well-developed and efficient at
26 all relevant times. As a result of these materially false and/or misleading statements, and/or
27 failures to disclose, Aqua Metals' securities traded at artificially inflated prices during the Class
28 Period. Plaintiff and other members of the Class purchased or otherwise acquired Aqua Metals'

1 securities relying upon the integrity of the market price of the Company's securities and market
2 information relating to Aqua Metals, and have been damaged thereby.

3 55. During the Class Period, Defendants materially misled the investing public, thereby
4 inflating the price of Aqua Metals' securities, by publicly issuing false and/or misleading
5 statements and/or omitting to disclose material facts necessary to make Defendants' statements, as
6 set forth herein, not false and/or misleading. The statements and omissions were materially false
7 and/or misleading because they failed to disclose material adverse information and/or
8 misrepresented the truth about Aqua Metals' business, operations, and prospects as alleged herein.

9 56. At all relevant times, the material misrepresentations and omissions particularized
10 in this Complaint directly or proximately caused or were a substantial contributing cause of the
11 damages sustained by Plaintiff and other members of the Class. As described herein, during the
12 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
13 statements about Aqua Metals' financial well-being and prospects. These material misstatements
14 and/or omissions had the cause and effect of creating in the market an unrealistically positive
15 assessment of the Company and its financial well-being and prospects, thus causing the
16 Company's securities to be overvalued and artificially inflated at all relevant times. Defendants'
17 materially false and/or misleading statements during the Class Period resulted in Plaintiff and
18 other members of the Class purchasing the Company's securities at artificially inflated prices, thus
19 causing the damages complained of herein when the truth was revealed.

20 **LOSS CAUSATION**

21 57. Defendants' wrongful conduct, as alleged herein, directly and proximately caused
22 the economic loss suffered by Plaintiff and the Class.

23 58. During the Class Period, Plaintiff and the Class purchased Aqua Metals' securities
24 at artificially inflated prices and were damaged thereby. The price of the Company's securities
25 significantly declined when the misrepresentations made to the market, and/or the information
26 alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,
27 causing investors' losses.

1 inflated at all relevant times, and when disclosed, negatively affected the value of the Company
2 stock. Defendants' materially false and/or misleading statements during the Class Period resulted
3 in Plaintiff and other members of the Class purchasing the Company's securities at such
4 artificially inflated prices, and each of them has been damaged as a result.

5 62. At all relevant times, the market for Aqua Metals' securities was an efficient
6 market for the following reasons, among others:

7 (a) Aqua Metals stock met the requirements for listing, and was listed and actively
8 traded on the NASDAQ, a highly efficient and automated market;

9 (b) As a regulated issuer, Aqua Metals filed periodic public reports with the SEC
10 and/or the NASDAQ;

11 (c) Aqua Metals regularly communicated with public investors via established market
12 communication mechanisms, including through regular dissemination of press releases on the
13 national circuits of major newswire services and through other wide-ranging public disclosures,
14 such as communications with the financial press and other similar reporting services; and/or

15 (d) Aqua Metals was followed by securities analysts employed by brokerage firms who
16 wrote reports about the Company, and these reports were distributed to the sales force and certain
17 customers of their respective brokerage firms. Each of these reports was publicly available and
18 entered the public marketplace.

19 63. As a result of the foregoing, the market for Aqua Metals' securities promptly
20 digested current information regarding Aqua Metals from all publicly available sources and
21 reflected such information in Aqua Metals' stock price. Under these circumstances, all purchasers
22 of Aqua Metals' securities during the Class Period suffered similar injury through their purchase
23 of Aqua Metals' securities at artificially inflated prices and a presumption of reliance applies.

24 64. A Class-wide presumption of reliance is also appropriate in this action under the
25 Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),
26 because the Class's claims are, in large part, grounded on Defendants' material misstatements
27 and/or omissions. Because this action involves Defendants' failure to disclose material adverse
28 information regarding the Company's business operations and financial prospects—information

1 that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to
2 recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable
3 investor might have considered them important in making investment decisions. Given the
4 importance of the Class Period material misstatements and omissions set forth above, that
5 requirement is satisfied here.

6 **NO SAFE HARBOR**

7 65. The statutory safe harbor provided for forward-looking statements under certain
8 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.
9 The statements alleged to be false and misleading herein all relate to then-existing facts and
10 conditions. In addition, to the extent certain of the statements alleged to be false may be
11 characterized as forward looking, they were not identified as “forward-looking statements” when
12 made and there were no meaningful cautionary statements identifying important factors that could
13 cause actual results to differ materially from those in the purportedly forward-looking statements.
14 In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-
15 looking statements pleaded herein, Defendants are liable for those false forward-looking
16 statements because at the time each of those forward-looking statements was made, the speaker
17 had actual knowledge that the forward-looking statement was materially false or misleading,
18 and/or the forward-looking statement was authorized or approved by an executive officer of Aqua
19 Metals who knew that the statement was false when made.

20 **FIRST CLAIM**
21 **Violation of Section 10(b) of The Exchange Act and**
22 **Rule 10b-5 Promulgated Thereunder**
23 **Against All Defendants**

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

26 67. During the Class Period, Defendants carried out a plan, scheme and course of
27 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing
28 public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and
other members of the Class to purchase Aqua Metals’ securities at artificially inflated prices. In

1 furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant,
2 took the actions set forth herein.

3 68. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made
4 untrue statements of material fact and/or omitted to state material facts necessary to make the
5 statements not misleading; and (iii) engaged in acts, practices, and a course of business which
6 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to
7 maintain artificially high market prices for Aqua Metals' securities in violation of Section 10(b) of
8 the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the
9 wrongful and illegal conduct charged herein or as controlling persons as alleged below.

10 69. Defendants, individually and in concert, directly and indirectly, by the use, means
11 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
12 continuous course of conduct to conceal adverse material information about Aqua Metals'
13 financial well-being and prospects, as specified herein.

14 70. Defendants employed devices, schemes and artifices to defraud, while in
15 possession of material adverse non-public information and engaged in acts, practices, and a course
16 of conduct as alleged herein in an effort to assure investors of Aqua Metals' value and
17 performance and continued substantial growth, which included the making of, or the participation
18 in the making of, untrue statements of material facts and/or omitting to state material facts
19 necessary in order to make the statements made about Aqua Metals and its business operations and
20 future prospects in light of the circumstances under which they were made, not misleading, as set
21 forth more particularly herein, and engaged in transactions, practices and a course of business
22 which operated as a fraud and deceit upon the purchasers of the Company's securities during the
23 Class Period.

24 71. Each of the Individual Defendants' primary liability and controlling person liability
25 arises from the following facts: (i) the Individual Defendants were high-level executives and/or
26 directors at the Company during the Class Period and members of the Company's management
27 team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and
28 activities as a senior officer and/or director of the Company, was privy to and participated in the

1 creation, development and reporting of the Company's internal budgets, plans, projections and/or
2 reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the
3 other defendants and was advised of, and had access to, other members of the Company's
4 management team, internal reports and other data and information about the Company's finances,
5 operations, and sales at all relevant times; and (iv) each of these defendants was aware of the
6 Company's dissemination of information to the investing public which they knew and/or
7 recklessly disregarded was materially false and misleading.

8 72. Defendants had actual knowledge of the misrepresentations and/or omissions of
9 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
10 ascertain and to disclose such facts, even though such facts were available to them. Such
11 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and
12 for the purpose and effect of concealing Aqua Metals' financial well-being and prospects from the
13 investing public and supporting the artificially inflated price of its securities. As demonstrated by
14 Defendants' overstatements and/or misstatements of the Company's business, operations, financial
15 well-being, and prospects throughout the Class Period, Defendants, if they did not have actual
16 knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain
17 such knowledge by deliberately refraining from taking those steps necessary to discover whether
18 those statements were false or misleading.

19 73. As a result of the dissemination of the materially false and/or misleading
20 information and/or failure to disclose material facts, as set forth above, the market price of Aqua
21 Metals' securities was artificially inflated during the Class Period. In ignorance of the fact that
22 market prices of the Company's securities were artificially inflated, and relying directly or
23 indirectly on the false and misleading statements made by Defendants, or upon the integrity of the
24 market in which the securities trades, and/or in the absence of material adverse information that
25 was known to or recklessly disregarded by Defendants, but not disclosed in public statements by
26 Defendants during the Class Period, Plaintiff and the other members of the Class acquired Aqua
27 Metals' securities during the Class Period at artificially high prices and were damaged thereby.

28 74. At the time of said misrepresentations and/or omissions, Plaintiff and other

1 members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff
2 and the other members of the Class and the marketplace known the truth regarding the problems
3 that Aqua Metals was experiencing, which were not disclosed by Defendants, Plaintiff and other
4 members of the Class would not have purchased or otherwise acquired their Aqua Metals
5 securities, or, if they had acquired such securities during the Class Period, they would not have
6 done so at the artificially inflated prices which they paid.

7 75. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act
8 and Rule 10b-5 promulgated thereunder.

9 76. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
10 other members of the Class suffered damages in connection with their respective purchases and
11 sales of the Company's securities during the Class Period.

12 **SECOND CLAIM**
13 **Violation of Section 20(a) of The Exchange Act**
14 **Against the Individual Defendants**

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

17 78. Individual Defendants acted as controlling persons of Aqua Metals within the
18 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level
19 positions and their ownership and contractual rights, participation in, and/or awareness of the
20 Company's operations and intimate knowledge of the false financial statements filed by the
21 Company with the SEC and disseminated to the investing public, Individual Defendants had the
22 power to influence and control and did influence and control, directly or indirectly, the decision-
23 making of the Company, including the content and dissemination of the various statements which
24 Plaintiff contends are false and misleading. Individual Defendants were provided with or had
25 unlimited access to copies of the Company's reports, press releases, public filings, and other
26 statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were
27 issued and had the ability to prevent the issuance of the statements or cause the statements to be
28 corrected.

79. In particular, Individual Defendants had direct and supervisory involvement in the

1 day-to-day operations of the Company and, therefore, had the power to control or influence the
2 particular transactions giving rise to the securities violations as alleged herein, and exercised the
3 same.

4 80. As set forth above, Aqua Metals and Individual Defendants each violated Section
5 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their
6 position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the
7 Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and
8 other members of the Class suffered damages in connection with their purchases of the
9 Company's securities during the Class Period.

10 **PRAYER FOR RELIEF**

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

12 (a) Determining that this action is a proper class action under Rule 23 of the Federal
13 Rules of Civil Procedure;

14 (b) Awarding compensatory damages in favor of Plaintiff and the other Class members
15 against all defendants, jointly and severally, for all damages sustained as a result of Defendants'
16 wrongdoing, in an amount to be proven at trial, including interest thereon;

17 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in
18 this action, including counsel fees and expert fees; and

19 (d) Such other and further relief as the Court may deem just and proper.

20 **JURY TRIAL DEMANDED**

21 Plaintiff hereby demands a trial by jury.
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