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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

Cl \_\_\_\_\_ STANLEY, Individually  
and On Behalf of All Others Similarly  
Situating,  
  
Plaintiff,  
  
vs.  
  
ELECTRO SCIENTIFIC INDUSTRIES,  
INC., R \_\_\_\_\_ WILLS, M  
BURGER, F \_\_\_\_\_ BALL, L  
CAMP, I \_\_\_\_\_ CRAMER, and  
R \_\_\_\_\_ LINK,  
  
Defendants.

No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

INJUNCTIVE RELIEF  
BREACH OF FIDUCIARY  
DUTIES

JURY TRIAL DEMANDED

**Not Subject to Mandatory  
Arbitration**

**Fee Authority: ORS 21.135(2)(a)**

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

**NATURE OF THE ACTION**

1. This action stems from a proposed transaction announced on October 30, 2018 (the "Proposed Transaction"), pursuant to which Electro Scientific Industries, Inc. ("ESI" or the "Company") will be acquired by MKS Instruments, Inc. ("Parent") and EAS Equipment, Inc. ("Merger Sub," and collectively with Parent, "MKS").

2. On October 29, 2018, ESI's Board of Directors (the "Board" or "Individual Defendants") caused the Company to enter into an agreement and plan of merger (the

1 “Merger Agreement”) with MKS. Pursuant to the terms of the Merger Agreement, ESI  
2 stockholders will receive \$30.00 per share in cash.

3 3. In approving the Merger Agreement, the Individual Defendants breached their  
4 fiduciary duties to plaintiff and the Class (defined herein). Moreover, as alleged herein, ESI  
5 aided and abetted the Individual Defendants’ breaches of fiduciary duties.

6 4. Compounding the unfairness of the Proposed Transaction, defendants issued  
7 materially incomplete disclosures in the proxy statement filed with the United States  
8 Securities and Exchange Commission (the “SEC”) on November 19, 2018 in connection with  
9 the Proposed Transaction (the “Proxy Statement”).

10 5. Plaintiff seeks to enjoin defendants from taking any steps to consummate the  
11 Proposed Transaction or, in the event the Proposed Transaction is consummated, plaintiff  
12 may amend his complaint pursuant to ORCP 32 J to recover damages resulting from the  
13 Individual Defendants’ violations of their fiduciary duties.

#### 14 JURISDICTION AND VENUE

15 6. This Court has jurisdiction over each defendant named herein because each  
16 defendant is either a corporation that conducts business or maintains operations in this  
17 County, or is an individual who has sufficient minimum contacts with Oregon so as to render  
18 the exercise of jurisdiction by the Oregon courts permissible under traditional notions of fair  
19 play and substantial justice.

20 7. Venue is proper in this Court because one or more defendants either resides in  
21 or maintains executive offices in this County, a substantial portion of the transactions or  
22 wrongs complained of herein, including the Individual Defendants’ primary participation in  
23 the wrongful acts detailed herein, occurred in this County, and defendants have received  
24 substantial compensation in this County by doing business here and engaging in numerous  
25 activities that had an effect in this County.  
26

1 **PARTIES**

2 8. Plaintiff is, and has been continuously throughout all times relevant hereto,  
3 the owner of ESI common stock.

4 9. Defendant ESI is an Oregon corporation and maintains its principal executive  
5 offices at 13900 NW Science Park Drive, Portland, Oregon 97229. ESI's common stock is  
6 traded on the NasdaqGS under the ticker symbol "ESIO." ESI is a party to the Merger  
7 Agreement.  
8

9 10. Defendant R Wills is Chairman of the Board of the Company.

10 11. Defendant M Burger is President, Chief Executive Officer, and a  
11 director of the Company.

12 12. Defendant F Ball is a director of the Company.

13 13. Defendant L Camp is a director of the Company.

14 14. Defendant L Cramer is a director of the Company.

15 15. Defendant R Link is a director of the Company.  
16

17 16. The defendants identified in paragraphs 10 through 15 are collectively referred  
18 to herein as the "Individual Defendants."

19 **CLASS ACTION ALLEGATIONS**

20 17. Plaintiff brings this action as a class action on behalf of himself and the other  
21 public stockholders of ESI (the "Class"). Excluded from the Class are defendants herein and  
22 any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.  
23

24 18. This action is properly maintainable as a class action.

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1           19.     The Class is so numerous that joinder of all members is impracticable. As of  
2     October 26, 2018, there were approximately 34,292,603 shares of ESI common stock  
3     outstanding, held by hundreds, if not thousands, of individuals and entities scattered  
4     throughout the country.

5           20.     Questions of law and fact are common to the Class, including, among others,  
6     whether defendants will irreparably harm plaintiff and the other members of the Class if  
7     defendants' conduct complained of herein continues.

8           21.     Plaintiff is committed to prosecuting this action and has retained competent  
9     counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of  
10    the other members of the Class and plaintiff has the same interests as the other members of  
11    the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and  
12    adequately protect the interests of the Class.

13          22.     A class action is superior to all other available methods for the fair and  
14    efficient adjudication of this controversy, since joinder of all members is impracticable. The  
15    prosecution of separate actions by individual members of the Class would create the risk of  
16    inconsistent or varying adjudications that would establish incompatible standards of conduct  
17    for defendants, or adjudications that would, as a practical matter, be dispositive of the  
18    interests of individual members of the Class who are not parties to the adjudications or would  
19    substantially impair or impede those non-party Class members' ability to protect their  
20    interests.

21          23.     Defendants have acted, or refused to act, on grounds generally applicable to  
22    the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive  
23    relief on behalf of the Class is appropriate.

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1 **SUBSTANTIVE ALLEGATIONS**

2 *Background of the Company and the Proposed Transaction*

3 24. ESI's manufacturing systems are designed to enable manufacturers of  
4 electronic components and devices to improve their production capabilities and  
5 commercialize technologies through laser processing.

6 25. ESI is headquartered in Portland, Oregon, with global operations from the  
7 Pacific Northwest to the Pacific Rim.

8 26. On October 29, 2018, ESI's Board caused the Company to enter into the  
9 Merger Agreement with MKS.

10 27. Pursuant to the terms of the Merger Agreement, ESI stockholders will receive  
11 \$30.00 per share in cash.

12 28. According to the press release announcing the Proposed Transaction:

13 MKS Instruments, Inc. (NASDAQ:MKSI) ("MKS"), a global provider of  
14 technologies that enable advanced processes and improve productivity, and  
15 Electro Scientific Industries, Inc. (NASDAQ:ESIO) ("ESI"), an innovator in  
16 laser-based manufacturing solutions for the micro-machining industry, today  
announced that they have entered into an agreement for MKS to acquire ESI  
for \$30.00 per share. The all-cash transaction is valued at approximately \$1  
billion.

17 The combined company is expected to have approximately \$2.2 billion in pro  
18 forma annual revenue, based on the two companies' calendar 2017 historical  
19 results. The transaction is expected to be accretive to MKS' Non-GAAP net  
20 earnings and free cash flow during the first 12 months post-closing. The  
combined company expects to realize \$15 million in annualized cost synergies  
within 18 to 36 months. . . .

21 MKS anticipates the acquisition will further advance the MKS strategy to  
22 enhance our Surround the Workpiece<sup>SM</sup> offerings by adding extraordinary  
23 systems expertise and deep technical understanding of laser materials  
24 processing interactions. ESI's leadership in Printed Circuit Board processing  
systems and other capabilities will provide MKS the opportunity to accelerate  
the roadmaps and performance of our laser, motion, and photonics portfolio. In  
addition, ESI brings a new platform of industrial markets enabling MKS to  
leverage its expertise more broadly. . . .

25 MKS intends to fund the transaction with a combination of available cash on  
26 hand and up to \$650 million in committed term loan debt financing. On a pro  
forma basis, as if the transaction closed on June 30, 2018, we expect the

1 combined company to have a strong balance sheet with combined pro forma net  
2 cash and investments of approximately \$400 million and total term loan debt  
3 outstanding of \$1 billion. This would result in pro forma trailing twelve month  
4 leverage, defined as debt to Adjusted EBITDA of 1.3 times and pro forma net  
5 leverage of 0.8 times. Actual leverage ratios will depend upon a number of  
6 factors and shall be determined at the time of the closing. The company has  
7 also obtained a commitment to upsize its asset based revolving credit facility to  
8 \$100 million.

9 The transaction has been unanimously approved by the MKS and ESI boards of  
10 directors and is subject to customary closing conditions, including regulatory  
11 approvals and approval by ESI's shareholders, and is expected to close in the  
12 first quarter of 2019.

13 29. The Merger Agreement contains a "no solicitation" provision that prohibits  
14 the Individual Defendants from soliciting alternative proposals and severely constrains their  
15 ability to communicate and negotiate with potential buyers who wish to submit or have  
16 submitted unsolicited alternative proposals. Sections 5.4(a) and (i) of the Merger Agreement  
17 provide:

18 (a) From the date hereof until the earlier of the Effective Time or the date, if any,  
19 on which this Agreement is validly terminated in accordance with its terms, and  
20 except as otherwise specifically provided for in this Section 5.4, the Company  
21 agrees that it will not and, will not authorize or permit any of its or its Subsidiaries'  
22 respective officers, directors, employees, agents, advisors and representatives,  
23 including any investment banker, attorney or accountant retained by the Company  
24 or any of its Subsidiaries (collectively, "Representatives") to, directly or indirectly:

25 (i) initiate, solicit, knowingly facilitate or knowingly encourage (including by  
26 providing information) any inquiries, proposals or offers with respect to, or the  
making or completion of, an Acquisition Proposal or any inquiry, proposal or offer  
that would reasonably be expected to lead to an Acquisition Proposal (including  
(A) approving any transaction under any Takeover Restriction, (B) approving any  
Person becoming an "interested shareholder" as defined in Section 60.825 of  
Oregon Act or a "Related Person" as defined in the Company Charter or (C)  
granting any amendment, waiver or release of any standstill or similar Contract  
with respect to the Company or any Shares);

(ii) engage or participate in any negotiations or discussions (other than to state that  
they are not permitted to have discussions) concerning, or provide or cause to be  
provided any information or data relating to the Company and its Subsidiaries in  
connection with, an Acquisition Proposal or any inquiry, proposal or offer that  
would reasonably be expected to lead to an Acquisition Proposal;

(iii) approve, endorse or recommend any Acquisition Proposal (or propose to do  
so); or

1 (iv) except for an Acceptable Confidentiality Agreement entered into pursuant to  
2 and in compliance with the terms of Section 5.4(b), execute or enter into any letter  
3 of intent, agreement in principle, merger agreement, acquisition agreement or other  
4 similar Contract relating to an Acquisition Proposal or any inquiry, proposal or  
5 offer that could reasonably be expected to lead to an Acquisition Proposal;

6 provided, however, in each case, it is understood and agreed that any determination  
7 or action by the Company Board expressly permitted under Section 5.4(b), Section  
8 5.4(d), Section 5.4(e), Section 5.4(h) or Section 7.1(c)(ii) shall not, in and of itself,  
9 be deemed to be a breach of this Section 5.4(a). Without limiting the foregoing, it  
10 is agreed that any violation of the restrictions set forth in this Section 5.4(a) by any  
11 of the Company's Subsidiaries or any Representative of the Company or any of its  
12 Subsidiaries, whether such Person is purporting to act on behalf of the Company or  
13 otherwise, shall be deemed to be a breach of this Section 5.4(a) by the Company.

14 (i) The Company and its Subsidiaries shall, and shall instruct their Representatives  
15 to, cease immediately all existing communications, discussions and negotiations  
16 regarding any proposal that constitutes, or would reasonably be expected to lead to,  
17 an Acquisition Proposal. The Company shall request the prompt return or  
18 destruction of all copies of all nonpublic data and information it or its Subsidiaries  
19 and its and their Representatives have distributed prior to the date of this Agreement  
20 to each other potential purchaser that has executed a confidentiality agreement in  
21 connection with its consideration of an Acquisition Proposal and in accordance with  
22 the applicable terms of such confidentiality agreement.

23 30. Additionally, the Company must promptly advise MKS of any proposals or  
24 inquiries received from other parties. Section 5.4(g) of the Merger Agreement states:

25 (g) The Company shall promptly (and in any event within 24 hours after becoming  
26 aware of the items set forth in (i)-(iii)) shall provide notice to Parent of (i) any  
receipt of any Acquisition Proposal, (ii) any request for information relating to the  
Company or its Subsidiaries, other than requests for information that would not  
reasonably be expected to be related to an Acquisition Proposal, or (iii) any inquiry  
or request for discussion or negotiation regarding, or that would reasonably be  
expected to lead to, an Acquisition Proposal, including in each case the identity of  
the Person making any such Acquisition Proposal, inquiry or request and a  
description of the material terms of any such Acquisition Proposal, inquiry or  
request. The Company shall (A) keep Parent reasonably informed of the status and  
details (including any change to the material terms) of any such Acquisition  
Proposal, request or inquiry, (B) contemporaneously with providing any non-public  
information (including any correspondence or other written material) to a third  
party in connection with any such Acquisition Proposal, request or inquiry, to the  
extent not previously provided to Parent, furnish a complete and accurate copy of  
such information (including information provided by electronic mail) to Parent, and  
(C) provide to Parent as soon as practicable (and in any event within 24 hours) after  
receipt or delivery thereof complete and accurate copies of all correspondence and  
other written material sent or provided to the Company or any of its  
Representatives, including those provided by electronic mail, from any third party  
in connection with such Acquisition Proposal, request or inquiry. The Company

1 agrees that it shall not, and shall not permit its Subsidiaries to, enter into any  
2 Contract that prohibits or restricts it from providing to Parent the information  
3 contemplated by, or otherwise complying with, this Section 5.4(g), Section 5.4(c),  
4 Section 5.4(d) or Section 5.4(e).

5 31. Moreover, the Merger Agreement contains a highly restrictive “fiduciary out”  
6 provision permitting the Board to change its recommendation of the Proposed Transaction  
7 under extremely limited circumstances, and grants MKS a “matching right” with respect to  
8 any “Superior Proposal” made to the Company. Section 5.4(d) of the Merger Agreement  
9 provides:

10 (d) Notwithstanding anything to the contrary in this Section 5.4, the Company  
11 Board or any committee thereof may, at any time prior to obtaining the Company  
12 Shareholder Approval, make an Adverse Recommendation Change in response to  
13 a Superior Proposal only if:

14 (i) the Company Board (or the applicable committee thereof) has received a written  
15 Acquisition Proposal after the execution and delivery of this Agreement by the  
16 parties hereto that did not result from a breach in any material respect of Section  
17 5.4(a) and determines, after consultation with outside counsel and its independent  
18 financial advisor, that (w) such Acquisition Proposal is a Superior Proposal, (x)  
19 such Superior Proposal is outstanding, (y) the failure of the Company Board (or  
20 such committee) to make an Adverse Recommendation Change in response to such  
21 Superior Proposal would reasonably be expected to be a breach of its fiduciary  
22 duties and (z) the Company Board (or such committee) intends to make an Adverse  
23 Recommendation Change in response to such Superior Proposal (which  
24 determination, and any public announcement thereof permitted under Section  
25 5.4(h), shall not in and of itself constitute an Adverse Recommendation Change);

26 (ii) the Company has provided written notice to Parent at least four Business Day  
prior to the making of such Adverse Recommendation Change (an “Adverse  
Recommendation Notice”) advising Parent of the determination contemplated by  
the foregoing clause (i) of this Section 5.4(d), including that the Company Board  
or such committee intends to make an Adverse Recommendation Change (and the  
manner and timing in which it intends to do so) (such four Business Day period,  
the “Notice Period”), which Adverse Recommendation Notice the Company shall  
deliver no more than 24 hours following such determination;

(iii) the Company provides Parent with a reasonable opportunity to make  
adjustments in the terms and conditions of this Agreement and negotiates in good  
faith with Parent (to the extent Parent requests or initiates such negotiation) with  
respect thereto during the Notice Period, in each case as would enable the Company  
Board or such committee to determine that a Superior Proposal ceases to be a  
Superior Proposal;



1 (iv) the Company complies in all material respects with the requirements of Section  
2 5.4(g) in respect of such Superior Proposal; and

3 (v) Parent does not, at or prior to the end of the Notice Period, make an offer or  
4 proposal in writing (which, if accepted by the Company, would be binding on  
5 Parent) that the Company Board or such committee determines in good faith (after  
6 consultation with outside counsel and its independent financial advisor) to be at  
7 least as favorable to the Company's shareholders as such Superior Proposal.

8 Any change to the financial terms or any material change to the other terms of such  
9 Superior Proposal shall require the Company to provide to Parent a new Adverse  
10 Recommendation Notice and a new Notice Period and to comply with the  
11 requirements of this Section 5.4(d) with respect to each such Adverse  
12 Recommendation Notice; provided, that each such new Notice Period shall be  
13 shortened to three Business Days following the receipt of the corresponding new  
14 Adverse Recommendation Notice.

15 32. The Merger Agreement also provides for a "termination fee" of \$35,650,000  
16 payable by the Company to MKS if the Individual Defendants cause the Company to  
17 terminate the Merger Agreement.

18 33. The consideration to be provided to plaintiff and the Class in the Proposed  
19 Transaction appears inadequate.

20 34. Among other things, the intrinsic value of the Company is materially in excess  
21 of the amount offered in the Proposed Transaction.

22 35. Accordingly, the Proposed Transaction will deny Class members their right to  
23 share proportionately and equitably in the true value of the Company's valuable and  
24 profitable business, and future growth in profits and earnings.

#### 25 *The Proxy Statement Omits Material Information*

26 36. Defendants filed the Proxy Statement with the SEC in connection with the  
Proposed Transaction. As set forth below, the Proxy Statement omits material information  
with respect to the Proposed Transaction.

37. The Proxy Statement omits material information regarding the Company's  
financial projections and the analyses performed by the Company's financial advisor, Stifel,  
Nicolaus & Company, Incorporated ("Stifel").

1           38. With respect to the Company’s financial projections, the Proxy Statement fails  
2 to disclose, for all sets of projections: (i) all line items used to calculate non-GAAP gross  
3 profit, non-GAAP operating income, EBITDA, non-GAAP net income, and unlevered free  
4 cash flow; (ii) a reconciliation of all non-GAAP to GAAP metrics; and (iii) with respect to  
5 revenue, the “forecasted percentages of market share [and] forecasted revenue on a product-  
6 by-product basis.”

7           39. With respect to Stifel’s Selected Comparable Companies Analysis, the Proxy  
8 Statement fails to disclose the individual multiples and financial metrics for the companies  
9 observed by Stifel in the analysis.

10           40. With respect to Stifel’s Selected Precedent Transactions Analysis, the Proxy  
11 Statement fails to disclose the individual multiples and financial metrics for the transactions  
12 observed by Stifel in the analysis.

13           41. With respect to Stifel’s Discounted Cash Flow Analyses, the Proxy Statement  
14 fails to disclose: (i) all line items used to calculate unlevered free cash flow; (ii) the terminal  
15 values for ESI; (iii) Stifel’s basis for applying a range of terminal multiples of 7.0x to 9.0x  
16 and a range of perpetuity growth of 2.0% to 4.0%; (iv) the individual inputs and assumptions  
17 underlying the discount rates of 14.0% to 18.0%; (v) ESI’s net cash; and (vi) the fully-diluted  
18 Company shares outstanding.

19           42. The disclosure of projected financial information is material because it  
20 provides stockholders with a basis to project the future financial performance of a company,  
21 and allows stockholders to better understand the financial analyses performed by the  
22 company’s financial advisor in support of its fairness opinion. Moreover, when a banker’s  
23 endorsement of the fairness of a transaction is touted to shareholders, the valuation methods  
24 used to arrive at that opinion as well as the key inputs and range of ultimate values generated  
25 by those analyses must also be fairly disclosed.

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1 43. The above-referenced omitted information, if disclosed, would significantly  
2 alter the total mix of information available to the Company's stockholders.

3 44. For these reasons and as set forth in detail herein, plaintiff seeks to enjoin  
4 defendants from taking any steps to consummate the Proposed Transaction or, in the event  
5 the Proposed Transaction is consummated, plaintiff may amend his complaint to recover  
6 damages resulting from the Individual Defendants' violations of their fiduciary duties.

7 **COUNT I**

8 **(Breach of Fiduciary Duties Against the Individual Defendants)**

9 45. Plaintiff repeats and realleges the preceding allegations as if fully set forth  
10 herein.

11 46. As members of the Company's Board, the Individual Defendants have  
12 fiduciary obligations to: (a) undertake an appropriate evaluation of ESI's net worth as a  
13 merger/acquisition candidate; (b) take all appropriate steps to enhance ESI's value and  
14 attractiveness as a merger/acquisition candidate; (c) act independently to protect the interests  
15 of the ESI's public stockholders; (d) adequately ensure that no conflicts of interest exist  
16 between the Individual Defendants' own interests and their fiduciary obligations, and, if such  
17 conflicts exist, to ensure that all conflicts are resolved in the best interests of ESI's public  
18 stockholders; (e) actively evaluate the Proposed Transaction and engage in a meaningful  
19 auction with third parties in an attempt to obtain the best value on any sale of ESI; and (f)  
20 disclose all material information to the ESI's stockholders.

21 47. The Individual Defendants have breached their fiduciary duties to plaintiff and  
22 the Class.

23 48. The Individual Defendants have initiated a process to sell ESI that  
24 undervalues the Company. In addition, by agreeing to the Proposed Transaction, the  
25 Individual Defendants have capped the price of ESI at a price that does not adequately reflect  
26 the Company's true value. The Individual Defendants also failed to sufficiently inform

1 themselves of ESI's value, or disregarded the true value of the Company. Furthermore, any  
2 alternate acquiror will be faced with engaging in discussions with a management team and  
3 Board that are committed to the Proposed Transaction.

4 49. As such, unless the Individual Defendants' conduct is enjoined by the Court,  
5 they will continue to breach their fiduciary duties to plaintiff and the other members of the  
6 Class.

7 50. Plaintiff and the members of the Class have no adequate remedy at law.

8 **COUNT II**

9 **(Breach of Fiduciary Duty of Disclosure Against the Individual Defendants)**

10 51. Plaintiff repeats and realleges the preceding allegations as if fully set forth  
11 herein.

12 52. The Individual Defendants have caused materially incomplete information to  
13 be disseminated to the Company's public stockholders. The Individual Defendants have an  
14 obligation to be complete and accurate in their disclosures.

15 53. The Proxy Statement fails to disclose material information, including financial  
16 information and information necessary to prevent the statements contained therein from  
17 being misleading.

18 54. The omissions and disclosures by defendants concerning information and  
19 analyses presented to and considered by the Board and its advisors affirm the inadequacy of  
20 disclosures to the Company's stockholders. Because of defendants' failure to provide full  
21 and fair disclosure, plaintiff and the Class will be stripped of their ability to make an  
22 informed decision with respect to the Proposed Transaction, and thus are damaged thereby.

23 55. Plaintiff and the members of the Class have no adequate remedy at law.

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**COUNT III**

**(Aiding and Abetting the Board's Breaches of Fiduciary Duties Against ESI)**

56. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

57. Defendant ESI knowingly assisted the Individual Defendants' breaches of fiduciary duties in connection with the Proposed Transaction, which, without such aid, would not have occurred. In connection with discussions regarding the Proposed Transaction, ESI provided sensitive non-public information concerning the Company enabling MKS to pursue the Proposed Transaction, which offers unfair and inadequate consideration.

58. As a result of this conduct, plaintiff and the other members of the Class have been and will be damaged in that they have been and will be prevented from obtaining fair consideration for their ESI shares.

59. Plaintiff and the members of the Class have no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff prays for judgment and relief as follows:

A. Ordering that this action may be maintained as a class action and certifying plaintiff as the Class representative and plaintiff's counsel as Class counsel;

B. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction unless and until the Company provides all material information to its stockholders to allow them to make a fully informed voting decision with respect to the Proposed Transaction;

C. Directing defendants to account to plaintiff and the Class for their damages sustained because of the wrongs complained of herein;

D. Awarding plaintiff the costs and disbursements of this action, including reasonable allowance for plaintiff's attorneys' and experts' fees; and

E. Granting such other and further relief as this Court may deem just and proper.

1 **JURY DEMAND**

2 Plaintiff hereby requests a trial by jury on all issues so triable.

3  
4 DATED this 5th day of December, 2018.

5 MARKOWITZ HERBOLD PC

6 By: */s/ Dallas DeLuca*

7 Dallas DeLuca, OSB #072992  
8 DallasDeLuca@MarkowitzHerbold.com  
9 Attorneys for Plaintiff

10 TRIAL ATTORNEY: DALLAS DELUCA

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