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CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA

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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

CV 04 0886 PHX-DKD

12 STANLEY SVED, on Behalf of Himself and All
13 Others Similarly Situated;
14 Plaintiff,
15 vs.
16 **MATRIXX INITIATIVES INC.; CARL J.**
17 **JOHNSON and WILLIAM J. HEMELT,**
18 Defendants.

CASE NO.

**CLASS ACTION COMPLAINT
FOR VIOLATION OF FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

19 Plaintiff has alleged the following based upon the investigation of Plaintiff's counsel,
20 which included a review of United States Securities and Exchange Commission ("SEC")
21 filings by Matrixx Initiatives Inc. ("Matrixx" or the "Company"), as well as regulatory filings
22 and reports, securities analysts' reports and advisories about the Company, press releases and
23 other public statements issued by the Company, and media reports about the Company, and
24 Plaintiff believes that substantial additional evidentiary support will exist for the allegations
25 set forth herein after a reasonable opportunity for discovery.
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1 4. The Company never disclosed that a risk factor that it had warned about as
2 materially negative to its business had, in fact, already materialized. Instead, the investing
3 public learned about the existence of the lawsuits through the news media. On January 30,
4 2004, an article published over the Dow Jones Wire revealed that the FDA was investigating
5 a potential link between Matrixx products and anosmia and that three product liability
6 lawsuits had alleged that the Company's products had caused the Plaintiffs to develop
7 anosmia. On February 2, 2004, the Company, seeking to limit the damage to its stock price,
8 issued a press release representing that "statements alleging that intra nasal Zicam products
9 cause anosmia (loss of smell) are completely unfounded and misleading." The Company
10 further represented that "in no clinical trial of intra nasal zinc gluconate gel products has
11 there been a single report of lost or diminished olfactory function (sense of smell)." Such
12 statements were materially false and misleading because, as the Company would later admit,
13 no clinical study has examined the relationship between zinc gluconate gel and anosmia.

14 5. Then, on February 6, 2004, a segment on the popular, nationally-broadcast
15 show *Good Morning America*, reported that at least four lawsuits were filed alleging that the
16 Company's products had caused anosmia, and that numerous similar actions are expected to
17 be filed. In reaction to the *Good Morning America* story, the price of Matrixx common stock
18 plummeted, falling from \$13.05 on February 5, 2004, to close at \$9.94 per share on February
19 6 -- a one-day drop of 23.8% on unusually heavy trading volume.

20 6. On February 6, 2004, Matrixx issued a press release "Reaffirm[in] Safety of
21 Intra nasal Zicam Cold Remedy."

22 7. However, on March 4, 2004, reporter John Ferreira, who had been the reporter
23 on the *Good Morning America* segment, reported, on news website The Denver Channel.com
24 (an affiliate of ABC News), that "Zicam Admits No Studies Done on Loss of Smell."
25 According to the article, "The makers of the nationally advertised cold remedy Zicam now
26 admit that they don't know if their nasal gel could cause loss of smell."
27
28

1 ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the
2 Individual Defendants had the opportunity to commit the fraudulent acts alleged herein.
3

4 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

5 20. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
6 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased the
7 securities of Matrixx between October 22, 2003 and February 6, 2004, inclusive and who
8 were damaged thereby. Excluded from the Class are Defendants, the officers and directors
9 of the Company, at all relevant times, members of their immediate families and their legal
10 representatives, heirs, successors or assigns and any entity in which Defendants have or had
11 a controlling interest.

12 21. The members of the Class are so numerous that joinder of all members is
13 impracticable. During the Class Period, Matrixx had approximately 9.4million shares of
14 common stock outstanding, which were actively traded on the NASDAQ National Market.
15 While the exact number of Class members is unknown to Plaintiff at this time and can only
16 be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or
17 thousands of members in the proposed Class. Record owners and other members of the Class
18 may be identified from records maintained by Matrixx or its transfer agent and may be
19 notified of the pendency of this action by mail, using the form of notice similar to that
20 customarily used in securities class actions.

21 22. Plaintiff's claims are typical of the claims of the members of the Class as all
22 members of the Class are similarly affected by Defendants' wrongful conduct in violations
23 of federal laws that is complained of herein.

24 23. Plaintiff will fairly and adequately protect the interests of the members of the
25 Class and has retained counsel competent and experienced in class and securities litigation.
26

27 . . .

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

- 4 (a) whether the federal securities laws were violated by Defendants' acts
5 as alleged herein;
- 6 (b) whether statements made by Defendants to the investing public during
7 the Class Period misrepresented material facts about the business and
8 operations of Matrixx; and
- 9 (c) to what extent the members of the Class have sustained damages and
10 the proper measure of damages.

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

17

18 **SUBSTANTIVE ALLEGATIONS**

19 **Materially False And Misleading Statements Made During The Class Period**

20 26. The Class Period begins on October 22, 2003. On that date, Matrixx issued a
21 press release announcing a its operational results for the third quarter of 2003. According to
22 the release, net sales increased by 163% over the third quarter of 2002, while net income
23 nearly tripled:

24

25 Matrixx Initiatives, Inc. (NASDAQ: MTXX), developer and
26 distributor of the expanded line of Zicam(R) products, today
27 announced net sales of \$13.4 million for the third quarter of
28 2003, a 163 percent increase versus \$5.1 million in the

1 comparable quarter of 2002. Net income for the quarter was
2 \$2.8 million or \$0.29 per share, versus \$1.0 million, or \$0.11 per
share for the third quarter of 2002.

3 Net sales for the nine month period ended September 30, 2003
4 were \$25.3 million, a 111 percent increase over the \$12.0
5 million reported for the comparable nine month period last year.
6 Net income for the first nine months of this year increased 114
percent to \$2.3 million, or \$0.25 per share, compared to \$1.1
million, or \$0.11 per share, for the comparable period last year.

7 Defendant Johnson commented on the favorable results, highlighting the efficacy of the
8 Zicam products:

9 Mr. Johnson continued, "The Zicam brand is poised for growth
10 in the upcoming cough and cold season with improved retail
11 exposure by virtue of three new unique oral delivery forms of
12 our Zicam Cold Remedy product, the resumption of our
13 television advertising campaigns in recent weeks and the
momentum from last year's successful season. Additionally, our
retail partners have come to rely on the Zicam brand not only as
an efficacious product for their customers, but also for the
profitability that Zicam branded products produce for their
respective bottom-lines."

14 27. On November 12, 2003, Matrixx filed its quarterly report for the third quarter
15 of 2003 on Form 10-Q with the SEC. The report reiterated the results announced in the
16 October 22, 2003 press release and was signed by Defendants Johnson and Hemelt. In a
17 section of the report titled "Risk Factors," the Company purported to warn of the material
18 risk posed by product liability actions that potentially could be filed against the Company,
19 representing that even a single claim, regardless of merit, can have materially negative
20 consequences for the Company:

21
22 *We may incur significant costs resulting from product liability
23 claims*

24 We are subject to significant liability should use or consumption
25 of our products cause injury, illness or death. Although we carry
26 product liability insurance, there can be no assurance that our
27 insurance will be adequate to protect us against product liability
claims or that insurance coverage will continue to be available
on reasonable terms. A product liability claim, even one without
merit or for which we have substantial coverage, could result in

1 significant legal defense costs, thereby increasing our expenses
2 and lowering our earnings. Such a claim, whether or not proven
3 to be valid, could have a material adverse effect on our product
4 branding and goodwill, resulting in reduced market acceptance
5 of our products. This in turn could materially adversely affect
6 our results of operations and financial condition.

7 28. In addition, as required by Section 302 of the Sarbanes Oxley Act of 2002, the
8 quarterly report contained certifications signed by Defendants Johnson and Hemelt
9 representing, among other things, that "[b]ased on my knowledge, this report does not
10 contain any untrue statement of a material fact or omit to state a material fact necessary to
11 make the statements made, in light of the circumstances under which such statements were
12 made, not misleading with respect to the period covered by this report."

13 29. On January 7, 2004, Matrixx issued a press release announcing that the
14 Company was revising its guidance for the 2003 year upwards, and that it expected its 2003
15 revenues to grow by 80% from 2002:

16 Matrixx Initiatives, Inc. (NASDAQ: MTXX), developer and
17 distributor of the expanded line of Zicam(R) Cold Remedy
18 products, today upwardly revised its guidance for fiscal year
19 2003. The Company expects total 2003 revenues to grow by
20 greater than 80 percent compared to 2002 and fully diluted
21 earnings per share to be in the range of \$0.33 to \$0.38. In 2002
22 Matrixx reported net sales of \$23.5 million and earnings per
23 share of \$0.14 (exclusive of a one-time deferred tax asset
24 accrual). This updates the Company's previous guidance of a
25 50% increase in revenue and earnings per share of \$0.25-\$0.30.
26 The increase in the guidance for 2003 reflects a much greater
27 incidence of colds than previously anticipated.

28 30. The statements referenced in ¶¶ 26-29 were each materially false and
misleading because they failed to disclose and misrepresented the following material adverse
facts, among others:

- i) That, by the beginning of the Class Period, a lawsuit had been filed
against the Company alleging that the Company's Zinc gluconate-based

1 products had caused Plaintiffs to suffer from anosmia and that at least
2 three other similar lawsuits had been filed during the Class Period;¹

3 ii) that anecdotal evidence questioning the safety of the Company's
4 mainstay cold medication had surfaced by the beginning of the Class
5 Period and was mounting;

6
7 iii) that the Company's express assurances that the Form 10-Q "does not
8 contain any untrue statement of a material fact or omit to state a
9 material fact necessary to make the statements made, in light of the
10 circumstances under which such statements were made, not misleading
11 with respect to the period covered by this report" were false and
12 misleading because the report purported to warn about the harm that
13 *potential* product liability posed to Matrixx's business without
14 disclosing that such lawsuits had *already* been filed.

15
16 31. On January 30, 2004, after the close of ordinary trading, Dow Jones
17 Newswires reported that the Food and Drug Administration "is looking into complaints that
18 an over-the-counter common-cold medicine manufactured by a unit of Matrixx Initiatives
19 Inc. (MTXX) may be causing some users to lose their sense of smell," after such allegations
20 were made in at least three lawsuits.

21 32. The Company's stock declined slightly following the Dow Jones report, falling
22 from \$13.55 per share on January 30, 2004 to \$11.97 on February 2, 2004. The Company,
23

24 ¹ Actions filed during the Class Period alleging that a Zicam product caused anosmia include the following: Christensen
25 v. Matrixx Initiatives, Inc. No. 03CV0146 (W.D. Mich., filed Oct. 14, 2003); Bentley v. Matrixx Initiatives, Inc. No.
26 CV2004-001338 (Sup. Ct. Maricopa Cty., Arizona, filed Jan. 23, 2004); Sutherland v. Matrixx Initiatives, Inc. No. CV
27 01635 (N.D. Ala., filed Jan. 22, 2004); Ringbauer v. Matrixx Initiatives, Inc. CV2004-002833 (Sup. Ct. Maricopa Cty.,
28 Arizona, filed Feb. 11, 2004).

1 however, seeking to reverse the decline in its stock price, issued a press release on February
2 2 that represented that "statements alleging that intra nasal Zicam products cause anosmia
3 (loss of smell) are completely unfounded and misleading." The Company further represented
4 that "in no clinical trial of intra nasal zinc gluconate gel products has there been a single
5 report of lost or diminished olfactory function (sense of smell)." Such statements were
6 materially false and misleading because, as the Company would later admit, no clinical study
7 has examined the relationship between zinc gluconate gel and anosmia. The Company's
8 vigorous, but baseless, denials had their intended effect: the stock price rose, closing at
9 \$13.40 on February 3, 2004.

10
11 **The Truth Begins to Emerge**

12 33. On February 5, 2004, *Good Morning America*, a nationally-broadcast morning
13 news program, reported on the connection between Matrixx's Zinc gluconate and anosmia.
14 According to reporter John Ferrugia, "Dr. Bruce Jafic has discovered more than a dozen
15 patients with the same troubles as Linda [who claims that Zicam Gel caused her anosmia],
16 after using the Zicam product." With respect to pending lawsuits, John Ferrugia reported that
17 "Well, in fact there have been, so far, four lawsuits. Others are being prepared, anywhere
18 from California to Michigan. And so far, Matrix-Initiatives [SIC] has denied that there's any
19 problem, saying that there is no liability. They're saying there's a lot of different reasons you
20 can lose your sense of smell and Zicam isn't one of them."

21
22 34. In response to the *Good Morning America* segment, the price of Matrixx
23 common stock plummeted, falling from \$13.05 on February 5, 2004, to close at \$9.94 per
24 share on February 6 -- a one-day drop of 23.8% on unusually heavy trading volume.

25 . . .

26 . . .
27

1 35. On February 6, 2004, Matrixx issued a press release "Reaffirm[ing] Safety of
2 Intra nasal Zicam Cold Remedy," reiterating its position that the product is safe and that no
3 clinical trial has shown a connection between its products and anosmia:

4 We want to assure our consumers that Zicam Cold Remedy intra
5 nasal zinc gluconate products are manufactured and marketed
6 according to Food and Drug Administration guidelines for
7 homeopathic medicine. Our primary concerns are the health and
8 safety of those who use Zicam Cold Remedy nasal gels and the
9 distribution of factual information about our products.

10 In no clinical trial of intra nasal zinc gluconate gel products has
11 there been a single report of lost or diminished olfactory
12 function (sense of smell). Rather, the safety and efficacy of zinc
13 gluconate for the treatment of symptoms related to the common
14 cold have been well established in two double-blind, placebo-
15 controlled, randomized clinical trials. In fact, in neither study
16 were there any reports of anosmia related to the use of this
17 compound. The overall incidence of adverse events associated
18 with zinc gluconate was extremely low, with no statistically
19 significant difference between the adverse event rates for the
20 treated and placebo subsets.

21 36. However, on March 4, 2004, reporter John Ferrugia, who had reported on the
22 matter on the *Good Morning America* segment, reported, on news website The Denver
23 Channel.com (an affiliate of ABC News), that "Zicam Admits No Studies Done on Loss of
24 Smell." According to the article, "The makers of the nationally advertised cold remedy
25 Zicam now admit that they don't know if their nasal gel could cause loss of smell." In
26 relevant part the article reported as follows:

27 The stunning information came after a 7News investigation
28 found that some consumers who have used Zicam report the loss
of smell.

 The company that makes Zicam (pictured left), Matrix
Initiatives [SIC], first told us its studies showed the product
[was] safe, but it will now begin animal and human testing to
determine whether its zinc compound could be harmful when
sprayed in the nose, causing some to lose their sense of smell.

 These studies come after our investigative report aired both on

1 '7 News' and ABC's 'Good Morning America' Those reports
2 prompted dozens of complaints to the U.S. Food and Drug
Administration, which is now investigating.

3 Doctors at the University of Colorado Taste and Smell Clinic
4 have an increasing number of patients who say they lost their
5 sense of smell after using Zicam intra nasal gel, which contains
zinc gluconate.

6 In turn, the company is taking action.

7 Doctors at the University of Colorado Taste and Smell Clinic
8 have an increasing number of patients who say they lost their
sense of smell after using Zicam intra nasal gel, which contains
zinc gluconate.

9 Dr. Bruce Jafek has been documenting the cases from around
10 the country, and there have been several lawsuits in at least five
11 states. All along, Matrixx Initiatives, the maker of Zicam, said
the product was safe. But now it admits there are no studies
dealing with issue.

12 *In a filing to the Securities and Exchange Commission on*
13 *issues affecting stockholders, Matrixx now discloses:*

14 *"There is insufficient evidence at this time to determine if zinc*
15 *gluconate, when used as recommended, affects a person's*
16 *ability to smell."*

17 What's more, after our initial investigation, dozens of consumers
18 have filed complaints with the Food and Drug Administration.

19 In response, the company formed a medical advisory panel in
20 February.

21 It says it will now conduct: "...animal and human studies to
22 further characterize these post-marketing complaints." Study
23 findings are expected to be available in 12 months.

24 "It seems to me that those studies should have been done before
25 they put the product on the market," said Jafek.

26 He is concerned about consumers who may be at risk right now
27 because Matrixx will leave Zicam nasal gel on the shelf until its
28 studies are completed.

"It would seem that it would either be reasonable to remove the
product from the market pending the additional study
recommended by the scientific panel or at least put on a warning
label so people can be aware of this problem," said Jafek. "If

1 you want to use this product to possibly shorten duration or
2 severity of your cold, do so but be aware that it may cause a loss
of smell."

3 Zicam makes many products, including lozenges. These are not
4 at issue -- only the nasal spray that contains zinc gluconate. A
5 representative for the company responded to our story and said
6 that Matrixx believes the product is safe and does not cause loss
of smell, even though the company admits there are no studies
7 to prove it. Even so, the company says it will not remove the
nasal spray from the shelves and has no plans to put a caution
8 label on it.

9 A company representative says consumers can make their own
10 decision until the studies are finished. [Emphasis added].

11 37. The Company's annual report, filed with the SEC on Form 10-K on March 19,
12 2004, stated that numerous suits alleging that its Zicam product(s) caused anosmia had been
13 filed, including one brought in the Superior Court of Maricopa County, Arizona, on behalf
of 64 Plaintiffs:

14 Product Liability Matters

15 Litigation relating to Zicam® Cold Remedy nasal gel arises
16 from claims that the product causes the permanent loss of taste
17 and smell, or anosmia. The Company feels that the clinical
studies performed on the product are sufficient evidence to
18 refute such claims.

19 As of December 31, 2003, suits involving three users of the
Zicam® Cold Remedy nasal gel products had been filed in
20 various federal and state courts. All of these suits are at a
preliminary stage and the Company has not yet obtained and
21 reviewed complete information regarding the Plaintiffs and their
medical conditions, and consequently, the Company is unable to
22 fully evaluate the claims.

23 On March 12, 2004, the Company was served with a complaint
that was filed in the Superior Court of Maricopa County,
24 Arizona, whereby sixty-four Plaintiffs alleged that the use of the
Zicam® Cold Remedy nasal gel products resulted in anosmia,
25 the loss of their sense of smell. Specific damages have not been
requested and the Company has turned the lawsuit over to its
26 product liability insurance carrier.

1 The Company is actively engaged in defending these various
2 lawsuits.

3
4 **Undisclosed Adverse Information**

5 38. The market for Matrixx securities was open, well-developed and efficient at
6 all relevant times. As a result of these materially false and misleading statements and failures
7 to disclose, Matrixx securities traded at artificially inflated prices during the Class Period.
8 The artificial inflation continued until at least February 6, 2004. Plaintiff and other members
9 of the Class purchased or otherwise acquired Matrixx securities relying upon the integrity
10 of the market price of the Company's securities and market information relating to Matrixx,
11 and have been damaged thereby.

12 39. During the Class Period, Defendants materially misled the investing public,
13 thereby inflating the price of Matrixx common stock, by publicly issuing false and
14 misleading statements and omitting to disclose material facts necessary to make Defendants'
15 statements, as set forth herein not false and misleading. Said statements and omissions were
16 materially false and misleading in that they failed to disclose material adverse information
17 and misrepresented the truth about the Company, its business and operations, as detailed
18 herein.

19 40. At all relevant times, the material misrepresentations and omissions
20 particularized in this Complaint directly or proximately caused or were a substantial
21 contributing cause of the damages sustained by Plaintiff and other members of the Class. As
22 described herein, during the Class Period, Defendants made or caused to be made a series of
23 materially false or misleading statements about Matrixx's earnings. These material
24 misstatements and omissions created in the market an unrealistically positive assessment of
25 Matrixx and its prospects and operations, thus causing the Company's common stock to be
26 overvalued and artificially inflated at all relevant times. Defendants' materially false and
27 misleading statements during the Class Period resulted in Plaintiff and other members of the
28

1 Class purchasing the Company's common stock at artificially inflated prices, thus leading
2 to their losses when the illusion was revealed, and the market was able to accurately value
3 the Company.

4
5 **Applicability Of Presumption Of Reliance:**

6 **Fraud-On-The-Market Doctrine**

7 41. At all relevant times, the market for Matrixx's securities was an efficient
8 market for the following reasons, among others:

- 9 (a) Matrixx's stock met the requirements for listing, and was listed and
10 actively traded on the NASDAQ National Market, a highly efficient
11 and automated market;
- 12 (b) As a regulated issuer, Matrixx filed periodic public reports with the
13 SEC and the NASDAQ National Market;
- 14 (c) Matrixx regularly communicated with public investors via established
15 market communication mechanisms, including through regular
16 disseminations of press releases on the national circuits of major
17 newswire services and through other wide-ranging public disclosures,
18 such as communications with the financial press and other similar
19 reporting services; and
- 20 (d) Matrixx was followed by several securities analysts employed by major
21 brokerage firms who wrote reports which were distributed to the sales
22 force and certain customers of their respective brokerage firms. Each
23 of these reports was publicly available and entered the public
24 marketplace.

25 42. As a result of the foregoing, the market for Matrixx's securities promptly
26 digested current information regarding Matrixx from all publicly available sources and
27 reflected such information in Matrixx's stock price. Under these circumstances, all

1 purchasers of Matrixx's securities during the Class Period suffered similar injury through
2 their purchase of Matrixx's securities at artificially inflated prices and a presumption of
3 reliance applies.

4 5 **ADDITIONAL SCIENTER ALLEGATIONS**

6 43. As alleged herein, Defendants acted with scienter in that Defendants knew that
7 the public statements or documents issued or disseminated in the name of the Company were
8 materially false and misleading; knew that such statements or documents would be issued
9 or disseminated to the investing public; and knowingly and substantially participated or
10 acquiesced in the issuance or dissemination of such statements or documents as primary
11 violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants,
12 by virtue of their receipt of information reflecting the true facts regarding Matrixx, their
13 control over, and/or receipt and/or modification of the Company's allegedly materially
14 misleading misstatements and/or their associations with the Company which made them
15 privy to confidential proprietary information concerning Matrixx, participated in the
16 fraudulent scheme alleged herein.

17 18 **NO SAFE HARBOR**

19 44. The statutory safe harbor provided for forward-looking statements under
20 certain circumstances does not apply to any of the allegedly false statements pleaded in this
21 complaint. Many of the specific statements pleaded herein were not identified as "forward-
22 looking statements" when made. To the extent there were any forward-looking statements,
23 there were no meaningful cautionary statements identifying important factors that could
24 cause actual results to differ materially from those in the purportedly forward-looking
25 statements. Alternatively, to the extent that the statutory safe harbor does apply to any
26 forward-looking statements pleaded herein, Defendants are liable for those false forward-
27 looking statements because at the time each of those forward-looking statements was made,

1 the particular speaker knew that the particular forward-looking statement was false, and/or
2 the forward-looking statement was authorized and/or approved by an executive officer of
3 Matrixx who knew that those statements were false when made.

4
5 **FIRST CLAIM**

6 **Violation Of Section 10(b) Of**

7 **The Exchange Act And Rule 10b-5**

8 **Promulgated Thereunder Against All Defendants**

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

11 46. During the Class Period, Matrixx and the Individual Defendants, and each of
12 them, carried out a plan, scheme and course of conduct which was intended to and,
13 throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and
14 other Class members, as alleged herein; (ii) artificially inflate and maintain the market price
15 of Matrixx's securities; and (iii) cause Plaintiff and other members of the Class to purchase
16 Matrixx's securities at artificially inflated prices. In furtherance of this unlawful scheme,
17 plan and course of conduct, Defendants, and each of them, took the actions set forth herein.
18

19 47. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made
20 untrue statements of material fact and/or omitted to state material facts necessary to make the
21 statements not misleading; and (c) engaged in acts, practices, and a course of business which
22 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort
23 to maintain artificially high market prices for Matrixx's securities in violation of Section
24 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary
25 participants in the wrongful and illegal conduct charged herein or as controlling persons as
26 alleged below.

1 48. Matrixx and the Individual Defendants, individually and in concert, directly
2 and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the
3 mails, engaged and participated in a continuous course of conduct to conceal adverse
4 material information about the business, operations and future prospects of Matrixx as
5 specified herein.

6 49. These Defendants employed devices, schemes and artifices to defraud, while
7 in possession of material adverse non-public information and engaged in acts, practices, and
8 a course of conduct as alleged herein in an effort to assure investors of Matrixx's value and
9 performance and continued substantial growth, which included the making of, or the
10 participation in the making of, untrue statements of material facts and omitting to state
11 material facts necessary in order to make the statements made about Matrixx and its business
12 operations and future prospects in the light of the circumstances under which they were
13 made, not misleading, as set forth more particularly herein, and engaged in transactions,
14 practices and a course of business which operated as a fraud and deceit upon the purchasers
15 of Matrixx's securities during the Class Period.

16 50. The Individual Defendants' primary liability, and controlling person liability,
17 arises from the following facts: (i) the Individual Defendants were high-level executives
18 and/or directors at the Company during the Class Period; (ii) the Individual Defendants were
19 privy to and participated in the creation, development and reporting of the Company's
20 internal budgets, plans, projections and/or reports; and (iii) the Individual Defendants were
21 aware of the Company's dissemination of information to the investing public which they
22 knew or recklessly disregarded was materially false and misleading.

23 51. Defendants had actual knowledge of the misrepresentations and omissions of
24 material facts set forth herein, or acted with reckless disregard for the truth in that they failed
25 to ascertain and to disclose such facts, even though such facts were available to them. Such
26
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1 Defendants' material misrepresentations and/or omissions were done knowingly or recklessly
2 and for the purpose and effect of concealing Matrixx's operating condition and future
3 business prospects from the investing public and supporting the artificially inflated price of
4 its securities. As demonstrated by Defendants' overstatements and misstatements of the
5 Company's business, operations and earnings throughout the Class Period, Defendants, if
6 they did not have actual knowledge of the misrepresentations and omissions alleged, were
7 reckless in failing to obtain such knowledge by deliberately refraining from taking those
8 steps necessary to discover whether those statements were false or misleading.

9
10 52. As a result of the dissemination of the materially false and misleading
11 information and failure to disclose material facts, as set forth above, the market price of
12 Matrixx's securities was artificially inflated during the Class Period. In ignorance of the fact
13 that market prices of Matrixx's publicly-traded securities were artificially inflated, and
14 relying directly or indirectly on the false and misleading statements made by Defendants, or
15 upon the integrity of the market in which the securities trade, and/or on the absence of
16 material adverse information that was known to or recklessly disregarded by Defendants but
17 not disclosed in public statements by Defendants during the Class Period, Plaintiff and the
18 other members of the Class acquired Matrixx securities during the Class Period at artificially
19 high prices and were damaged thereby.

20 53. At the time of said misrepresentations and omissions, Plaintiff and other
21 members of the Class were ignorant of their falsity, and believed them to be true. Had
22 Plaintiff and the other members of the Class and the marketplace known of the true financial
23 condition and business prospects of Matrixx, which were not disclosed by Defendants,
24 Plaintiff and other members of the Class would not have purchased or otherwise acquired
25 their Matrixx securities, or, if they had acquired such securities during the Class Period, they
26 would not have done so at the artificially inflated prices which they paid.

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

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

12 **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

13
14 (a) Determining that this action is a proper class action, designating Plaintiff as
15 Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal
16 Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

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

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

22
23 (d) Such other and further relief as the Court may deem just and proper.
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2
3 **JURY TRIAL DEMANDED**

4 Plaintiff hereby demands a trial by jury.

5 Dated: April 27, 2004

6 **BONNETT, FAIRBOURN,
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