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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TILLIE SALTZMAN, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

JONES SODA COMPANY, PETER M. VAN
STOLK and HASSAN N. NATHA,

Defendants.

)
) No.
)
) CLASS ACTION
)
) COMPLAINT FOR VIOLATION OF THE
) SECURITIES EXCHANGE ACT OF 1934
)
)
)
)
)
) DEMAND FOR JURY TRIAL

1 **SUMMARY AND OVERVIEW**

2 1. This is a class action on behalf of all purchasers of the common stock of Jones Soda
3 Company (“Jones Soda” or the “Company”) between 3/9/07 and 8/2/07 (the “Class Period”). During
4 the Class Period, Jones Soda made false and misleading statements about its financial results and
5 business prospects.

6 2. Jones Soda is a Seattle based manufacturer and marketer of a variety of beverage
7 products sold through the Company’s national distribution network.

8 3. As a result of Jones Soda’s release of its 4Q 2006 results after the close of trading on
9 3/8/07 and its very bullish message to analysts and the investment community after releasing its 4Q
10 2006 results, including announcing it was expanding the sales channels of its *Jones Soda* product in
11 12-ounce cans to major retailers such as Wal-Mart, Kroger, Safeway and Kmart, Jones Soda’s stock
12 traded up from its closing price of under \$14 per share on 3/8/07 to close above \$17 per share on
13 3/9/07, on trading volume more than 1200% greater than the previous ten-day average. Specifically,
14 defendants stated that through its expanded sales network and advertising activities then underway,
15 Jones Soda was on track to obtain 25% of the \$66 billion canned soda market during the first half of
16 2007. Defendants’ continued bullish statements in subsequent weeks drove the stock price above
17 \$32 per share by 4/16/07, more than doubling the Company’s market value.

18 4. On 8/2/07, however, the Company reported significantly lower-than-expected canned
19 soda sales and difficulty getting the new canned soda product onto retailers’ shelves. Despite earlier
20 promises to have the new canned product onto retailer shelves in advance of the Memorial Day
21 holiday and to use a huge national advertising blitz to increase brand recognition that weekend to
22 increase sales and market share, defendants would admit they lacked the requisite sales and
23 distribution resources to execute the launch, failed to obtain shelf-space at the national chains and
24 essentially bumbled the launch of *Jones Soda* 12-ounce cans, forcing them to embargo the
25 advertising campaign. As a result, the Company’s first half 2007 financial performance significantly
26 underperformed that which they had led the investment community to expect.

1 **THE PARTIES**

2 8. Plaintiff Tillie Saltzman purchased shares of Jones Soda common stock during the
3 Class Period and was damaged thereby.

4 9. Defendant Jones Soda is headquartered in Seattle, Washington. Jones Soda's
5 common stock trades in an efficient market on the Nasdaq. Jones Soda controlled each of the
6 individual defendants and each of the individual defendants controlled Jones Soda.

7 10. (a) Defendant Peter M. Van Stolk ("Van Stolk") was President and Chief
8 Executive Officer of Jones Soda during the Class Period.

9 (b) Defendant Hassan N. Natha ("Natha") was Chief Financial Officer and
10 Secretary of Jones Soda during the Class Period.

11 **SCIENTER AND SCHEME ALLEGATIONS**

12 11. Defendants are liable for intentionally and knowingly making false statements or for
13 failing to disclose adverse facts or for intentionally and knowingly participating in a fraudulent
14 scheme by which they inflated Jones Soda's stock price.

15 12. Jones Soda's top executives – including each of the individual defendants – were
16 constantly focused on the amount of shelf space obtained, anticipated canned product delivery
17 schedules, and how much inventory of bottled beverage product Jones Soda had on hand at any
18 given time because this was the key indicator of future demand for Jones Soda's products (including
19 the success of the 12-ounce can launch) and thus Jones Soda's future revenue, net income and EPS
20 growth. Jones Soda's top executives – including each of the individual defendants – received and
21 read very detailed weekly sales and financial reports which provided detailed information with
22 respect to the ongoing efforts to obtain shelf space, tracking the orders placed and performance of
23 Jones Soda and each of Jones Soda's retailers around the country.

24 **FALSE AND MISLEADING STATEMENTS**

25 13. On 3/8/07, defendants issued a release entitled "Jones Soda Co. Announces Record
26 Fourth Quarter and 2006 Year-End Financial Results," which stated in relevant part:

1 “Fiscal 2006 was marked by the execution of several important initiatives that have
2 significantly enhanced our growth prospects, further differentiated our brand from
3 the competition, and set the stage for an exciting 2007. *Foremost, we signed a*
4 *distribution and manufacturing agreement with National Beverage Corp. for 12 oz.*
5 *Jones Soda and 16 oz. Jones Energy cans for the U.S. marketplace. After the*
6 *successful launch during 2005 and 2006 for our first ever line of cans exclusively*
7 *at Target, we are excited to go after a much larger piece of the \$66 billion CSD*
8 *category. Additionally, we made the strategic decision to sweeten our new cans with*
9 *pure cane sugar rather than high fructose corn syrup, which is predominately used*
10 *throughout the industry. Not only does this provide our consumers a healthier*
11 *alternative, it sets Jones Soda apart from the other beverage companies. We are*
12 *optimistic about the opportunities we believe our new Jones Pure Cane Soda will*
13 *provide, and we have already secured more than 25% ACV through shelf space at*
14 *major retailers”.*

15 Mr. van Stolk concluded, “We are very pleased with our overall performance
16 in fiscal 2006. Financially, we increased revenues more than 16% and drove an
17 earnings per share gain of 217%. At the same time, we successfully raised \$30
18 million to help fund our future growth. Operationally, we continued to gain shelf
19 space within our DTR relationships, increased our geographic penetration through
20 our DSD business, and prepared for the launch of our 24C vitamin drink mix into the
21 marketplace. *We also upgraded our operating platform with the addition of key*
22 *personnel to better support both our core businesses as well as our new 12 oz. can*
23 *venture. Strategically, we once again provided consumers with unique, limited*
24 *edition Jones Soda products, such as our Valentines Day, Thanksgiving and 10th*
25 *Anniversary Hot Wheels collectors’ packs. Over the past 12 months we have*
26 *strengthened our foundation, increased our brand equity, and further evolved our*
strategy, as we continue our transformation from a small player in a niche market
into the premium name in the beverage industry. We move forward with a powerful
portfolio of branded products that we believe will allow us to deliver long-term
growth and profitability and increased shareholder value.”

17 14. The Company’s common stock, which closed at \$13.95 per share on the evening of
18 3/8/07, significantly increased to close at \$17.13 on 3/9/07 on 6,999,900 shares traded, more than
19 1200% of the 542,000 that had changed hands on average each day during the proceeding ten-day
20 period.

21 15. On 4/2/07, defendants issued a release entitled “Jones Soda Launches Traditional 12
22 Ounce Bottled Soda Sweetened With Pure Cane Sugar,” which stated in relevant part:

23 Jones Soda Co., today announced that it has launched its 12 ounce bottled soda
24 sweetened with pure cane sugar.

25 *In conjunction with the national launch of the Jones Soda 12 ounce can,*
26 *the Company outlined a strategy to convert the sweetener in all its Jones Soda*
products to pure cane sugar from high fructose corn syrup (HFCS). Pure cane
sugar is a natural ingredient as opposed to HFCS which is food and drink additive.
The entire Jones Soda full-sugar line is now branded Jones Pure Cane Soda and is

1 available in single 12 ounce glass bottles and 4-Packs as well as 12 ounce cans. Jones
2 Pure Cane Soda is unique in the alternative beverage category as the only national
brand sweetened with pure cane sugar.

3 Peter van Stolk, President and CEO stated, "We are excited to now offer even
4 better products for our consumers while at the same time further distinguishing Jones
5 Soda from the competition. After numerous requests from our customers, coupled
6 with detailed market research and comprehensive product development, we now
believe that we now offer the best soda product in the industry and we are confident
that everyone will enjoy and appreciate this positive switch to pure cane sugar."

7 Mr. van Stolk concluded, "Jones Soda bottles have always held a premium
8 presence in the marketplace and we believe this transition to pure cane sugar will
9 further solidify our leadership position as a result of the better taste, enhanced health
10 benefits, and positive perception of this new beverage line. We are committed to
11 continuing to introduce unique and compelling products that resonate with our
12 consumers, attract new customers to the brand, and increase our penetration of the
overall soda category."

13 16. On 5/3/07, defendants issued a release entitled "Jones Soda Co. Announces First
14 Quarter Fiscal 2007 Financial Results," which stated in relevant part:

15 Jones Soda Co. today announced financial results for the first quarter ended March
16 31, 2007.

17 First Quarter Review

- 18 • Total case sales of 1,722,000 cases (288 ounce equivalent) compared to 592,000
cases a year ago
- 19 • Revenue increased 4.9% to \$9.2 million compared to \$8.8 million a year ago
- 20 • Gross margin increased to 38.3% versus 35.6% last year
- 21 • Diluted earnings per share were \$0.00 compared to \$0.00 a year ago

22 *Peter van Stolk, President and CEO stated, "During the first quarter we
23 worked hard to prepare for the full launch of our Jones Soda 12-ounce cans while
24 at the same time increase the penetration of our bottled business at retail. Sales of
25 1,124,000 cases (288 ounce equivalent) of concentrate during the quarter
26 contributed to meaningful gross margin expansion. However, this expansion was
offset by additional investments in our infrastructure, primarily sales personnel
and increased compliance costs (Audit and Sarbanes Oxley) to support our
aggressive expansion plans coupled with several new promotional programs aimed
at heightening our brand awareness. As we head into the key summer selling
season, we are excited about the recent introduction of Jones Soda Pure Cane in
bottles which along with our Pure Cane 12-ounce cans offer consumers a healthier
alternative and provide our company significant growth opportunities into the
future."*

1 Revenue for the first quarter of 2007 increased 4.9% to \$9.2 million
2 compared to \$8.8 million in the first quarter of 2006. Gross margin for the first
3 quarter increased to 38.3% versus 35.6% in the first quarter of the prior year.
4 Operating expenses as a percentage of sales for the first quarter increased to 44.5%
5 from 36.7% in the corresponding period in the prior year. Earnings before interest
6 income and taxes decreased to a loss of \$427,784 compared to income of \$44,832 in
7 the prior year. The company reported a net income of \$58,312, or \$0.00 per diluted
8 share, compared to net income of \$2,542, or \$0.00 in the first quarter ended March
9 31, 2006.

10 *“We are very pleased to achieve more than 25% ACV in such a short period
11 of time and we are committed to expanding our national presence throughout the
12 remainder of this year and beyond,” continued Mr. van Stolk. “Jones Soda 12-
13 ounce cans are now available across the country at major retailers including Wal-
14 Mart, Sam’s Clubs, Albertsons, Safeway and Target to name a few. Importantly,
15 we have successfully leveraged our relationships to secure additional distribution
16 for our bottles with many of the aforementioned accounts and we will continue to
17 focus on executing similar agreements for our entire portfolio of products.”*

18 *Mr. van Stolk concluded, “Our brand equity and recognition continue to
19 expand as we diversify our business, increase our marketing and advertising, and
20 broaden our geographic reach. After several years as a leader in the premium soda
21 category we have made tremendous progress over the past 12-months transforming
22 our Company through exciting new and unique product offerings in order to target
23 the much larger carbonated soft drink market. While it is still early we are
24 optimistic about our prospects as we believe we are just now beginning to scratch
25 the surface in terms of our full potential. We move forward with a strong
26 management team and an entire organization dedicated to delivering long-term
growth and profitability and increased shareholder value.”*

17. On 8/2/07, defendants issued a release entitled “Jones Soda Co. Announces Second
Quarter Fiscal 2007 Financial Results,” which disclosed in relevant part:

- Gross margin *decreased* to 34.2% versus 38.0% last year
- Diluted *earnings per share were \$0.00* compared to \$0.10 a year ago

Peter van Stolk, President and CEO stated, “Although our second quarter
revenues increased by approximately 30% driven by a double digit sales gain in our
core bottle business, *our concentrate sales were below plan due to some delays in
the launch of our CSD product which negatively impacted our gross margin and
profitability. While we are disappointed in the initial rollout of our Jones Soda
cans we are focused on better managing our CSD manufacturing and distribution
process* and we remain optimistic about the many long-term growth prospects of this
business.”

18. During the conference call following the 8/2/07 earnings release, each of the
defendants, collectively and separately, admitted that, despite earlier promises to get the new canned
product onto retailer shelves in advance of the Memorial Day holiday and to use a huge national

1 advertising blitz to increase brand recognition that weekend to increase sales and market share, the
2 Company lacked the requisite sales and distribution resources to execute the launch, they failed to
3 obtain shelf-space at the national chains and essentially bumbled the launch of *Jones Soda* 12-ounce
4 cans, forcing the Company to cancel the advertising campaign.

5 19. Defendants' Class Period statements were false and misleading when made. The true
6 facts, which defendants concealed, were that:

7 (a) Jones Soda lacked the sales and distribution personnel and resources to launch
8 the *Jones Soda* 12-ounce can product through major retailers;

9 (b) the big national retailers defendants represented on 3/8/07 were going to carry
10 the *Jones Soda* 12-ounce can product were refusing to provide shelf space in advance of the
11 Memorial Day weekend;

12 (c) the Memorial Day weekend national advertising blitz had been cancelled due
13 to failure to obtain shelf space for the 12-ounce can product at the big national retailers;

14 (d) major retail distributor Starbucks had advised that it intended to discontinue
15 sales of *Jones Soda* products at its stores; and

16 (e) inventories of the Company's bottled finished goods and raw materials related
17 to the production of its bottle finished goods had been built up to levels unwarranted by the
18 Company's then-current sales/marketing capabilities.

19 20. Jones Soda's stock price plunged 23% in after-hours trading on 8/3/07 to \$11.70 per
20 share, down more than 65% from its Class Period high, erasing tens of millions of dollars in market
21 value.

22 STATUTORY SAFE HARBOR

23 21. The statutory safe harbor provided for forward-looking statements ("FLS") does not
24 apply to the false FLS pleaded. None of the specific oral FLS were identified as "forward-looking
25 statements" when made, it was not stated that actual results "could differ materially from those
26 projected," nor did meaningful cautionary statements identifying important factors that could cause

1 actual results to differ materially from those in the FLS accompany those FLS. The defendants are
2 liable for the false FLS pleaded because, at the time each FLS was made, the speaker knew the FLS
3 was false and the FLS was authorized and/or approved by an executive officer of Jones Soda who
4 knew that the FLS was false. None of the historic or present-tense statements made by defendants
5 were assumptions underlying or relating to any plan, projection or statement of future economic
6 performance, as they were not stated to be such assumptions underlying or relating to any projection
7 or statement of future economic performance when made nor were any of the projections or forecasts
8 made by defendants expressly related to or stated to be dependent on those historic or present-tense
9 statements when made.

10 **LOSS CAUSATION/ECONOMIC LOSS**

11 22. By misrepresenting its financial statements, the defendants presented a misleading
12 picture of Jones Soda's business and prospects. Thus, instead of truthfully disclosing during the
13 Class Period that Jones Soda's business was not as healthy as represented, Jones Soda falsely
14 overstated its sales and earnings capabilities.

15 23. These claims caused and maintained the artificial inflation in Jones Soda's stock price
16 throughout the Class Period and until the truth was revealed to the market.

17 24. Defendants' false and misleading statements had the intended effect and caused Jones
18 Soda stock to trade at artificially inflated levels throughout the Class Period, reaching as high as
19 \$32.60 per share.

20 25. On 8/2/07, defendants were forced to publicly disclose that the launch of *Jones Soda*
21 12-ounce cans had failed, the promised marketing campaign had not been undertaken, and the
22 Company was holding unwarranted levels of inventory of its finished bottle product and raw
23 materials related to the production of its finished bottle product. As the market learned that Jones
24 Soda's 2Q 2007 financial results had materially missed expectations defendants had created in the
25 market, the Company's stock price plummeted to below 65% of its Class Period high of \$32.60 to
26

1 close at \$11.35 on 8/3/07. This drop removed some of the inflation from Jones Soda's stock price,
2 causing real economic loss to investors who had purchased the stock during the Class Period.

3 **COUNT I**

4 **For Violation of §10(b) of the 1934 Act and Rule 10b-5**
5 **Against All Defendants**

6 26. Plaintiff incorporates ¶¶1-25 by reference.

7 27. During the Class Period, defendants disseminated or approved the false statements
8 specified above, which they knew or deliberately disregarded were misleading in that they contained
9 misrepresentations and failed to disclose material facts necessary in order to make the statements
10 made, in light of the circumstances under which they were made, not misleading.

11 28. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

12 (a) employed devices, schemes and artifices to defraud;

13 (b) made untrue statements of material facts or omitted to state material facts
14 necessary in order to make the statements made, in light of the circumstances under which they were
15 made, not misleading; or

16 (c) engaged in acts, practices and a course of business that operated as a fraud or
17 deceit upon plaintiff and others similarly situated in connection with their purchases of Jones Soda
18 common stock during the Class Period.

19 29. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of
20 the market, they paid artificially inflated prices for Jones Soda common stock. Plaintiff and the
21 Class would not have purchased Jones Soda common stock at the prices they paid, or at all, if they
22 had been aware that the market prices had been artificially and falsely inflated by defendants'
23 misleading statements.

24 **COUNT II**

25 **For Violation of §20(a) of the 1934 Act**
26 **Against All Defendants**

30. Plaintiff incorporates ¶¶1-29 by reference.

1 (f) the extent of damage sustained by Class members and the appropriate measure
2 of damages.

3 35. Plaintiff's claims are typical of those of the Class because plaintiff and the Class
4 sustained damages from defendants' wrongful conduct.

5 36. Plaintiff will adequately protect the interests of the Class and has retained counsel
6 who are experienced in class action securities litigation. Plaintiff has no interests which conflict
7 with those of the Class.

8 37. A class action is superior to other available methods for the fair and efficient
9 adjudication of this controversy.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, plaintiff prays for judgment as follows:

- 12 A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;
13 B. Awarding plaintiff and the members of the Class damages, including interest;
14 C. Awarding plaintiff reasonable costs and attorneys' fees; and
15 D. Awarding such equitable/injunctive or other relief as the Court may deem just and
16 proper.

17 **JURY DEMAND**

18 Plaintiff demands a trial by jury of all issues so triable.

19 DATED: September 4, 2007

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