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Plaintiff Grant Heath

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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 GRANT HEATH, on behalf of himself and all
11 others similarly situated,

12 Plaintiffs,

13 vs.

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

15 Defendants.
16

Case No. 3:17-cv-07196

CLASS ACTION

**COMPLAINT FOR VIOLATION OF
FEDERAL SECURITIES LAW**

17 Plaintiff Grant Heath (“Plaintiff”) alleges the following based upon the investigation of
18 counsel, which included a review of United States Securities and Exchange Commission (“SEC”)
19 filings by United States Aqua Metals, Inc. (“Aqua Metals” or the “Company”), as well as regulatory
20 filings and reports, securities analyst reports and advisories by the Company, press releases and other
21 public statements issued by the Company, and media reports about the Company. Plaintiff believes that
22 additional evidentiary support will exist for the allegations set forth herein after a reasonable
23 opportunity for discovery.

24 **NATURE OF THE ACTION**

25 1. This is a federal securities class action on behalf of all investors who purchased or
26 otherwise acquired Aqua Metals securities between May 19, 2016, and November 9, 2017, inclusive
27 (the “Class Period”).

1 Act because many of the false and misleading statements were made in or issued from this District.

2 **PARTIES**

3 11. Plaintiff Grant Heath purchased Aqua Metals securities as set forth herein and in his
4 certification filed herewith.

5 12. Aqua Metals is a Delaware corporation with its principal executive offices located at
6 1010 Atlantic Avenue, Alameda, California 94105. Aqua Metals trades on the NASDAQ under the
7 ticker symbol "AQMS."

8 13. Defendant Stephen R. Clarke ("Clarke") was the President, Chief Executive Officer
9 ("CEO") and Chairman of the Board of the Company at all relevant times.

10 14. Defendant Thomas Murphy ("Murphy") was the Chief Financial Officer ("CFO") and a
11 Director of the Company from the beginning of the Class Period to August 10, 2017.

12 15. Defendant Mark Weinswig ("Weinswig") was the Chief Financial Officer ("CFO") and
13 a Director of the Company from August 10, 2017, to the end of the Class Period.

14 16. Defendants Clarke, Murphy and Weinswig are collectively referred to herein as the
15 "Individual Defendants."

16 17. Aqua Metals and the Individual Defendants are collectively referred to as the
17 "Defendants."

18 **CONTROL PERSON ALLEGATIONS**

19 18. By reason of the Individual Defendants' positions with the Company as executive
20 officers, the Individual Defendants possessed the power and authority to control the contents of Aqua
21 Metals' quarterly reports, press releases, and presentations to securities analysts, money and portfolio
22 managers, and institutional investors, i.e., the market. The Individual Defendants were provided with
23 copies of the Company's reports and press releases alleged herein to be misleading prior to or shortly
24 after their issuance and had the ability and opportunity to prevent their issuance or cause them to be
25 corrected. Because of their positions with the Company, and their access to material, non-public
26 information available to them but not to the public, the Individual Defendants knew that the adverse
27 facts specified herein had not been disclosed to and were being concealed from the public, and that the

1 positive representations being made were then materially false and misleading. The Individual
2 Defendants are liable for the false statements pleaded herein.

3 SUBSTANTIVE ALLEGATIONS

4 **Background**

5 19. Aqua Metals identifies itself as a company reinventing lead recycling by using a room
6 temperature, water-based process called AquaRefining. Aqua Metals built its first recycling facility in
7 Nevada's Tahoe Reno Industrial Complex.

8 20. AquaRefining aims at using bio-degradable aqueous solvent and a novel ambient
9 temperature electro-chemical process to produce pure lead (with higher than 99.99% purity).

10 **Material Misrepresentations and Omissions**

11 21. The Class Period begins on May 19, 2016, when Aqua Metals issued a press release
12 ("May 2016 Press Release") announcing a partnership between Interstate Battery System International,
13 Inc. ("Interstate Battery") and Aqua Metals ("Interstate Battery Partnership"). The press release stated
14 in relevant part:

15 ALAMEDA, Calif., May 19, 2016 (GLOBE NEWSWIRE) -- Aqua Metals, Inc.
16 (NASDAQ: AQMS) (Aqua Metals), which is commercializing a non-polluting
17 electrochemical lead recycling technology called AquaRefining™, today
18 announced the signing of definitive agreements with Interstate Batteries.
19 Interstate Batteries is the No. 1 replacement battery brand, the largest
20 independent battery distribution system in North America and the country's
21 leading battery recycler.

22 *Upon the closing of these agreements, Interstate Batteries has agreed to
23 supply more than a million automotive and other lead-acid batteries as
24 feedstock for Aqua Metals' AquaRefineries. This partnership will start with
25 Aqua Metals' first AquaRefinery, which will be located in Nevada's Tahoe-
26 Reno Industrial Complex (TRIC) and is set to open in July 2016. Interstate
27 Batteries will also make a strategic investment of approximately \$10 million
into Aqua Metals.*

24 "Interstate Batteries seeks out innovation, pursues opportunities and invests in
25 the technology we need to succeed not just today, but also tomorrow," said Scott
26 Miller, president and CEO of Interstate Batteries. *"Our focus is on the future of
our industry and continued growth. Aqua Metals' breakthrough technology is
a promising new way for recycling lead-acid batteries."*

27 Aqua Metals' patent-pending AquaRefining process is an environmentally
friendly electrochemical process for recycling lead-acid batteries. *AquaRefining*

1 *is a closed-loop, room temperature, water-based recycling method that is*
2 *fundamentally non-polluting, yet able to yield nearly 100 percent lead*
3 *recovery.*

4 “With its forward-thinking environmental goals, broad distribution network and
5 strong brand name, Interstate Batteries is an ideal partner for us as we scale our
6 business,” said Dr. Stephen Clarke, chairman and CEO of Aqua Metals. “*As we
7 grow, we are able to create a more sustainable ecosystem for lead as a power
8 source.* We look forward to growing our partnership with Interstate Batteries.”

9 Emphasis added.

10 22. Following this press release and in response to what appeared at the time as positive
11 news, the price per share of Aqua Metals increased \$2.26, or close to 29%, from a close of \$7.80 on
12 May 18, 2016, to a close of \$10.06 on May 19, 2016.

13 23. On August 2, 2016, Aqua Metals issued a press release announcing the opening of the
14 Tahoe-Reno Industrial Center (“TRIC”) in McCarran, Nevada (“August 2016 Press Release”). The
15 press release stated in relevant part:

16 ALAMEDA, Calif., Aug. 02, 2016 (GLOBE NEWSWIRE) -- Aqua Metals, Inc.
17 (NASDAQ:AQMS) (Aqua Metals), which is commercializing a non-polluting
18 electrochemical lead recycling technology called AquaRefining™, held an open
19 house at its first AquaRefinery at the Tahoe-Reno Industrial Center (TRIC) in
20 McCarran, Nevada. AquaRefining is the world’s first environmentally friendly
21 process to recycle lead-acid batteries (LABs).

22 * * *

23 “The first AquaRefinery at TRIC is an exciting start to a cleaner future for the
24 lead industry,” said Stephen Clarke, CEO of Aqua Metals. “Lead-acid batteries
25 are over 99% recyclable, but until now, there has been no way to recycle lead in
26 an environmentally friendly fashion. With this AquaRefinery and more expected
27 to come, Aqua Metals is doing its part to create the most sustainable battery
technology the world has ever seen, while also providing economic benefits to
recyclers, manufacturers and distributors.”

The proprietary AquaRefining technology extracts lead from LABs with a room
temperature, closed-loop, water-based process that results in vast reductions of
hazardous waste and direct human contact with the lead itself. ***The process
produces lead that is as pure as – or purer than – mined lead, requiring no
secondary processing.*** Battery Systems Inc. has a 200,000 square foot battery
distribution and collection facility adjacent to Aqua Metals’ TRIC facility.
Interstate Batteries, which made a \$10 million investment into Aqua Metals, has
already committed to provide used LABs to recycle at the facility. Interstate
Batteries controls 20 percent of the lead-acid battery recycling market in the
United States.

* * *

1 “This first-ever AquaRefinery has the potential to change our industry, and our
 2 planet,” said Scott Miller, president and CEO of Interstate Batteries. “While
 3 we’ve been in the battery business for more than six decades, Interstate
 4 continues to seek out innovation and invest in technology for today, and
 5 tomorrow. ***Because Aqua Metals’ breakthrough technology is so promising,
 Interstate Batteries is supplying more than a million automotive and other
 lead-acid batteries to the AquaRefinery over the next year.*** We feel we’re
 making a smart investment in our future, and in the future of our industry.”

6 Emphasis added.

7 24. On November 1, 2016, after the market close, Aqua Metals issued a press release also
 8 attached as exhibit 99.1 to a Form 8-K filed with the SEC (“November 2016 Press Release”)
 9 announcing production of the first refined lead at the TRIC. The press release stated in relevant part:

10 **ALAMEDA, Calif.** – November 1, 2016 – Aqua Metals (NASDAQ: AQMS)
 11 today announced that it has produced the first-ever AquaRefined lead at its
 12 flagship AquaRefinery in McCarran, Nevada. AquaRefining is a water-based,
 13 room-temperature process and is the only clean lead recycling method.

14 ***“This is a major milestone – not just for our company, but for the entire
 15 industry,”*** said Dr. Stephen R. Clarke, Chairman and CEO of Aqua Metals.
 16 ***“Our commercial-scale AquaRefining modules have the potential to
 17 revolutionize lead recycling and make lead-acid batteries the only truly
 18 sustainable battery technology. We are confident that our lead products will
 19 exceed the most rigorous industry specifications.*** I am extremely proud of our
 20 entire team for making this dream a reality.”

21 AquaRefining uses an entirely reusable water-based technology to produce
 22 ingots of ultrapure lead. Through its own on-site assay, Aqua Metals has verified
 23 that the lead produced in the AquaRefining module is over 99.99 percent pure.
 24 The Company will send its initial production samples to several U.S. battery
 25 manufacturing companies—which collectively represent over 50 percent of U.S.
 battery production—to allow them to conduct their own assays.

26 Aqua Metals previously demonstrated the effectiveness of its technology at
 27 bench scale, pilot scale and with a single, full-size electrolyzer. ***The Company
 has now produced high-quality AquaRefined lead with a commercial-scale
 AquaRefining module at its facility in the Tahoe-Reno Industrial Center in
 Nevada.***

“This is the most critical step in the commissioning process of the Nevada
 AquaRefinery,” Dr. Clarke continued. “Over the coming weeks we plan to fully
 integrate the front-end battery-breaking portion of the facility.”

Emphasis added.

25 25. On February 9, 2017, Aqua Metals issued a press release (“February 2017 Press
 26 Release”), announcing a battery recycling technology partnership between Johnson Controls
 27

1 International plc (“Johnson Controls” or “JCI”) and Aqua Metals (“JCI Partnership”). The press
2 release stated in relevant part:

3 “ALAMEDA, Calif., Feb. 9, 2017 /PRNewswire/ -- Johnson Controls (JCI),
4 finalized an agreement covering North America, China and Europe for a cutting-
5 edge electrochemical battery recycling technology. Under terms of a multi-
6 faceted deal, the company is investing in Aqua Metals (AQMS).

7 * * *

8 *"Our partnership with Johnson Controls is a tremendous step forward and is
9 an opportunity for us to work with the global leader in automotive battery
10 manufacturing and responsible recycling,"* said Dr. Stephen Clarke, chairman
11 and CEO of Aqua Metals. "We will build on this exciting relationship in order to
12 enable clean and efficient battery recycling around the world."

13 Under the agreement Johnson Controls will also:

- 14 • Become the first licensee for AquaRefining™ technology
- 15 • Supply Aqua Metals with batteries to recycle as a service, as part of the
16 Johnson Controls closed-loop network
- 17 • Purchase AquaRefined™ metals produced from Aqua Metals' facilities
- 18 • Acquire just under 5 percent of Aqua Metals outstanding shares
- 19 • "Agreements like this are a part of our continuing strategy to invest in clean
20 technologies, building on our commitment to create a more sustainable and
21 environmentally responsible industry," said Joe Walicki, president of
22 Johnson Controls Power Solutions.

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

27 Emphasis added.

28 26. Following this press release and in response to what also appeared at the time as
29 positive news, the price per share of Aqua Metals increased \$4.75, or approximately 41.6%, from a
30 close of \$11.41 on February 8, 2017, to a close of \$16.16 on February 9, 2017.

31 27. On February 14, 2017, Aqua Metals issued a press release, also attached as exhibit 99.1
32 to the Form 8-K filed with the SEC announcing the Company's financial and operating result for the
33 fiscal fourth quarter and fiscal year ended December 31, 2016 ("FY 2016 Press Release"). For the
34 year, the Company reported a net loss of \$13.6 million, compared to a net loss of \$12.3 million in the
35 previous fiscal year. The FY 2016 Press Release stated in relevant part:

36 **ALAMEDA, Calif., February 14, 2016** – Aqua Metals, Inc. (NASDAQ:
37 AQMS), which is commercializing a non-polluting electrochemical lead

1 recycling technology called AquaRefining™, has provided a corporate update
2 and announced results for the fourth quarter and fiscal year ended December 31,
2016.

3 **Company Highlights:**

- 4 · Successfully commissioned and in the process of scaling up production of
AquaRefined lead at AquaRefinery 1 in McCarran, Nevada at the Tahoe
5 Reno Industrial Center (TRIC)
- 6 · Signed a strategic partnership covering North America, China and Europe
with Johnson Controls, the world's largest manufacturer of automotive
7 batteries. Under the agreements, Johnson Controls has invested \$10.6
million for approximately 5% of Aqua Metals outstanding shares; become
8 the first licensee for AquaRefining technology; agreed to supply Aqua
Metals with batteries to recycle as a service; and agreed to purchase
AquaRefined metals produced from Aqua Metals' facilities.
- 9 · Signed a strategic partnership with Interstate Batteries, the No. 1 replacement
10 battery brand, the largest independent battery distribution system in North
America and the country's leading battery recycler. Under the agreements,
11 Interstate Batteries made a strategic investment of approximately \$10.0
million into Aqua Metals, and agreed to supply lead-acid batteries as
12 feedstock to Aqua Metals.

13 **Management Commentary**

14 *"2016 was a pivotal year for the company, as we successfully built,
commissioned and began producing products at the world's first
15 AquaRefinery and deepened our strategic relationships with major players
throughout the industry,"* said Dr. Stephen Clarke, Chairman and CEO of Aqua
16 Metals. *"Our partnerships, most recently with Johnson Controls—the global
leader in automotive battery manufacturing and responsible recycling— and
17 Interstate Batteries—the largest independent battery distribution system in
North America and the country's leading battery recycler. — and Battery
Systems Inc. – one of the largest independent battery distributors in the U.S.
18 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
19 expansion of AquaRefinery 1 and the construction of additional facilities.*

20 Emphasis added.

21 28. The same day, during a conference call to discuss the Company's financial and
22 operating result for the fiscal fourth quarter and fiscal year ended December 31, 2016 ("FY 2016 Conf.
23 Call"), Aqua Metals' CEO, Defendant Clarke commented about the production:

24 Thank you, Greg and welcome everybody to the 2016 year-end conference call.
25 One of the headlines today is that the first ever AquaRefinery located at Tahoe
Reno Industrial Center, has moved from commissioning to operational. *That*
26 *means that we are breaking batteries and making lead from the batteries that*
we've broken, both from -- both metallic lead and Aqua-refined lead. It's
27 *continuing to ramp-up.* We are not at full scale yet and there is more work to be
done.

1 * * *

2 So moving on. So let's talk about our Tahoe, Reno facility. *As I mentioned at*
3 *the start, it's now running we have transitioned out of a mostly startup phase*
into a commissioning phase, into an operational phase.

4 Emphasis added.

5 29. During the Q&A session, analyst Bhakti Pavani from Euro-Pacific Capital, Inc. inquired
6 about a "blueprint date" for the JCI Partnership to which Defendant Clarke responded in relevant part:

7 **Bhakti Pavani**

8 Got it. Okay. Thank you. Wanting to talk about the Johnson Control agreement,
9 I know in the 8-K you did mention about there would be a mutually agreed
10 blueprint date, especially with the equipment supply agreement. Have you guys
11 -- could you maybe provide more color on what kind of timeline are we talking
12 about?

13 **Stephen Clarke**

14 *Well we're on it already. I'm not going to get into two much more detail on*
15 *that. We are -- both parties are working hard on this. We'll be making*
16 *announcement on that in a few days.*

17 Emphasis added.

18 30. Defendant Clarke then provided details on the technology, to assure investors about the
19 overcoming of major challenges and operability of the process:

20 So our process is fundamentally different. We use a breaker while we use
21 exactly the same source and equipment but our process runs wetter. And what
22 we produce from our breaker is different in a key respect. We make the lead
23 paste which is the active material in a batteries, lead acid, lead sulfate and
24 spongy lead and co-compounds of those.

25 We also separate out metallic lead which is the good lead and the top lead. That
26 is actually quite high value lead alloy, it's going to be produce back into good
27 lead and it starts soft as good lead and one of the advantages of our process is
we don't have to do anything more to that, other than [indiscernible] turn into
ingots and sell it as lead alloy.

The other stack is that lead paste runs through a process that we've been calling
desulphurization and then from there runs in to AquaRefining from which it's
ingoted. One of the key point here is that the process that we call
desulphurization in many respect is fundamentally different from the processes
that operate in a smelter.

We have to take -- we choose to take much higher level of the sulfur out and we
do some other proprietary steps to that paste before we put into our
AquaRefining process. So one of the key process is here that we have to develop
and scale was that multi-step desulphurization process.

So moving on and talk a little bit about what we learned along the way. So it

1 was the first kind, and we were surprised. There were a number of surprises
2 encountered as we built this and we are a few months later than we hoped we
3 would be in commissioning and transitioning TRIC from startup to operations.
4 And I'm just want to talk about some of the lessons learned there.

5 So starting with the input side, we spent some time dealing with jams on the
6 conveyor belt for the breaker, calibrating the several sourcing steps in that. We
7 had some issues with seals and bearing which required redesigns and change
8 outs. ***And we accomplished all of that in six months, which I believe is quite
9 remarkable given industry standards.*** Then in the processes, transporting the
10 lead paste from the breaker through desulphurization we had a number of
11 redesign issues around pumps and materials handling and various other aspects
12 as we learned that there are some differences in handling our paste input to
13 desulphurization from a convention dry powder.

14 The desulphurization itself is a multi-step process. I'm not going to break it
15 down because it's proprietary but this really was the first time that we operate
16 this at scale. ***We've been able to run the AquaRefining systems because it's
17 modular for several years now*** and to dial that technology in one of biggest
18 challenges we had is that the desulphurization process operates in 40 to 80 tons a
19 day of throughput. This is something you can't really pilot or even test in a lab.
20 It has to be built or worked out in real-time. ***It's a unique process and the big
21 news is that we've got that dialed in now and it's operating. That means that
22 we can provide feedstock to the AquaRefiners and make AquaRefined lead.***

23 Emphasis added.

24 31. During the FY 2016 Conf. Call, Defendant Clarke emphasized the importance of the
25 JCI Partnership and the Interstate Battery Partnership, stating in relevant part:

26 So now I'll talk about the JCI agreements. There is really three phases to this, the
27 first agreement is a tolling and lead purchase agreement in which JCI provides
28 feedstock on a tolling basis. That means they provide the batteries and provide a
29 fee for us to convert those batteries into lead that we provide back to JCI.

30 * * *

31 What does it all mean? Well, we have been working on this agreement with JCI
32 for a number of months now, and looking at the tolling lead purchase agreement,
33 I alluded for this a moment ago, it pretty much gives us all the supply. ***If we take
34 what we've got with Interstate Batteries and Battery Systems Inc., and then lay
35 on top, the demand and supply and off-take with JCI, it gives everything that
36 we need to scale from 160 tons to 800 tons a day.***

37 As we've been talking to JCI for a number of months, we've been talking to
38 providers of debt and non-dilutive finance for a number of months and we're
39 looking at a \$250 million package of finance, which really needs a high credit
40 worthy third party to supply the batteries and take a lead. And so we believe that
41 the bond we have with JCI and Interstate and Battery Systems Inc., actually
42 meets a prerequisites for the supply and off-take part of a \$250 million non-
43 diluting finance package that will take us from AquaRefinery [. . .] there is a lot
44 promising to actually close any particular debt finance package, but it certainly

1 moves as a giant step forward to be able secure that.

2 Emphasis added.

3 32. On March 2, 2017, Aqua Metals filed a Form 10-K with the SEC announcing the
4 Company's financial and operating results for the fiscal fourth quarter and fiscal year ended December
5 31, 2016 ("2016 10-K"), which was signed and certified under the Sarbanes Oxley Act of 2002 by the
6 Individual Defendants. Throughout the 2016 10-K, the Company reapproved the previous statements.

7 33. On May 9, 2017, after the market close, Aqua Metals issued a press release, also
8 attached as exhibit 99.1 to the Form 8-K filed with the SEC announcing the Company's financial and
9 operating result for the fiscal first quarter ended March 31, 2017 ("Q1 2017 Press Release"). For the
10 quarter, the Company reported a net loss of \$4.9 million, compared to a net loss of \$2.2 million for the
11 previous year's comparable quarter. The Q2 2017 Press Release stated in relevant part:

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

15 **Company Highlights**

16 · Began production at AquaRefinery 1 in McCarran, Nevada at the Tahoe
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 2017.

17 · In the first quarter of 2017, signed a strategic partnership covering North
18 America, China and Europe with Johnson Controls, the world's largest
19 manufacturer of automotive batteries. Under the agreements, Johnson Controls
20 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' facilities.

21 * * *

22 **Management Commentary**

23 *"With the world's first AquaRefinery now in commercial operation and*
24 *generating revenue, we are aggressively scaling up operations and ramping*
25 *our capacity to reach 120 metric tonnes per day by the end of 2017,"* said Dr.
26 Stephen Clarke, Chairman and CEO of Aqua Metals. "We currently have shifts
A and B completely staffed, and plan to complete our recruitment efforts for
shifts C and D in the next month. Since day one, we've remained focused on
building a team and the proper foundation, which would allow us to rapidly
expand our innovative lead recycling technology and deliver better quality
solutions to our partners and the market as a whole.

27 *"Given we have all of the necessary permitting in place and the support*

1 *provided by strategic partnerships with some of the largest players in the*
 2 *battery industry*, we are taking the opportunity to implement the lessons learned
 3 during commissioning of AquaRefinery 1 which will accelerate our roll-out of
 4 additional facilities. These improvements and our ongoing work with our
 strategic partners is creating a blueprint for future facilities – both for our own
 and for our partners. Our goal is to roll-out facilities in the rest of North
 America, China, the European Union and elsewhere, based upon this blueprint.”

5 Clarke, continued: *“Since our last update, we’ve not only expanded our*
 6 *current strategic relationships, but continued discussions with potential*
 7 *strategic partners in complementary areas, which could help us accelerate*
 8 *expansion*. As a technology company, we are keenly focused on delivering high
 9 value products that can be used for advanced battery applications. With this in
 10 mind, we recently announced our acquisition of Ebonex, which we acquired for
 the purpose of accelerating the development and testing of our nano-structured
 lead as a high performance active material and potentially use their Ebonex™
 material as a complimentary additive. Through this acquisition, our goal is to
 develop technology, equipment and processes that will eventually allow our
 customers to deliver ‘better’ batteries.

11 *“For the remainder of 2017, we plan to ramp up production at AquaRefinery 1*
 12 *and to prepare for accelerated build-out of additional facilities, while*
 13 *concurrently moving forward with our plans for additional AquaRefineries,*
 securing non-dilutive financing to accommodate our growth and finalizing our
 plan to retrofit a to-be-named recycling facility with our strategic partner in
 2018.”

14
 15 Emphasis added.

16 34. The statements in paragraphs ¶21-33 above were materially false and/or misleading
 17 because they misrepresented and failed to disclose the following adverse facts pertaining to the
 18 Company’s business, operations, and prospects, which were known to Defendants or recklessly
 19 disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to
 20 disclose that:

21 (a) the Company was touting the business value of the Interstate Battery Partnership and
 22 the JCI Partnership, primarily because

23 (b) the Company was aware of and ignoring material unresolved deficiencies in the
 24 AquaRefine technology and process preventing large scale development;

25 (c) the Company was experiencing numerous execution and operational issues
 26 preventing scaling and production ramp up at its facility;

27 (d) the Company was unable to produce and generate revenue from its core business,

1 therefore remaining unprofitable, and

2 (e) as a result of the foregoing, Defendants' statements about its business and operations
3 were materially false and misleading at all relevant times.

4 **The Truth Begins to Emerge**

5 35. Later on May 9, 2017, during a conference call to discuss the Company's financial and
6 operating result for the fiscal first quarter ended March 31, 2016 ("Q1 2017 Conf. Call"), Aqua
7 Metals' CEO, Defendant Clarke described a long list of unresolved and/or partially resolved issues the
8 Company was in fact facing with the development of its technology, stating in relevant part:

9 On the next slide I am going to go through some of the improvements that we
10 developed and *some of the issues we faced and the challenges that we had as*
11 *we ramped up this process*. So anybody who has worked in the battery recycling
12 industry knows that breakers break. Breaking and separation is the most
13 challenging process for any battery recycling Company. And what we can say is
14 it took longer than we planned to get the breaking and separation up and
15 running, but actually considerably shorter than industry norms. *One of the*
16 *challenges that was unique to us that we faced is that, because we don't have a*
17 *smelter, we don't have a furnace, we needed to achieve much higher degree of*
18 *separation than is normal in this industry*.

19 And what I mean by that is our plastic had to be clean plastic with no lead oxide
20 and no lead dust on it. Our metallic lead had to be metallic lead with no plastic
21 and no lead oxide and no lead sulfate on it. Our lead compounds had to be lead
22 oxide, lead sulfate and other lead compounds with no plastic and no metallic
23 lead in it. That's a really tough order and we achieved it. And we worked very
24 closely with Wirtz Engineering who have been tremendous in this operation. We
25 asked them to do things that no other battery breaking Company has ever been
26 asked to do. It took us a while to get there but we achieved it and we developed
27 and implemented numerous, far too numerous to mention, upgrades to support
what is essentially an industry-leading level of separation. And we think that's
something that we are working actually on developing to know how and maybe
even some IP down the line. But when we talk about breaking and separation we
are operating at levels of separation that we don't know of anybody else in the
industry even close to.

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

1 Looking at the aqua preparation, which is where we make the electrolyte, we
 2 were later -- quite a bit later and slower in being able to bring this online.
 3 *Initially because of intermittent supply from the breaker, without consistent*
 4 *high quality lead compounds from the breaker it's very difficult to commission*
 5 *the processes that turn that and turn it into electrolyte. We weren't idle*
 6 *though. Whilst we had this spare time and capacity we actually used that to*
 7 *switch to an improved and lower cost chemistry for our desulfurization and*
 8 *separation technology which is a real big benefit down the line. And we*
 9 *learned some tough lessons on tank mixing and filtration which needed to be*
 10 *changed and upgraded to improve reliability, but the aqua preparation now is up*
 11 *and running.*

7 Similarly with AquaRefining, those of you who followed us knew that we had a
 8 module online in October and we were struggling to -- with intermittent supply
 9 from both aqua preparation, which was struggling with intermittent supply from
 10 the breaker, to get sufficient electrolyte up and running to commission all of the
 11 modules. *So we were limited to only have the electrolyte to run a single module*
 12 *until that opportunity, again to learn, to improve and to implement.* So we
 13 used that delay in commissioning the additional AquaRefining modules to test
 14 and implement numerous upgrades that have improved potential liability,
 15 lifetime, reduced cost and improved consistency of operation.

12 And last but not least, again, same theme here, we were struggling to
 13 commission the ingot casting process because, again, of intermittent supply of
 14 processed lead. We've now got all of that and the ingot casting is --
 15 commissioning is underway. So moving on, the AquaRefinery that we are
 16 working towards and we are on track to be at 120 metric tons a day by the end of
 17 the year, I want to say by the end of the year. We are hoping to be there sooner
 18 than that. But essentially where we are at now is modules five to 16 are being
 19 assembled to the latest engineering standard. Ingotting is being commissioned.

17 Emphasis added.

18 36. On the release of the news, the stock price declined \$4.34 from a close of \$16.65 per
 19 share of Aqua Metals stock on May 9, 2017, to a close of \$12.31 per share on May 10, 2017, a drop of
 20 approximately 26%.

21 **Additional Misstatements**

22 37. On May 31, 2017, Aqua Metals issued a press release announcing analyst's tour of
 23 TRIC, the Company's facility ("May 2017 Press Release"). The press release stated in relevant part:

24 Analysts tour AquaRefining™ facility operations, meet with executive team

25 ALAMEDA, Calif., May 31, 2017 (GLOBE NEWSWIRE) -- Aqua Metals, Inc.
 26 (NASDAQ:AQMS), ("Aqua Metals" or the "Company"), which is
 27 commercializing a non-polluting electrochemical lead recycling technology
 called AquaRefining™, today successfully hosted its first analyst visitor day.

The analysts were given a tour of AquaRefinery 1, located in the Tahoe-Reno

1 Industrial Complex (TRIC), led by Aqua Metals' executive management team.
 2 *Analysts were able to view the critical processes at the AquaRefinery as they*
 3 *happened, including: battery feedstock deliveries; battery breaking and*
 4 *separation; desulfurization and pre-AquaRefining digestion processes;*
 5 *AquaRefining on simultaneously running AquaRefining modules; and*
 6 *shipments of lead products to customers.*

7 * * *

8 “It has been a busy few months for our team as we continue to pursue our
 9 production milestones and step ever closer to full output of AquaRefined lead at
 10 TRIC,” said Dr. Stephen R. Clarke, CEO and chairman of Aqua Metals. “We
 11 aim to be as transparent as possible while protecting our IP, as we expand our
 12 operations and collaborate with new partners. This was a valuable opportunity
 13 to open our doors to the analyst community, providing a behind-the-scenes look
 14 at our process.”

15 The Company expects all the analysts who attended the visitor day to update
 16 their coverage reports to reflect findings from the site visit in the coming days.

17 AquaRefinery 1 is ramping towards a total production output of 120 metric
 18 tonnes of lead products per day by the end of 2017. Aqua Metals is currently
 19 also working on plans to build a second AquaRefinery and integrating
 20 AquaRefining into a to-be-named existing lead smelter with its strategic partner,
 21 Johnson Controls. Regular updates on scaling of production and other Aqua
 22 Metals news can be found on the Aqua Metals website
 23 (<http://www.aquametals.com>).

24 Emphasis added.

25 38. The statements in paragraph ¶37 above were materially false and/or misleading because
 26 they misrepresented and failed to disclose the following adverse facts pertaining to the Company's
 27 business, operations, and prospects, which were known to Defendants or recklessly disregarded by
 them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that:

(a) the Company was touting the business value of the Interstate Battery Partnership and
 the JCI Partnership, primarily because

(b) the Company was aware of and ignoring material unresolved deficiencies in the
 AquaRefine technology and process preventing large scale development;

(c) the Company was experiencing numerous execution and operational issues
 preventing scaling and production ramp up at its facility;

(d) the Company was unable to produce and generate revenue from its core business,
 therefore remaining unprofitable, and

1 (e) as a result of the foregoing, Defendants' statements about its business and operations
2 were materially false and misleading at all relevant times.

3 **The Truth Continues to Emerge**

4 39. On August 9, 2017, Aqua Metals issued a press release, also attached as exhibit 99.1 to
5 the Form 8-K filed with the SEC announcing the Company's financial and operating result for the
6 fiscal second quarter ended June 30, 2017 ("Q2 2017 Press Release"). For the quarter, the Company
7 reported a net loss of \$8.4 million, compared to a net loss of \$2.9 million for the previous year's
8 comparable quarter. Additionally, the Company reported revenue of \$603,000. The Q2 2017 Press
9 Release stated in relevant part:

10 **ALAMEDA, Calif., August 9, 2017** – Aqua Metals, Inc. (NASDAQ: AQMS),
11 which is commercializing a non-polluting electrochemical lead recycling
12 technology called AquaRefining™, has provided a corporate update and
13 announced results for the second quarter ended June 30, 2017.

14 **Company Highlights**

- 15 • Recognized our first revenues from AquaRefinery 1 at the Tahoe Reno
16 Industrial Center (TRIC) in McCarran, Nevada.
- 17 • As of July, the Company had four AquaRefining modules commissioned
18 and in operation. The Company is currently in the process of scaling up
19 AquaRefining operations to include 16 modules by the end of 2017.

20 * * *

21 **Management Commentary**

22 *"In the second quarter, the company faced and overcame many challenges as
23 we worked to ramp up production.* With four AquaRefining modules now on-
24 line and our front-end processes operational, we are totally focused on
25 commissioning the balance of the 16 AquaRefining modules and the production
26 of AquaRefined lead. With the operational experience we have gained, we are
27 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.

28 **Second Quarter 2017 Financials**

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

31 Emphasis added.

32 40. The same day, during a conference call to discuss the Company's financial and
33 operating result for the fiscal second quarter ended June 30, 2017 ("Q2 2017 Conf. Call"), Aqua

1 Metals' CEO, Defendant Clarke while overly-optimistic, disclosed another list of unresolved and/or
2 partially resolved issues with the process, in relevant part:

3 So the headlines there are that, breaking and separation is now operational. We
4 mentioned before in previous earnings calls that we would identify some issues
5 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.

* * *

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

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

13 The next part of the commissioning process was to bring the electrolyte virtual
14 we call aqua preparation which is where we take the active material the oxide to
sulfates and convert them into the electrolyte that we used to feed to our
AquaRefining systems.

15 And similarly we looked outside of our own skill set and we looked to the
16 leading players in the chemical industry to bring techniques and best practices
17 from the specialty chemical industry to bare on that process and not only it is
18 commission and running but we've actually achieved a fourfold reduction in the
19 electrolyte volume that means we've reduced the volume of electrolyte that we
need to operate by a factor of four which is pretty considerable and I believe it is
a remarkable testament to the hard work and effort of the technical and
operations team in achieving that.

* * *

20 So I'll just talk about a few of those we've have simplified the design of the
21 modules and reduce some of the components. We've made it fairly significant
22 reduction in plate and voltage and the energy required with significant I'm
23 talking in the 20%.

24 We've also been able to improve the range of operating parameters that
AquaRefining modules can operate under which gives us a high degree of
25 flexibility in operation. We've also made them more robust.

* * *

26 And this is where we start to change the game. This is where we start to make
27 our highest quality product. It's also where we expect our highest margins. So if
you look at the improvements we made - and we talked about in the previous

1 slides, with all those improvements and upgrades, we now have five-nine battery
2 processing capacity that we can utilize with the 16 AquaRefining modules that
we plan for installation.

3 And we have the option of producing and selling lead components from
4 AquaRefining feedstock, and we've done this. And as Tom will say shortly,
that's where much of our revenue for the second quarter came from.

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

8 So it's all about AquaRefining but optimal product mix and profitability. We're
9 focused on running all of our AquaRefining modules to the maximum benefit.
And that means that we may choose to operate the overall facility with an output
10 of less than 120 tons a day, but with maximized AquaRefining. And we're
looking to change our product mix to a higher level of AquaRefining product.

11 Emphasis added.

12 41. Later on during the call, Aqua Metals' CFO, Defendant Murphy disclosed that the
13 \$603,000 recognized in revenue consisted only of sales of plastic and lead compounds.

14 42. The same day, the Company filed a Form 10-Q with the SEC announcing the
15 Company's financial and operating result for the fiscal second quarter ended June 30, 2017 ("Q-2 2017
16 10-Q") which was signed and certified under the Sarbanes Oxley Act of 2002 by the Individual
17 Defendants. Throughout the Q2 2017 10-Q the company reapproved the previous statements.

18 43. On the release of the news, the stock price declined from a close of \$10.87 per share of
19 Aqua Metals stock on August 9, 2017, to a close of \$8.31 per share on August 10, 2017, a drop of
20 approximately 23.55%.

21 **Additional Misstatements**

22 44. During the Q2 2017 Conf. Call, Aqua Metals' CEO, Defendant Clarke assured
23 investors, once again, that "*AquaRefining works*" by highlighting that the Company had now "*four*
24 *modules operating.*"

25 45. The statements in paragraphs ¶44 above were materially false and/or misleading
26 because they misrepresented and failed to disclose the following adverse facts pertaining to the
27 Company's business, operations, and prospects, which were known to Defendants or recklessly

1 disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to
2 disclose that:

3 (a) the Company was touting the business value of the Interstate Battery Partnership and
4 the JCI Partnership, primarily because

5 (b) the Company was aware of and ignoring material unresolved deficiencies in the
6 AquaRefine technology and process preventing large scale development;

7 (c) the Company was experiencing numerous execution and operational issues
8 preventing scaling and production ramp up at its facility;

9 (d) the Company was unable to produce and generate revenue from its core business,
10 therefore remaining unprofitable, and

11 46. (e) as a result of the foregoing, Defendants' statements about its business and operations
12 were materially false and misleading at all relevant times

13 **The Truth Emerges**

14 47. On September 27, 2017, Aqua Metals filed a Form 8-K with the SEC announcing that,
15 contrary to what was disclosed during the Q&A session of the FY 2016 Conf. Call, the Company had
16 "commenced meetings" for the purposed of "furthering discussions" with JCI ("September 2017 Form
17 8-K"). The Form 8-K stated in relevant part:

18 On February 7, 2017, we entered into an Equipment Supply Agreement with a
19 wholly-owned indirect subsidiary of Johnson Controls International plc, or
20 Johnson Controls, pursuant to which we agreed to collaborate on the
21 development of a program for the installation of new greenfield builds and
22 conversion of existing Johnson Controls' and certain strategic partners of
23 Johnson Controls existing lead smelters to a lead recycling process utilizing our
24 proprietary and patent-pending AquaRefining technology and equipment, know-
25 how and services.

26 On September 15, 2017, Johnson Controls delivered to us written notice of the
27 first Johnson Controls facility designated by it, on a preliminary basis, for
conversion or retrofit. On September 25, 2017, we delivered to Johnson Controls
written notice our readiness to commence discussions to convert or retrofit a
Johnson Controls facility to be capable of using AquaRefining to produce lead.

During the week of September 25, 2017, we commenced meetings with Johnson
Controls for purposes of furthering the discussions concerning the conversion or
retrofit of the initial Johnson Controls facility and the negotiation of the
definitive Development Program Agreement pursuant to which we will provide
to Johnson Controls, and certain strategic partners of Johnson Controls, by way

1 of licensing or sale, AquaRefining technology and the related equipment,
2 engineering and systems integration support sufficient to convert or retrofit
3 existing smelter-based operations. Johnson Controls has reserved the right to
definitively designate the initial facility upon the parties' execution of the
definitive Development Program Agreement.

4 48. On October 23, 2017, Aqua Metals issued a press release providing update on its
5 operations ("October 2017 Press Release"). Contrary to what was disclosed during the Q2 2017 Conf.
6 Call, the Company announced that four modules were in fact used to "determine the optimal operating
7 parameters" and that the Company was only producing "small quantities" of lead. The press release
8 stated in relevant part:

9 ALAMEDA, Calif., Oct. 23, 2017 (GLOBE NEWSWIRE) -- Aqua Metals, Inc.
10 (NASDAQ:AQMS), ("Aqua Metals" or the "Company"), which is proceeding to
11 commercialize its proprietary electrochemical lead recycling technology called
AquaRefining™, has provided the following update on operations at its
McCarran, Nevada facility.

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

14 ***Four modules are assembled, commissioned and are being used to determine
15 the optimal operating parameters, including electrolyte pH, lead
16 concentration, operating temperature, electrolyte flow rate and free acid
17 levels.***

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

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

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

49. On the release of the news, the stock price declined from a close of \$5.37 per share of
Aqua Metals stock on October 20, 2017, to a close of \$4.41 per share on October 23, 2017, a drop of

1 approximately 17.9%.

2 50. On November 9, 2017, after the market close, Aqua Metals issued a press release, also
3 attached as exhibit 99.1 to the Form 8-K filed with the SEC announcing the Company's financial and
4 operating result for the fiscal third quarter ended September 30, 2017 ("Q3 2017 Press Release"). For
5 the quarter, the Company reported a net loss of \$6.3 million, compared to a net loss of \$3.5 million for
6 the previous year's comparable quarter. Throughout the Q3 2017 Press Release, the Company
7 disclosed that it was still overcoming "significant challenges" and reaffirmed that its four modules
8 were "fully assembled but not yet in operation." The press release stated in relevant part:

9 ALAMEDA, Calif., November 9, 2017 – Aqua Metals, Inc. (NASDAQ:
10 AQMS), ("Aqua Metals" or the "Company"), which is proceeding to
11 commercialize its proprietary electrochemical lead recycling technology called
AquaRefining™, has provided a corporate update and announced results for the
third quarter ended September 30, 2017.

12 Company Highlights

- 13 ● The Company currently has a total of 16 AquaRefining modules on-site and
14 in-place. Eight modules are in the final stages of on-site assembly. *Four
15 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.*
- 16 ● The ingot production line has cast lead ingots, which will be sent to
17 customers in the fourth quarter of 2017.
- 18 ● The Company overcame significant challenges with breaking and separation,
and has significantly increased the amount of throughput.

19 * * *

20 Management Commentary

21 "During the third quarter, we made significant progress towards scaling
22 operations at the world's first AquaRefining facility. We are currently in the
23 process of transitioning to the production of lead ingots that are produced from
battery grids and a small amount of AquaRefined lead," said Dr. Stephen
Clarke, Chairman and CEO of Aqua Metals.

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

"Over the last several months, we have strengthened our management and

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

6 Emphasis added.

7 51. On the release of the news and over the course of three trading days, the stock price
8 declined \$0.79 from a close of \$3.79 per share of Aqua Metals stock on November 9, 2017, to a close
9 of \$3.00 per share on November 14, 2017, a drop of approximately 20.8%.

10 **LOSS CAUSATION AND ECONOMIC LOSS**

11 52. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive
12 the market and a course of conduct that artificially inflated the Company's stock price, and operated as
13 a fraud or deceit on acquirers of the Company's securities. As detailed above, when the truth about
14 Aqua Metals' misconduct and its lack of operational and financial controls was revealed, the value of
15 the Company's securities declined precipitously as the prior artificial inflation no longer propped up its
16 stock price. The decline in Aqua Metals' share price was a direct result of the nature and extent of
17 Defendants' fraud finally being revealed to investors and the market. The timing and magnitude of the
18 common stock price decline negates any inference that the loss suffered by Plaintiff and other
19 members of the Class was caused by changed market conditions, macroeconomic or industry factors or
20 Company-specific facts unrelated to the Defendants' fraudulent conduct. The economic loss, i.e.,
21 damages, suffered by Plaintiff and other Class members was a direct result of Defendants' fraudulent
22 scheme to artificially inflate the Company's stock price and the subsequent significant decline in the
23 value of the Company's share, price when Defendants' prior misrepresentations and other fraudulent
24 conduct was revealed.

25 53. At all relevant times, Defendants' materially false and misleading statements or
26 omissions alleged herein directly or proximately caused the damages suffered by the Plaintiff and other
27 Class members. Those statements were materially false and misleading through their failure to disclose

1 a true and accurate picture of Aqua Metals' business, operations and financial condition, as alleged
2 herein. Throughout the Class Period, Defendants publicly issued materially false and misleading
3 statements and omitted material facts necessary to make Defendants' statements not false or
4 misleading, causing Aqua Metals' securities to be artificially inflated. Plaintiff and other Class
5 members purchased Aqua Metals' securities at those artificially inflated prices, causing them to suffer
6 the damages complained of herein.

7 **SCIENTER ALLEGATIONS IN SUPPORT OF EXCHANGE ACT VIOLATIONS**

8 54. Collectively, the following factual allegations strongly support an inference of scienter
9 on the part of Defendants. Further, Defendants' actions, intentions, and deliberately reckless conduct
10 are imputed to the Company as a matter of law. Because of their key roles in the Company, the
11 Individual Defendants caused Aqua Metals to act in the manner it did and perpetuate the material
12 misrepresentations and omissions it made throughout the Class Period. Defendants acted with the
13 requisite intent to establish liability under the Exchange Act. Their conduct with respect to Aqua
14 Metals' statements was intentionally misleading and/or reckless with regard to the risk of investors
15 being misled.

16 55. For the reasons stated above, the factual allegations strongly support an inference of
17 scienter on the part of Defendants.

18 **PRESUMPTION OF RELIANCE; FRAUD-ON-THE-MARKET**

19 56. At all relevant times, the market for Aqua Metals securities was an efficient market for
20 the following reasons, among others:

- 21 a) Aqua Metals securities met the requirements for listing, and were listed and actively
22 traded on the NASDAQ, a highly efficient market;
- 23 b) During the Class Period, Aqua Metals securities were actively traded, demonstrating
24 a strong presumption of an efficient market;
- 25 c) As a regulated issuer, Aqua Metals filed with the SEC periodic public reports during
26 the Class Period;
- 27 d) Aqua Metals regularly communicated with public investors via established market

1 communication mechanisms;

2 e) Aqua Metals was followed by securities analysts employed by major brokerage
3 firms who wrote reports that were distributed to the sales force and certain
4 customers of brokerage firms during the Class Period. Each of these reports was
5 publicly available and entered the public marketplace; and

6 f) Unexpected material news about Aqua Metals was rapidly reflected in and
7 incorporated into the Company's stock price during the Class Period.

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

13 58. Alternatively, reliance need not be proven in this action because the action involves
14 omissions and deficient disclosures. Positive proof of reliance is not a prerequisite to recovery pursuant
15 to ruling of the United States Supreme Court in *Affiliated Ute Citizens of Utah v. United States*, 406
16 U.S. 128 (1972). All that is necessary is that the facts withheld be material in the sense that a
17 reasonable investor might have considered the omitted information important in deciding whether to
18 buy or sell the subject security. Here, the facts withheld are material because an investor would have
19 considered the Company's true net losses and adequacy of internal controls over financial reporting
20 when deciding whether to purchase and/or sell stock in Aqua Metals.

21 **NO SAFE HARBOR; INAPPLICABILITY OF BESPEAKS CAUTION DOCTRINE**

22 59. The statutory safe harbor provided for forward-looking statements under certain
23 circumstances does not apply to any of the material misrepresentations and omissions alleged in this
24 Complaint.

25 60. To the extent certain of the statements alleged to be misleading or inaccurate may be
26 characterized as forward-looking, they were not identified as "forward-looking statements" when made
27 and there were no meaningful cautionary statements identifying important factors that could cause

1 actual results to differ materially from those in the purportedly forward-looking statements.

2 61. Defendants are also liable for any false or misleading “forward-looking statements”
3 pleaded because, at the time each “forward-looking statement” was made, the speaker knew the
4 “forward-looking statement” was false or misleading and the “forward-looking statement” was
5 authorized and/or approved by an executive officer of Aqua Metals who knew that the “forward-
6 looking statement” was false. Alternatively, none of the historic or present-tense statements made by
7 the defendants were assumptions underlying or relating to any plan, projection, or statement of future
8 economic performance, as they were not stated to be such assumptions underlying or relating to any
9 projection or statement of future economic performance when made, nor were any of the projections or
10 forecasts made by the defendants expressly related to or stated to be dependent on those historic or
11 present-tense statements when made.

12 **CLASS ACTION ALLEGATIONS**

13 62. Plaintiffs bring this action on behalf of all individuals and entities who purchased or
14 otherwise acquired Aqua Metals securities on the public market during the Class Period, and were
15 damaged, excluding the Company, the defendants and each of their immediate family members, legal
16 representatives, heirs, successors or assigns, and any entity in which any of the defendants have or had
17 a controlling interest (the “Class”).

18 63. The members of the Class are so numerous that joinder of all members is impracticable.
19 Throughout the Class Period, Aqua Metals securities were actively traded on the New York Stock
20 Exchange. While the exact number of Class members is unknown to Plaintiffs at this time and can be
21 ascertained only through appropriate discovery, Plaintiffs believe that there are hundreds or thousands
22 of members in the proposed Class. Record owners and other members of the Class may be identified
23 from records maintained by Aqua Metals or its transfer agent and may be notified of the pendency of
24 this action by mail, using the form of notice similar to that customarily used in securities class actions.
25 As of November 6, 2017, Aqua Metals had 20,402,454 outstanding shares of common stock. Upon
26 information and belief, these shares are held by thousands if not millions of individuals located
27 geographically throughout the country and possibly the world. Joinder would be highly impracticable.

1 which was intended to and, throughout the Class Period, did: (1) deceive the investing public,
2 including Plaintiff and other Class members, as alleged herein; and (2) cause Plaintiff and other
3 members of the Class to purchase Aqua Metals securities at artificially inflated prices. In furtherance
4 of this unlawful scheme, plan and course of conduct, each of the Defendants took the actions set forth
5 herein.

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

13 71. Defendants, individually and in concert, directly and indirectly, by the use, means or
14 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous
15 course of conduct to conceal adverse material information about the business, operations and future
16 prospects of Aqua Metals as specified herein.

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

26 73. Individual Defendants' primary liability, and controlling person liability, arises from the
27 following facts: (1) Individual Defendants were high-level executives, directors, and/or agents at the

1 Company during the Class Period and members of the Company's management team or had control
2 thereof; (2) each Individual Defendant, by virtue of his responsibilities and activities as a senior officer
3 and/or director of the Company, was privy to and participated in the creation, development and
4 reporting of the Company's financial condition; (3) each Individual Defendant enjoyed significant
5 personal contact and familiarity with the other Individual Defendant and was advised of and had access
6 to other members of the Company's management team, internal reports and other data and information
7 about the Company's finances, operations, and sales at all relevant times; and (4) each Individual
8 Defendant was aware of the Company's dissemination of information to the investing public which
9 they knew or recklessly disregarded was materially false and misleading.

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

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

1 Period at artificially high prices and were or will be damaged thereby.

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

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

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

13 79. This action was filed within two years of discovery of the fraud and within five years of
14 each plaintiff's purchases of securities giving rise to the cause of action.

15 **COUNT II**

16 **The Individual Defendants Violated Section 20(a) of the Exchange Act**

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

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

1 misleading prior to and/or shortly after these statements were issued and had the ability to prevent the
2 issuance of the statements or to cause the statements to be corrected.

3 82. In particular, each of these Defendants had direct and supervisory involvement in the
4 day-to-day operations of the Company and, therefore, is presumed to have had the power to control or
5 influence the particular transactions giving rise to the securities violations as alleged herein, and
6 exercised the same.

7 83. As set forth above, Aqua Metals and the Individual Defendants each violated Section
8 10(b), and Rule 10b-5 promulgated thereunder, by their acts and omissions as alleged in this
9 Complaint.

10 84. By virtue of their positions as controlling persons, the Individual Defendants are liable
11 pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants'
12 wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their
13 purchases of the Company's securities during the Class Period.

14 85. This action was filed within two years of discovery of the fraud and within five years of
15 each Plaintiff's purchases of securities giving rise to the cause of action.

16 **PRAYER FOR RELIEF**

17 86. WHEREFORE, Plaintiff prays for relief and judgment as follows:

- 18 a) Determining that this action is a proper class action, certifying Plaintiff as class
19 representative under Federal Rule of Civil Procedure 23 and Plaintiff's counsel as
20 class counsel;
- 21 b) Awarding compensatory damages in favor of Plaintiff and the other members of the
22 Class against all Defendants, jointly and severally, for all damages sustained as a
23 result of the defendants' wrongdoing, in an amount to be proven at trial, including
24 interest thereon;
- 25 c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this
26 action, including counsel fees and expert fees;
- 27 d) Granting extraordinary equitable and/or injunctive relief as permitted by law; and

1 e) Such other and further relief as the Court may deem just and proper.

2 **JURY TRIAL DEMANDED**

3 Plaintiff hereby demands a jury trial.

4 DATED: December 19, 2017

LEVI & KORSINSKY, LLP

5
6 By: /s/ Rosemary Rivas
Rosemary M. Rivas

7
8 Rosemary M. Rivas
44 Montgomery Street, Suite 650
9 San Francisco, California 94104
Telephone: (415) 291-2420
10 Facsimile: (415) 484-1294

11 Counsel for Individual and Representative
12 Plaintiff Grant Heath

EXHIBIT A

CERTIFICATION OF NAMED PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, Grant Heath, duly certify and say, as to the claims asserted under the federal securities laws, that:

1. I have reviewed the complaint and authorized its filing.
2. I did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action.
3. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.
4. My transaction(s) in Aqua Metals, Inc. which are the subject of this litigation during the class period set forth in the complaint are set forth in the chart attached hereto.
5. Within the last 3 years, I have not sought to serve nor have I served as a class representative in any federal securities fraud case.
6. I will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except as ordered or approved by the court, including any award for reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this December 19, 2017.

Name: Grant Heath

Signed:

A handwritten signature in blue ink that reads "Grant Heath". The signature is written in a cursive, slightly slanted style.

Grant Heath

Transactions in Aqua Metals, Inc. (AQMS) Securities

Class Period: May 19, 2016, through November 9, 2017, inclusive

Date of Transaction	Buy (B) or Sell (S)	Quantity	Price (\$)
8/2/2016	B	450	\$ 8.74
12/7/2016	B	87	\$ 12.0852
5/30/2017	B	440	\$ 11.3322

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Grant Heath, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Florence, SC (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Levi & Korsinsky LLP 44 Montgomery Street, Suite 650 San Francisco, California 94104 T: (415) 291-2420

DEFENDANTS

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

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 78j(b) and 78t(a)

Brief description of cause: Violation of Federal Securities Laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Haywood S Gilliam, Jr. DOCKET NUMBER 3:17-cv-7142

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 12/19/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Rosemary Rivas

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Aqua Metals, Execs Have Questions to Answer in Securities Class Action Case](#)
