

1 BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
2 ANDREW S. FRIEDMAN (AZ005425)  
FRANCIS J. BALINT, JR. (AZ007669)  
3 2901 N. Central Avenue, Suite 1000  
Phoenix, AZ 85012-3311  
4 Telephone: 602/274-1100

FILED X  
2005 MAR -4 PM 4:30  
CLERK OF COURT

5 Liaison Counsel for Plaintiffs  
6 LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
7 WILLIAM S. LERACH  
DARREN J. ROBBINS  
8 SCOTT H. SAHAM  
LUCAS F. OLTS  
9 401 B Street, Suite 1600  
San Diego, CA 92101  
10 Telephone: 619/231-1058  
- and -  
11 SAMUEL H. RUDMAN  
DAVID A. ROSENFELD  
12 200 Broadhollow Road, Suite 406  
Melville, NY 11747  
13 Telephone: 631/367-7100  
14 Lead Counsel for Plaintiffs

15 UNITED STATES DISTRICT COURT  
16 DISTRICT OF ARIZONA

17 JAMES V. SIRACUSANO, On Behalf of  
18 Himself and All Others Similarly Situated,  
19 Plaintiff,  
20 vs.  
21 MATRIXX INITIATIVES INC.;  
CARL J. JOHNSON;  
22 WILLIAM J. HEMELT; and  
TIMOTHY L. CLAROT,  
23 Defendants.  
24

Civ. No. 04-0886-PHX-DKD  
(Consolidated)  
CLASS ACTION  
CONSOLIDATED AMENDED  
COMPLAINT FOR VIOLATION OF  
THE FEDERAL SECURITIES LAWS

47

1 INTRODUCTION

2 1. This is a federal securities class action on behalf of purchasers of the publicly  
3 traded securities of Matrixx Initiatives Inc. ("Matrixx" or the "Company") between October  
4 22, 2003 and February 6, 2004, inclusive (the "Class Period").

5 2. Defendant Matrixx is engaged in the development, manufacture and marketing  
6 of over-the-counter pharmaceuticals. During the Class Period, Matrixx only directly  
7 employed 15 people as it chose to outsource many of its corporate functions. Through its  
8 main operating wholly-owned subsidiary Zicam, LLC, Matrixx sells several products under  
9 the Zicam name, all of which are used for the treatment of the common cold and associated  
10 symptoms. The Zicam brand is Matrixx's core brand and, during the Class Period, made up  
11 both 100% of the Company's net sales, gross profit and growth. One of Matrixx's most  
12 popular products is the Zicam Cold Remedy, which accounted for approximately 70% of  
13 Zicam Class Period sales. This product was marketed as "the only nasal product on the  
14 market that has been clinically proven to reduce the duration of the common cold." Zicam  
15 Cold Remedy can be applied in several forms, including a nasal spray and a gel. Zicam Cold  
16 Remedy, and other of the Company's cold-fighting products, rely on a compound called zinc  
17 gluconate as the active ingredient.

18 3. In September 2003, prior to the start of the Class Period, defendants learned  
19 that numerous users of their Zicam product had experienced anosmia, which is a total loss of  
20 smell and that, as detailed herein, medical researchers at the University of Colorado School  
21 of Medicine had prepared a presentation for the fall meeting of the American Rhinologic  
22 Society which identified 10 patients who had lost their sense of smell after using Zicam  
23 including a detailed case study of one of those patients.

24 4. Despite their knowledge of the University of Colorado research and the  
25 anosmia cases, defendants failed to disclose this material information in any public statement  
26 or Securities and Exchange Commission ("SEC") filing. Instead, defendants instituted  
27 measures to prevent the University of Colorado Researchers from referencing Zicam in any  
28 report of their findings. Specifically, Matrixx informed Dr. Jafek that "as a legal matter" he

1 did "not have their permission to use their company name or product trademarks" in the  
2 poster reporting the University of Colorado research at the American Rhinologic Society  
3 September 20, 2003 Fall Science meeting. In response to the Company's demand, Dr. Jafek  
4 deleted any reference to Zicam or Matrixx from the poster presenting his research at the  
5 American Rhinologic Society meeting.

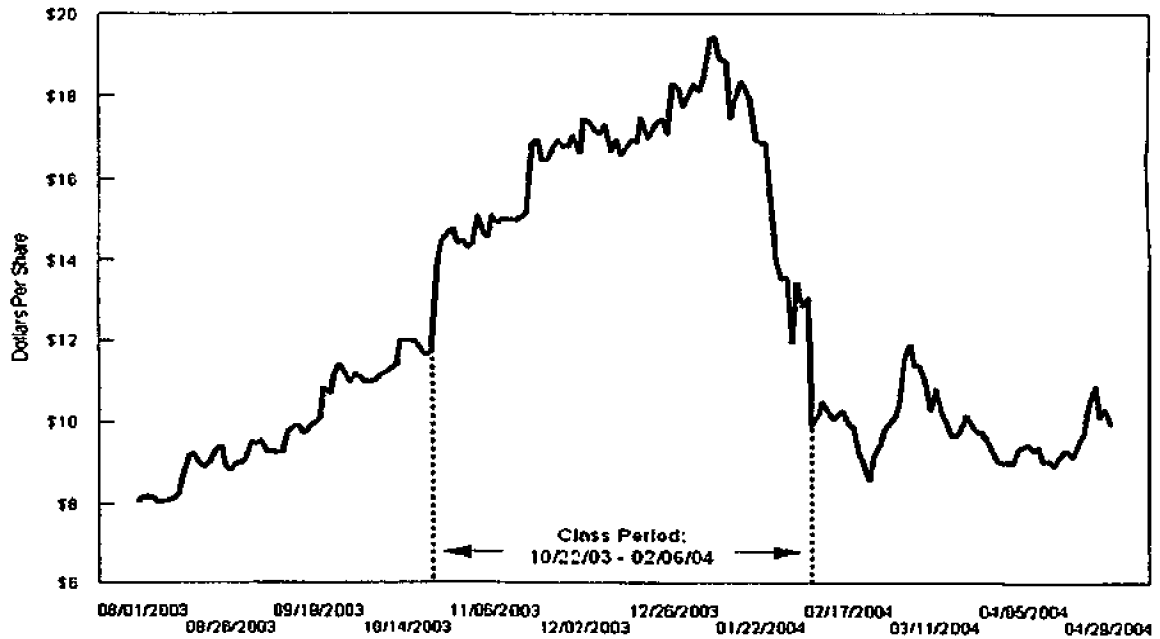
6       5. Throughout the Class Period, Matrixx touted the growth of its business,  
7 reporting triple-digit growth in revenue and income, highlighting the increased success of its  
8 Zicam cold remedies without any disclosure of the University of Colorado Research or the  
9 known adverse health effects of Zicam. The Company's Class Period representations to the  
10 investing public were, materially false and misleading when made because they failed to  
11 disclose the findings of the University of Colorado School of Medicine researchers and that  
12 the Company was already subject to lawsuits alleging that the Company's zinc-based  
13 products had caused anosmia. In addition, the Company's SEC filings purported to warn  
14 investors that the potential for product liability lawsuits presented a material risk to the  
15 Company, but failed to disclose that such lawsuits had *already* been filed. The first action  
16 was filed on October 14, 2003, in the United States District Court for the Western District of  
17 Michigan (No. 4:03-cv-0146-HWB), prior to the beginning of the Class Period.

18       6. Then, on January 30, 2004, an article published over the *Dow Jones Wire*  
19 revealed that the FDA was investigating a potential link between Matrixx products and  
20 anosmia and that three product liability lawsuits had alleged that the Company's product had  
21 caused the plaintiffs to develop anosmia.

22       7. On February 2, 2004, the Company, seeking to limit the damage to its stock  
23 price issued a press release representing that "statements alleging that intranasal Zicam  
24 products cause anosmia (loss of smell) are completely unfounded and misleading." The  
25 Company further represented that "[i]n no clinical trial of intranasal zinc gluconate gel  
26 products has there been a single report of lost or diminished olfactory function (sense of  
27 smell)." Such statements were materially false and misleading because, as the Company  
28 would later admit, it had conducted no clinical study examining the relationship between

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Matrixx Initiatives, Inc.**  
Daily Prices From August 1, 2003 to April 30, 2004



9. On February 6, 2004, Matrixx issued a press release entitled "Reaffirm[ing] safety of intranasal Zicam Cold Remedy." This statement as well as each of the Company's earlier statements regarding the safety of Zicam, were materially false and misleading as defendants failed to disclose the existence of the University of Colorado School of Medicine findings or the existence of numerous users of Zicam who were experiencing a total loss of smell.

10. On March 4, 2004, reporter John Ferrugia, who had been the reporter on the *Good Morning America* segment, reported, on news website *TheDenverChannel.com* (an affiliate of ABC News), that "Zicam Admits No Studies Done on Loss of Smell." According to the article, "[t]he makers of the nationally advertised cold remedy Zicam now admit that they don't know if their nasal gel could cause loss of smell."

#### JURISDICTION AND VENUE

11. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") 15 U.S.C. §§78j(b) and 78t(a) and Rule 10b-5 promulgated thereunder by the SEC 17 C.F.R. §240.10b-5.



1 prospects. The Individual Defendants also had access to material adverse non-public  
2 information concerning Matrixx, as discussed in detail below. Because of their positions  
3 with Matrixx, the Individual Defendants had access to non-public information about its  
4 business, finances, products, markets and present and future business prospects via access to  
5 internal corporate documents, conversations and connections with other corporate officers  
6 and employees, attendance at management and Board of Directors meetings and committees  
7 thereof and via reports and other information provided to them in connection therewith.  
8 Because of their possession of such information, the Individual Defendants knew or  
9 recklessly disregarded the fact that adverse facts specified herein had not been disclosed to  
10 and were being concealed from, the investing public.

11 22. Each of the defendants is liable as a direct participant in and co-conspirator  
12 with respect to the wrongs complained of herein. In addition, defendants Johnson and  
13 Hemelt, by reason of their status as senior executive officers and directors were each a  
14 "controlling person" within the meaning of §20 of the Exchange Act and had the power and  
15 influence to cause the Company to engage in the unlawful conduct complained of herein.  
16 Because of their positions of control, defendants Johnson and Hemelt were able to and did,  
17 directly or indirectly, control the conduct of Matrixx's business.

18 23. The Individual Defendants, because of their positions with the Company,  
19 controlled and/or possessed the authority to control the contents of its reports, press releases  
20 and presentations to securities analysts and through them, to the investing public. The  
21 Individual Defendants were provided with copies of the Company's reports and press  
22 releases alleged herein to be misleading, prior to or shortly after their issuance and had the  
23 ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the  
24 Individual Defendants had the opportunity to commit the fraudulent acts alleged herein.

#### 25 **CONCEALED ADVERSE INFORMATION REGARDING ZICAM**

26 24. Defendants were aware prior to the start of the Class Period that numerous  
27 users of their Zicam product had experienced a rare condition known as anosmia. Numerous  
28 cases of anosmia were observed by researchers at the University of Colorado School of

1 Medicine, Department of Otolaryngology, The Rocky Mountain Taste and Smell Center  
2 (“RMTSC”)<sup>1</sup> and the Smell & Taste Treatment and Research Foundation Ltd.

3 25. Dr. Alan Hirsch M.D., F.A.C.P., Neurological Director of the Smell & Taste  
4 Treatment and Research Foundation, Ltd., first recognized the possible link between Zicam  
5 nasal gel and a loss of smell in a cluster of his patients in 1999 shortly after the product came  
6 on the market. In December 1999, Hirsch called Matrixx’s customer service line to inquire  
7 into the amount of zinc contained in Zicam nasal gel. Hirsch spoke with a Mr. Laundau.  
8 Hirsch told Laundau about at least one patient who developed anosmia after using Zicam in  
9 the absence of a cold. Hirsch also mentioned to Laundau that previous studies had  
10 demonstrated that intranasal application of zinc could be problematic, but Laundau indicated  
11 that he was not aware of these studies. Hirsch further told Laundau that he was willing to  
12 conduct a clinical study on the issue, but was “told ‘no’ at that time.”

13 26. In September of 2002, Timothy L. Clarot, Matrixx’s Vice President, Research  
14 and Development<sup>2</sup> called Miriam R. Linschoten, Ph.D., of the University of Colorado Health  
15 Sciences Center concerning Zicam customer complaints related to loss of smell. During this  
16 call, Linschoten referenced previous studies linking zinc sulfate to loss of smell. Linschoten  
17 expressed her concern to Clarot over the lack of information regarding the Zicam product,  
18 that is available over-the-counter, with no warning that it could cause users to suffer a loss of  
19 smell. Clarot had called Linschoten because one of the several patients she had treated at the  
20 RMTSC for loss of smell after she had used Zicam, had also complained to Matrixx. In  
21 addition to her patient, Clarot informed Linschoten that Matrixx had also received  
22 complaints from other customers who experienced a loss of smell following use of Zicam

---

23  
24 <sup>1</sup> The RMTSC, a NIH Program Project Grant, is a collaborative research effort by the  
25 Departments of Cellular & Structural Biology and Otolaryngology at the University of  
26 Colorado School of Medicine which is dedicated to the study of taste and smell under normal  
27 and diseased conditions in human and animal models.

26 <sup>2</sup> According to the Matrixx website Timothy L. Clarot oversees regulatory compliance  
27 activities, supply chain management, materials and product development, information  
28 technology and consumer affairs.

1 nasal gel. Matrixx had received customer complaints of loss of smell as early as 1999.  
2 Linschoten asked Clarot whether Matrixx had done any studies. Clarot responded that  
3 Matrixx had not, but that it had hired a consultant to review the product. Linschoten  
4 mentioned existing studies that linked zinc sulfate to loss of smell, but Clarot gave her the  
5 impression that he had not heard of these studies. Linschoten then offered to send Clarot  
6 information regarding these studies.

7       27. On September 20, 2002, Linschoten sent an email as promised to Clarot which  
8 included abstracts on the link between zinc sulfate and loss of smell. Zinc's toxicity had  
9 been confirmed by studies from the 1930s and work with fish in the early 80s. Linschoten  
10 received a phone call from Clarot not too long after she sent her September 20, 2002 email.  
11 Clarot inquired in this call as to whether she would participate in animal studies that Matrixx  
12 was planning to conduct. Linschoten responded that she did not want to participate, as she  
13 focuses on human research and not animal research.

14       28. As of September of 2003, Dr. Bruce Jafek of the University Colorado School  
15 of Medicine had observed 10 patients suffering from anosmia following Zicam use. Dr.  
16 Jafek, Dr. Linschoten and a colleague planned to submit their findings via a September 20,  
17 2003 poster presentation to the American Rhinologic Society. Prior to the meeting  
18 scheduled for September 20, 2003, the American Rhinologic Society posted abstracts of  
19 scheduled presentations. Jafek, Linschoten and Murrow's abstract, entitled, "Zicam@  
20 Induced Anosmia," was posted along with the other scheduled presentation abstracts. The  
21 University of Colorado School of Medicine research provided a detailed description of one  
22 of the patients they had diagnosed with anosmia following Zicam use. A 55 year old man  
23 with previously normal taste and smell who had developed clear rhinitis and congestion and  
24 treated himself with Zicam. On spraying his nose, he noted severe burning. This was  
25 followed immediately by loss of smell. In addition to the one detailed case, the University of  
26 Colorado researchers reported 10 other Zicam users with similar symptoms as of September  
27 of 2003.

28

1           29.    On September 12, 2003, Matrixx sent a letter to Jafek stating that he did not  
2 have permission to use Matrixx's name or the names of its products. The letter was signed  
3 by Clarot. Jafek responded to Matrixx after consulting with the university attorney, seeking  
4 permission to use the names. Matrixx responded with another letter, "no." Thus, instead of  
5 disclosing this critical research to the public, defendants demanded that the University of  
6 Colorado researchers cease referring to Zicam in their poster describing their research. At  
7 that point, Jafek had to physically cut out all instances of the word "Zicam" in his poster  
8 presentation. The poster was presented to the American Rhinologic Society without  
9 specifically referring to the product. Jafek's findings regarding Zicam were ultimately  
10 disclosed to the public on February 6, 2004 on *Good Morning America*.

11           30.    As of April of 2004, Dr. Jafek had evaluated over 100 cases of anosmia  
12 following Zicam use. Dr. Linschoten estimates that she has been in contact with  
13 approximately 65 patients who have experienced a loss of smell following use of Zicam  
14 nasal gel. She has "no doubt" that Zicam has an "immediate effect." The patients she has  
15 been in contact with complain of an "immediate, severe burning" immediately following use  
16 of Zicam nasal gel, followed by a loss of smell. Some of her patients partially regained their  
17 sense of smell after a few months, but none of her patients have "completely recovered yet."  
18 Dr. Jafek's and Dr. Linschoten's findings that "[z]inc ions are toxic to olfactory epithelium"  
19 and that "[r]eports of severe hyposmia with parosmia or anosmia appear to be related to the  
20 intranasal use of zinc gluconate [Zicam Cold Remedy]" were later published in the May/June  
21 issue of the *American Journal of Rhinology*.

22           31.    Both Drs. Jafek and Hirsch have observed that the Zicam nasal spray does  
23 reach the upper area of the nasal cavity where smell reception occurs. Dr. Jafek observed  
24 that Zicam nasal gel would "hit the ceiling" if opened and squeezed. Late in 2002 Zicam  
25 introduced a cold remedy swab product which when used would not be propelled into the  
26 upper area of the nasal cavity.

27  
28



1           33.    On October 23, 2003, defendants convened a conference call with financial  
2 analysts following the Company. During the conference call defendant Johnson stated that  
3 “retail results through October suggest that retail sales . . . are up 95%” and that “we are  
4 extremely encouraged at this point in time” as the Company has “very strong momentum  
5 going into the upcoming cough and cold season.” Johnson further reiterated that:

6           [W]hat lies behind these results is a unique product in the Zicam product line.  
7           A product that offers a unique benefit, the ability for consumers to actually  
8           reduce the duration and severity of the common cold, not just mask the  
9           symptoms.

10           These statements were materially false and misleading as defendants were aware, but failed  
11 to disclose, that researchers at the University of Colorado had reported a link between Zicam  
12 and anosmia and that use of Zicam posed a material health risk to consumers, which when  
13 disclosed would adversely affect the Company’s business.

14           34.    Defendant Johnson further stated that the Company was “extremely well  
15 positioned for a successful 2003/2004 cough/cold season.” During the conference call  
16 defendant Hemelt stated that sales:

17           [M]ore than doubled for the three months ended September 30 from the third  
18           quarter of last year. Sales increased 163% to 13.4 million dollars compared to  
19           5.1 million dollars, last year. Earnings per share on a fully diluted basis for  
20           the third quarter increased 29 cents from 11 cent in 2002. The growth in sales  
21           was driven by increased sales of all ten of our Zicam products.

22           Defendant Johnson further stated that “our expectation for the full year is that our revenues  
23 will be up in excess of 50% and that earnings, per share for the full year will be in the 25 to  
24 30 cent range.” These statements were materially false and misleading as defendants were  
25 aware but failed to disclose that Zicam products, which were responsible for the Company’s  
26 sales growth, posed a material health risk to consumers, which when disclosed would  
27 adversely affect the Company’s business.

28           35.    On November 12, 2003, Matrixx filed its quarterly report for the third quarter  
of 2003 on Form 10-Q with the SEC. The report reiterated the results announced in the  
October 22, 2003 press release and was signed by defendants Johnson and Hemelt. In a  
section of the report titled “Risk Factors,” the Company purported to warn of the material

1 risk posed by product liability actions that potentially could be filed against the Company,  
2 representing that even a single claim, regardless of merit, can have materially negative  
3 consequences for the Company:

4 *We may incur significant costs resulting from product liability claims.*

5 We are subject to significant liability should use or consumption of our  
6 products cause injury, illness or death. Although we carry product liability  
7 insurance, there can be no assurance that our insurance will be adequate to  
8 protect us against product liability claims or that insurance coverage will  
9 continue to be available on reasonable terms. A product liability claim, even  
10 one without merit or for which we have substantial coverage, could result in  
11 significant legal defense costs, thereby increasing our expenses and lowering  
12 our earnings. Such a claim, whether or not proven to be valid, could have a  
13 material adverse effect on our product branding and goodwill, resulting in  
14 reducing market acceptance of our products. This in turn could materially  
15 adversely affect our results of operations and financial condition.

11 These statements were materially false and misleading as defendants failed to disclose that a  
12 lawsuit alleging that Zicam caused anosmia had already been filed and, given the findings of  
13 the researchers at the University of Colorado it was highly likely that additional suits would  
14 be filed in the future.

15 36. In addition, as required by §302 of the Sarbanes-Oxley Act of 2002, the  
16 quarterly report contained certifications signed by defendants Johnson and Hemelt  
17 representing, among other things, that:

18 Based on my knowledge, this report does not contain any untrue statements of  
19 a material fact or omit to state a material fact necessary to make the statements  
20 made, in light of the circumstances under which such statements were made,  
21 not misleading with respect to the period covered by this report.

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

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

1 38. On February 2, 2004, Matrixx issued a press release which stated:

2 All Zicam products are manufactured and marketed according to FDA  
3 guidelines for homeopathic medicine. Our primary concern is the health and  
4 safety of our customers and the distribution of factual information about our  
5 products. Matrixx believes statements alleging that intranasal Zicam products  
6 cause anosmia (loss of smell) are completely unfounded and misleading.

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

16 A multitude of environmental and biologic influences are known to  
17 affect the sense of smell. Chief among them is the common cold. As a result,  
18 the population most likely to use cold remedy products is already at increased  
19 risk of developing anosmia. Other common causes of olfactory dysfunction  
20 include age, nasal and sinus infections, head trauma, anatomical obstructions,  
21 and environmental irritants.

22 39. The statements referenced above in ¶¶36-38 were each materially false and  
23 misleading because they failed to disclose and misrepresented the following material adverse  
24 facts, among others:

25 (a) by the beginning of the Class Period, a lawsuit had been filed against  
26 the Company alleging that the Company's zinc gluconate-based products had caused  
27 plaintiffs to suffer from anosmia and that at least three other similar lawsuits had been filed  
28 during the Class Period;

(b) evidence questioning the safety of the Company's mainstay cold  
medication had surfaced by the beginning of the Class Period and was mounting;

(c) the Company's express assurances that the 10-Q "does not contain any  
untrue statements of a material fact or omit to state a material fact necessary to make the  
statements made, in light of the circumstances under which such statements were made, not  
misleading with respect to the period covered by this report" were materially false and  
misleading because the report omitted any reference to the University of Colorado research,  
other research linking zinc to loss of smell, the numerous individuals suffering from anosmia

1 after Zicam use, and purported to warn about the harm that *potential* product liability  
2 lawsuits posed to Matrixx's business without disclosing that lawsuit(s) had *already* been  
3 filed;

4 (d) defendants were aware of but failed to disclose that numerous  
5 individuals who had used Zicam suffered anosmia; and

6 (e) defendants were aware of and actively thwarted the dissemination of  
7 scientific research conducted at the University of Colorado linking Zicam to anosmia.

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

13 41. The Company's stock declined some following the *Dow Jones* report, falling  
14 from \$13.55 per share on January 30, 2004 to \$11.97 per share on February 2, 2004. The  
15 Company, however, seeking to reverse the decline in its stock price, issued the press release  
16 on February 2 that represented that "statements alleging that intranasal Zicam products cause  
17 anosmia (loss of smell) are completely unfounded and misleading." The Company further  
18 represented that "[i]n no clinical trial of intranasal zinc gluconate gel products has there been  
19 a single report of lost or diminished olfactory function (sense of smell)." Such statements  
20 were materially false and misleading because, as the Company would later admit, no clinical  
21 study has examined the relationship between zinc gluconate gel and anosmia and other  
22 research had, in fact, shown such a link. The Company's vigorous, but baseless, denials had  
23 their intended effect: the stock price rose, closing at \$13.40 per share on February 3, 2004.

#### 24 HEALTH RISKS OF ZICAM ARE COMMUNICATED TO THE PUBLIC

25 42. On February 6, 2004, *Good Morning America*, a nationally-broadcast morning  
26 news program, reported on the connection between Matrixx's zinc gluconate and anosmia.  
27 According to reporter John Ferrugia, "Dr. Bruce Jafek has discovered more than a dozen  
28 patients with the same troubles as Linda [who claims that Zicam Gel caused her anosmia],

1 after using the Zicam product." With respect to pending lawsuits, John Ferrugia reported  
2 that. "Well, in fact there have been, so far, four lawsuits. Others are being prepared,  
3 anywhere from California to Michigan. And so far, Matrixx-Initiatives [sic] has denied that  
4 there's any problem, saying that there is no liability. They're saying there's a lot of different  
5 reasons you can lose your sense of smell and Zicam isn't one of them."

6 43. In response to the *Good Morning America* segment disclosing Dr. Jafek's  
7 findings linking Zicam to anosmia, the price of Matrixx common stock plummeted, falling  
8 from \$13.05 per share on February 5, 2004, to close at \$9.94 per share on February 6 – a  
9 one-day drop of 23.8% on unusually heavy trading volume.

10 44. On February 6, 2004, Matrixx issued a press release "Reaffirm[ing] Safety of  
11 Intranasal Zicam(R) Remedy," reiterating its position that the product is safe and that no  
12 clinical trial has shown a connection between its product and anosmia:

13 We want to assure our consumers that Zicam Cold Remedy intranasal  
14 zinc gluconate products are manufactured and marketed according to Food and  
15 Drug Administration guidelines for homeopathic medicine. Our primary  
16 concerns are the health and safety of those who use Zicam Cold Remedy nasal  
17 gels and the distribution of factual information about our products.

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

27 45. However, on February 19, 2004, defendants filed an 8-K with the SEC which  
28 stated that the Company had

29 convened a two-day meeting of physicians and scientists to review current  
30 information on smell disorders. The meeting was held in response to a poster  
31 presentation at the American Rhinological Society in September 2003 alleging  
32 an association between the use of Zicam and the onset of smell disorders.

33 46. The February 19, 2004, 8-K further stated that: "In the opinion of the panel,  
34 there is insufficient scientific evidence at this time to determine if zinc gluconate, when used  
35 as recommended, affects a person's ability to smell."

1           47.    On March 4, 2004, reporter John Ferrugia, who had reported on the matter on  
2 the *Good Morning America* segment, reported, on news website *TheDenverChannel.com* (an  
3 affiliate of ABC News), that "Zicam Admits No Studies Done on Loss of Smell." According  
4 to the article, "[t]he makers of the nationally advertised cold remedy Zicam now admit that  
5 they don't know if their nasal gel could cause loss of smell." A related part of the article  
6 reported as follows:

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

9                   The company that makes Zicam (pictured left), Matrixx Initiatives, first  
10 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.

11                   These studies come after our investigative report aired both on  
12 "7NEWS" and ABC's "Good Morning America." Those reports prompted  
dozens of complaints to the U.S. Food and Drug Administration, which is now  
investigating.

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

15                   In turn, the company is taking action.

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

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

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

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

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

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

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

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

3 "It would seem that it would either be reasonable to remove the product  
4 from the market pending the additional study recommended by the scientific  
5 panel or at least put a warning label so people can be aware of this problem,"  
6 said Jafek. "If you want to use this product to possibly shorten duration or  
7 severity of your cold, do so but be aware that it may cause a loss of smell."

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

14 A company representative says consumers can make their own decision  
15 until studies are finished.

16 48. The Company's annual report, filed with the SEC on Form 10-K on March 19,  
17 2004, stated that numerous suits alleging that its Zicam product(s) caused anosmia had been  
18 filed, including one brought in the Superior Court of Maricopa County, Arizona, on behalf of  
19 64 plaintiffs:

20 Products Liability Matters

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

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

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

The Company is actively engaged in defending these various lawsuits.

49. According to Matrixx's own SEC filings, from late 2003 through October 2004  
Matrixx has been sued by approximately 284 individuals in 19 different lawsuits alleging

1 that Zicam caused damage to their sense of smell. Plaintiff has identified the following  
 2 personal injury lawsuits which are detailed in the following table:

CASE	CASE NO.	DATE FILED	JURISDICTION	NO. OF PLAINTIFFS
<i>Christensen, et al. v. Matrixx Initiatives, Inc., et al.</i>	4:03-cv-0146-HWB	10/14/03	United States District Court, Western District of Michigan (Kalamazoo)	2
<i>Nelson v. Matrixx Initiatives, Inc., et al.</i>	YC048136	12/08/03	Los Angeles Superior Court	1
<i>Sutherland v. Matrixx Initiative, Inc., et al.</i>	CV2003-1635-WHR	12/18/03	Circuit Court of Etowah, Alabama; Removed to Northern District of Alabama (Middle); 4:2004cv00129	1
<i>Bentley, et al. v. Matrixx Initiatives, Inc., et al.</i>	CV2004-001338	01/23/04	Superior Court of Arizona (Maricopa County)	5 (266 consolidated)
<i>Ringbauer, et al. v. Matrixx Initiatives, Inc., et al.</i>	CV2004-002822	02/11/04	Superior Court of Arizona (Maricopa County); Removed to District of Arizona (Phoenix); 04-CV-513	1
<i>Abramsen, et al. v. Matrixx Initiatives, Inc., et al.</i>	CV2004-04415	03/05/04	Superior Court of Arizona (Maricopa County) Consolidated into Bentley on 09/22/04	64
<i>Powell, et al. v. Matrixx Initiatives, Inc., et al.</i>	CV2004-006062	03/29/04	Superior Court of the State of Arizona (Maricopa County)	3
<i>Kalfian v. Matrixx Initiatives, et al.</i>	04-CV-119	04/07/04	United States District Court for the District of Rhode Island (Providence)	1
<i>Hood v. Matrixx Initiatives, Inc., et al.</i>	CACE04006193	04/14/04	Broward County 17th Judicial Circuit of Florida	2
<i>Benkwith v. Matrixx Initiatives, Inc., et al.</i>	CV04-1180 (CNP)	05/03/04	Circuit Court for Montgomery County, Alabama; Removed to Middle District of Alabama (Montgomery); 2:04-cv-00623-MEF-DRB	1
<i>Douillard v. Matrixx Initiatives, Inc., et al.</i>	CV2004-008950	05/06/04	Superior Court of the State of Arizona (Maricopa County); Consolidated into Bentley on 09/22/04	1
<i>Mayo v. Matrixx Initiatives, Inc., et al.</i>	ESX-L-3551-04	05/06/04	Superior Court of New Jersey (Essex County); Removed to District of New Jersey (Newark); 2:04-cv-03197-WJM-RJII	1
<i>Adams, et al. v. Matrixx Initiatives, Inc., et al.</i>	CV2004-008929	05/07/04	Superior Court of the State of Arizona (Maricopa County); Consolidated into Bentley on 09/22/04	89
<i>Lutche v. Matrixx Initiatives, Inc., et al.</i>	CV2004-008704	05/07/04	Superior Court of the State of Arizona (Maricopa County); Consolidated into Bentley on 09/22/04	1
<i>Hunter, et al. v. Matrixx Initiatives, Inc., et al.</i>	CV2004-010830	06/04/04	Superior Court of the State of Arizona (Maricopa County); Consolidated into Bentley on 09/22/04	8
<i>Bryant v. Matrixx Initiatives, Inc., et al.</i>	04CV808	06/14/04	District Court, Boulder County, Colorado; Removed to District of Colorado (Denver); 1:04-cv-02317-MSK-BNB	1
<i>Wyatt v. Matrixx Initiatives, Inc., et al.</i>	2:04-cv-04-1230-UWC	06/15/04	United States District Court, Northern District of Alabama	1
<i>Hilton v. Matrixx Initiatives, Inc., et al.</i>	04 82061620 04	06/27/04	48th Judicial District Court, Tarrant County, Texas; Removed to Northern District of Texas; 4:04-cv-00519	1

CASE	CASE NO.	DATE FILED	JURISDICTION	NO. OF PLAINTIFFS
<i>Akers, et al. v. Matrixx Initiatives, Inc., et al.</i>	CV2004-016010	08/20/04	Superior Court of the State of Arizona (Maricopa County); Consolidated into Bentley on 09/22/04	97
<i>Hans, et al. v. Matrixx Initiatives, Inc., et al.</i>	3:04-cv-00540-TBR	09/13/04	United States District Court, Western District of Kentucky (Louisville)	4
<i>Rostron v. Matrixx Initiatives, Inc., et al.</i>	4:04-cv-03136-WMA	11/01/04	United States District Court for Northern District of Alabama	2
<i>Swanbeck v. Matrixx Initiatives, Inc., et al.</i>	L003096 04	11/18/04	Superior Court of the State of New Jersey (Morris County)	1
<i>O'Hanlon, et al. v. Matrixx Initiatives, Inc., et al.</i>	2:04cv10391-AHM-JTL	12/21/04	Central District of California; Removed from Los Angeles County Superior Court, Case No. BC220239	2
<i>Williams, et al. v. Matrixx Initiatives, Inc., et al.</i>	4:04-cv-03548-UWC	12/29/04	United States District Court for Northern District of Alabama	5
<i>Gillespie v. Matrixx Initiatives, Inc., et al.</i>	8:05-cv-00047	01/13/05	Central District of California; Removed from Orange County Superior Court, Case No. 04CC11976.	1
<i>Bourgeois v. Matrixx Initiatives, Inc. et al</i>	4:05-cv-00393-RBP	02/22/05	Northern District of Alabama (Middie)	1

#### FALSE FINANCIAL REPORTING DURING THE CLASS PERIOD

50. In order to inflate the price of Matrixx's stock, defendants caused the Company to falsely report its results for 3Q of 2003 by failing to disclose, if not reserve for, a potential liability that had surfaced prior to the Class Period arising from health related concerns questioning the safety of its mainstay cold medication in violation of Generally Accepted Accounting Principals ("GAAP").

51. The 3Q 2003 results were included in the 10-Q filed with the SEC on November 12, 2003. The results for quarter ending September 30, 2003 were also included in a press release issued at the start of the Class Period on October 22, 2003. These SEC filings represented that the financial information was a fair statement of the Company's financial results and that the results were prepared in accordance with GAAP.

52. These representations were false and misleading as to the financial information reported, as such financial information was not prepared in conformity with GAAP, nor was the financial information "a fair presentation" of the Company's operations due to the Company's improper accounting for its reserves, causing the financial results to be presented in violation of GAAP and SEC rules.



1 indicate the nature of the contingency and shall give an estimate of the  
2 possible loss or range of loss or state that such an estimate cannot be made.

3 \* \* \*

4 Obligations other than warranties may arise with respect to products or  
5 services that have been sold, for example, claims resulting from injury or  
6 damage caused by product defects. If it is probable that claims will arise with  
7 respect to products or services that have been sold, accrual for losses may be  
8 appropriate. *The condition in paragraph 8(a) would be met, for instance,  
9 with respect to a drug product or toys that have been sold if a health or  
10 safety hazard related to these products is discovered and as a result it is  
11 considered probable that liabilities have been incurred. The condition in  
12 paragraph 8(b) would be met if experience or other information enables the  
13 enterprise to make a reasonable estimate of the loss with respect to the drug  
14 product or the toys.*

15 SFAS No. 5 ¶¶8, 10 & 26.

16 55. Here, at a minimum, by 3Q of 2003, Matrixx should have disclosed, if not  
17 provided a reserve for, a potential contingency that had arisen related to safety issues  
18 concerning its products. During the Class Period, Matrixx did not disclose that several  
19 lawsuits had been filed against the Company, including one prior to the start of the Class  
20 Period, alleging that the Company's zinc gluconate-based products had caused plaintiffs to  
21 suffer from anosmia and that anecdotal evidence had surfaced questioning the safety of the  
22 Company's mainstay cold medication. The failure to disclose these known contingencies  
23 violated GAAP.

24 56. Due to these accounting improprieties, the Company presented its financial  
25 results and statements in a manner which violated GAAP, including violation of the  
26 following fundamental accounting principles:

27 (a) the principle that interim financial reporting should be based upon the  
28 same accounting principles and practices used to prepare annual financial statements. (APB  
No. 28, ¶10);

---

possibility that a loss may have incurred even though information may not indicate that it is  
probable that an asset had been impaired or a liability had been incurred at the date of the  
financial statements.

1 (b) the principle that financial reporting should provide information that is  
2 useful to present and potential investors and creditors and other users in making rational  
3 investment, credit and similar decisions. (FASB Statement of Concepts No. 1, ¶34);

4 (c) the principle that financial reporting should provide information about  
5 the economic resources of an enterprise, the claims to those resources, and effects of  
6 transactions, events and circumstances that change resources and claims to those resources.  
7 (FASB Statement of Concepts No. 1, ¶40);

8 (d) the principle that financial reporting should provide information about  
9 how management of an enterprise has discharged its stewardship responsibility to owners  
10 (stockholders) for the use of enterprise resources entrusted to it. To the extent that  
11 management offers securities of the enterprise to the public, it voluntarily accepts wider  
12 responsibilities for accountability to prospective investors and to the public in general.  
13 (FASB Statement of Concepts No. 1, ¶50);

14 (e) the principle that financial reporting should provide information about  
15 an enterprise's financial performance during a period. Investors and creditors often use  
16 information about the past to help in assessing the prospects of an enterprise. Thus, although  
17 investment and credit decisions reflect investors' expectations about future enterprise  
18 performance, those expectations are commonly based at least partly on evaluations of past  
19 enterprise performance. (FASB Statement of Concepts No. 1, ¶42);

20 (f) the principle that financial reporting should be reliable in that it  
21 represents what it purports to represent. That information should be reliable as well as  
22 relevant, is a notion that is central to accounting. (FASB Statement of Concepts No. 2, ¶¶58-  
23 59);

24 (g) the principle of completeness, which means that nothing is left out of  
25 the information that may be necessary to insure that it validly represents underlying events  
26 and conditions. (FASB Statement of Concepts No. 2, ¶79); and

27 (h) the principle that conservatism be used as a prudent reaction to  
28 uncertainty to try to ensure that uncertainties and risks inherent in business situations are

1 adequately considered. The best way to avoid injury to investors is to try to ensure that what  
2 is reported represents what it purports to represent. (FASB Statement of Concepts No. 2,  
3 ¶¶95, 97).

4 57. Further, the undisclosed adverse information concealed by defendants during  
5 the Class Period is the type of information which, because of SEC regulations, regulations of  
6 the national stock exchanges and customary business practice, is expected by investors and  
7 securities analysts to be disclosed and is known by corporate officials and their legal and  
8 financial advisors to be the type of information which is expected to be and must be  
9 disclosed.

#### 10 **UNDISCLOSED ADVERSE INFORMATION**

11 58. The market for Matrixx securities was open, well-developed and efficient at all  
12 relevant times. As a result of defendants' materially false and misleading statements and  
13 failures to disclose adverse information regarding Zicam, Matrixx securities traded at  
14 artificially inflated prices during the Class Period. The artificial inflation continued until at  
15 least February 6, 2004. Plaintiff and other members of the class purchased or otherwise  
16 acquired Matrixx securities relying upon the integrity of the market price of the Company's  
17 securities and market information relating to Matrixx and have been damaged thereby.

18 59. During the Class Period, defendants materially misled the investing public,  
19 thereby inflating the price of Matrixx common stock, by publicly issuing false and  
20 misleading statements and omitting to disclose material adverse facts regarding Zicam,  
21 necessary to make defendants' statements, as set forth herein not false and misleading. Said  
22 statements and omissions were materially false and misleading in that they failed to disclose  
23 material adverse information regarding Zicam and misrepresented the truth about the  
24 Company, its business and operations, as detailed herein.

25 60. At all relevant times, the material misrepresentations and omissions  
26 particularized in this Complaint directly or proximately caused or were a substantial  
27 contributing cause of the damages sustained by plaintiff and other members of the class. As  
28 described herein, during the Class Period, defendants made or caused to be made a series of

1 materially false or misleading statements about Matrixx's earnings. These material  
2 misstatements and omissions created in the market an unrealistically positive assessment of  
3 Matrixx and its prospects as operations, thus causing the Company's common stock to be  
4 overvalued and artificially inflated at all relevant times. Defendants' materially false and  
5 misleading statements during the Class Period resulted in plaintiff and other members of the  
6 class purchasing the Company's common stock at artificially inflated prices, thus leading to  
7 their losses when the illusion was revealed and the market was able to accurately value the  
8 Company.

9 **APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-**  
10 **MARKET DOCTRINE**

11 61. At all relevant times, the market for Matrixx's securities was an efficient  
12 market for the following reasons, among others:

13 (a) Matrixx's stock met the requirements for listing and was listed and  
14 actively traded on the NASDAQ National Market, a highly efficient and automated market;

15 (b) as a regulated issuer, Matrixx filed periodic public reports with the SEC  
16 and the NASDAQ National Market;

17 (c) Matrixx regularly communicated with public investors via established  
18 market communication mechanisms, including through regular disseminations of press  
19 releases on the national circuits of major newswire services and through other wide-ranging  
20 public disclosures, such as communications with the financial press and other similar  
21 reporting services; and

22 (d) Matrixx was followed by several securities analysts employed by major  
23 brokerage firms who wrote reports which were distributed to the sales force and certain  
24 customers of their respective brokerage firms. Each of these reports were publicly available  
25 and entered the public marketplace.

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



1 intranasal use of zinc gluconate [Zicam Cold Remedy]" were later published in the May/June  
2 2004 issue of the *American Journal of Rhinology*.

### 3 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

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

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

20 67. Plaintiff's claims are typical of the claims of the members of the class as all  
21 members of the class are similarly affected by defendants' wrongful conduct in violations of  
22 federal law that is complained of herein.

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

25 69. Common questions of law and fact exist as to all members of the class and  
26 predominate over any questions solely affecting individual members of the class. Among the  
27 questions of law and fact common to the class are:

28

1 (a) whether the federal securities laws were violated by defendants' acts as  
2 alleged herein;

3 (b) whether statements made by defendants to the investing public during  
4 the Class Period misrepresented material facts about the business and operations of Matrixx;  
5 and

6 (c) to what extent the members of the class have sustained damages and the  
7 proper measure of damages.

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

14 **FIRST CLAIM**  
15 **Violation of §10(b) of the Exchange Act and Rule 10b-5**  
16 **Promulgated Thereunder Against All Defendants**

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

19 72. During the Class Period, Matrixx and the Individual Defendants carried out a  
20 plan, scheme and course of conduct which was intended to and, throughout the Class Period,  
21 did: (i) deceive the investing public, including plaintiff and other class members, as alleged  
22 herein; (ii) artificially inflate and maintain the market price of Matrixx's securities; and (iii)  
23 cause plaintiff and other members of the class to purchase Matrixx's securities at artificially  
24 inflated prices. In furtherance of this unlawful scheme, plan and course of conduct,  
25 defendants took the actions set forth herein.

26 73. Defendants: (i) employed devices, schemes, and artifices to defraud; (ii) made  
27 untrue statements of material fact and/or omitted to state material facts necessary to make the  
28 statements not misleading; and (iii) engaged in acts, practices, and a course of business  
which operated as a fraud and deceit upon the purchasers of the Company's securities in an

1 effort to maintain artificially high market prices for Matrixx's securities in violation of the  
2 Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the  
3 wrongful and illegal conduct charged herein or as controlling persons as alleged below.

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

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

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

26 77. Defendants had actual knowledge of the misrepresentations and omissions of  
27 material facts set forth herein, or acted with reckless disregard for the truth in that they failed  
28 to ascertain and to disclose such facts, even though such facts were available to them. Such

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

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

26       80. By virtue of the foregoing, defendants have violated §10(b) of the Exchange  
27 Act and Rule 10b-5 promulgated thereunder.

28



1 Defendants' wrongful conduct, plaintiff and other members of the class suffered damages in  
2 connection with their purchases of the Company's securities during the Class Period.

3 WHEREAS, plaintiff prays for relief and judgment, as follows:

4 A. Determining that this action is a proper class action, designating plaintiff as  
5 lead plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal  
6 Rules of Civil Procedure and plaintiff's counsel as lead counsel;

7 B. Awarding compensatory damages in favor of plaintiff and the other class  
8 members against all defendants, jointly and severally, for all damages sustained as a result of  
9 defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

10 C. Awarding plaintiff and the class their reasonable costs and expenses incurred in  
11 this action, including counsel fees and expert fees; and

12 D. Such other and further relief as the Court may deem just and proper.

13 **JURY TRIAL DEMANDED**

14 Plaintiff hereby demands a trial by jury.

15 DATED: March 4, 2005

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT P.C.

16  
17  
18   
FRANCIS J. BALINT, JR.  
ANDREW S. FRIEDMAN

19  
20 2901 W. Central Avenue, Suite 1000  
Phoenix, AZ 85012-3311  
Telephone: 602/274-1100

21 Liaison Counsel for Plaintiffs  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
WILLIAM S. LERACH  
DARREN J. ROBBINS  
SCOTT H. SAHAM  
LUCAS F. OLTS  
401 B Street, Suite 1600  
San Diego, CA 92101  
Telephone: 619/231-1058

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
SAMUEL H. RUDMAN  
DAVID A. ROSENFELD  
200 Broadhollow Road, Suite 406  
Melville, NY 11747  
Telephone: 631/367-7100

Lead Counsel for Plaintiffs

CAVANAGH & O'HARA  
PATRICK O'HARA  
407 East Adams  
Springfield, IL 62701  
Telephone: 217/544-1771  
217/544-9894 (fax)

Attorneys for Plaintiff

1 ORIGINAL, and COPY of the foregoing  
2 filed this 4<sup>th</sup> day of March, 2005, with:

3 Clerk of Court  
4 U.S. DISTRICT COURT  
5 401 West Washington  
6 Phoenix, AZ 85003

7 COPIES of the foregoing mailed this  
8 4<sup>th</sup> day of March, 2005, to:

9 Steven G. Schulman  
10 Milberg Weiss Bershad & Schulman, LLP  
11 One Pennsylvania Plaza – 48<sup>th</sup> Floor  
12 New York, NY 10119

13 Marc S. Henzel  
14 Law Offices of Marc S. Henzel  
15 237 Montgomery Avenue  
16 Bala Cynwyd, PA 19004

17 Marc A. Topaz  
18 Schiffrin & Barroway, LLP  
19 Three Bala Plaza East, Suite 400  
20 Bala Cynwyd, PA 19004

21 Samuel H. Rudman  
22 David A. Rosenfeld  
23 Lerach Coughlin Stoia Geller Rudman & Robbins, PLLC  
24 200 Broadhollow Road  
25 Suite 406  
26 Melville, NY 11747

27 Christopher Seeger  
28 David R. Buchanan  
Seeger Weiss LLP  
One William Street  
New York, NY 10004

*Attorneys for Plaintiff*

22

23

24

25

26

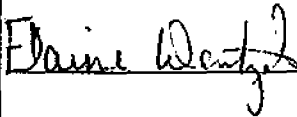
27

28

1 David B. Rosenbaum, Esq.  
Maureen Beyers, Esq.  
2 Osborn Maledon, Esq.  
2929 N. Central Avenue, 21<sup>st</sup> Floor  
3 Phoenix, Arizona 85012-2794

4 Michael G. Yoder, Esq.  
Amy J. Longo, Esq.  
5 O'Melveny & Myers LLP  
610 Newport Center Drive  
6 Newport Beach, CA 92660

7 *Attorneys for Defendants*

8   
9 \_\_\_\_\_

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28