

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

JOHN G. MAYER, Derivatively on Behalf of Nominal
Defendant, VUZIX CORPORATION,

Plaintiff,

vs.

PAUL J. TRAVERS, GRANT RUSSELL,
ALEXANDER RUCKDAESCHEL, EDWARD
KAY, TIMOTHY HARNED, MICHAEL D.
SCOTT, PAUL BORIS and MATT MARGOLIS,

Defendants,

and

VUZIX CORPORATION,

Nominal Defendant.

Index No.

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiff's attorneys an answer to the Complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is New York County because: (i) a substantial portion of the transactions and wrongs complained of occurred in this County; and (ii) related litigation is currently pending in both federal and state courts in this County.

Dated: October 29, 2018

Respectfully submitted,

FARUQI & FARUQI, LLP

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By: /s/ Nina M. Varindani

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**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

JURY TRIAL DEMANDED

SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff John G. Mayer (“Plaintiff”), by and through his undersigned attorneys, submits this Verified Shareholder Derivative Complaint (the “Complaint”) against defendants named herein. Plaintiff alleges the following based upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, the investigation conducted by and under the supervision of their counsel which included, among other things: (a) a review and analysis of regulatory filings filed by Vuzix Corporation (“Vuzix” or the “Company”) with the United States Securities and Exchange Commission (“SEC”); (b) a review and analysis of press releases and media reports issued and disseminated by Vuzix; (c) a review of other publicly available information concerning Vuzix, including articles in the news media and analyst reports; (d) complaints and related materials in litigation commenced against some or all of the Individual Defendants (defined below) and/or the Company; and (e) applicable rules and regulations.

SUMMARY OF THE ACTION

1. This is a shareholder’s derivative action brought for the benefit of Nominal Defendant Vuzix. Vuzix designs, markets and sells devices that are worn like eyeglasses and feature built-in video screens. One of the Company’s purported products is the Vuzix Blade Smart Glasses (“Vuzix Blade”). Vuzix is a Delaware corporation and is headquartered in Monroe County, New York. This derivative action is brought against certain current and former members of the Company’s Board of Directors (the “Board”), certain of its current and former executive officers, and a non-executive officer member of senior management (collectively, the “Individual Defendants”) seeking to remedy the Individual Defendants’ violations of state law and breaches of fiduciary duty.

2. On January 26, 2018, the Company filed its secondary public offering (“SPO”) prospectus supplement on Form 424(b)(5), which forms part of the Form S-3 filed with the SEC on February 1, 2016 (collectively, the “Registration Statement/Prospectus Supplement”).¹ In the SPO, the Company sold 3,000,000 shares of common stock at a price of \$10.00 per share. The Company received proceeds of approximately \$28.4 million from the SPO, net of underwriting discounts and commissions. The proceeds from the SPO were purportedly to be used for general corporate purposes, including expanding Vuzix’s product lines, and for general working capital purposes.

3. In March of 2018, MOX Reports published a series of posts alleging that the Company unlawfully used certain stock promotion tactics to boost Vuzix’s share price in anticipation of a secondary public offering of its shares at \$10 per share (the “MOX Reports Publication”). The MOX Reports Publication claimed that Vuzix used an undisclosed stock promotion involving dozens of mainstream media outlets to artificially inflate the share price and volume, that one of the Company’s main products, Vuzix Blade, was little more than a “low tech mock-up” that did not actually function, and that one of the stock promoters Vuzix used had a substantial history of involvement in fraudulent stock promotion schemes.

4. Following this news, the Company’s share price fell \$1.70 per share, or more than 22%, over the course of three trading sessions, to close on March 21, 2018 at \$5.95.

5. As a result, the Company is now subject to two securities class actions consolidated as *In re Vuzix Corp. Securities Litigation*, Master File No. 1:18-cv-06656, pending in the United

¹ The Company’s Form S-3 shelf registration statement was dated January 29, 2016, subsequently filed with the SEC on February 1, 2016 and deemed effective on February 4, 2016 (the “Registration Statement”).

States District Court for the Southern District of New York (the “Securities Class Action”).² The Securities Class Action alleges violations of the federal securities laws including violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“1934 Act”) and Section 11 and 15 of the Securities Act of 1933 (“1933 Act”) allegedly for a false and misleading Registration Statement/Prospectus Supplement in connection with an SPO of the Company’s shares in January 2018.

6. On October 18, 2018, Vuzix finally provided further information on a release date for the Vuzix Blade, but glaringly absent from the Company’s announcement, or other recent public filings, is any mention of Amazon Alexa, which purported to be an integral additional feature to the Vuzix Blade that was promoted by the Company, as alleged in the Securities Class Action and as conceded by the Company. Further, the Company does not expect to have a general release for both consumers and businesses until January 2019, recognized as one of the worst months for retail due to Christmas returns, instead of during the main selling Christmas holiday season, which raises the very issues of functionality addressed by the MOX Reports Publication.

7. The Individual Defendants breached their fiduciary duties by: (i) approving and/or causing the Company to engage in an illicit stock promotion scheme for the purpose of inflating the price of Vuzix shares in anticipation of the SPO; (ii) failing to exercise their oversight duties by not monitoring the Company’s compliance with Company procedures and federal and state regulations; and (iii) making and/or causing the Company to make false and misleading statements and/or material omissions.

² *McDonel v. Vuzix Corporation, et al.*, Docket No. 1:18-cv-06656 (S.D.N.Y. July 24, 2018); *Bauman v. Vuzix Corporation, et al.*, Docket No. 1:18-cv-06793 (S.D.N.Y. July 27, 2018).

JURISDICTION AND VENUE

8. This Court has jurisdiction over all causes of action asserted herein. Derivative claims on behalf of corporations against their directors and officers for breach of their fiduciary obligations owed to the corporation are governed exclusively by state law. In addition, Vuzix maintains its principal executive offices in the State of New York.

9. This Court has jurisdiction over each and every defendant named herein because each defendant is either a corporation that conducts business in and maintains principal executive offices in the State of New York or is an individual who has sufficient minimum contacts with the State of New York so as to render the exercise of jurisdiction by the courts of the State of New York permissible under traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because one or more of the defendants either resides in or maintains executive offices in the State of New York, a substantial portion of the transactions and wrongs complained of herein occurred in New York County, and defendants have received substantial compensation in the State of New York for doing business here and engaging in numerous activities in the State of New York. Further, the related Securities Class Action is pending in the United States District Court for the Southern District of New York in New York County, and the Company's related defamation lawsuit against the author of the MOX Reports Publication is pending in the New York Supreme Court in New York County as described in ¶ 99.

PARTIES

11. Plaintiff John G. Mayer is currently and has continuously been a stockholder of Vuzix at all relevant times hereto. Plaintiff is a citizen of Pennsylvania.

12. Nominal Defendant Vuzix is incorporated under the laws of the State of Delaware and maintains its headquarters in West Henrietta, New York. According to the Company's SEC filings, Vuzix is engaged in the design, manufacturing, marketing and sale of augmented reality

wearable display devices, in the form of Smart Glasses and Augmented Reality glasses. Vuzix's common stock trades on the NASDAQ Stock Market ("NASDAQ") under the symbol "VUZI." As of August 9, 2018, the Company had 27,426,402 shares of the Company's common stock outstanding.

Paul J. Travers

13. Defendant Paul J. Travers ("Travers") has been the President, Chief Executive Officer ("CEO") and a Director of the Company since 1997 when he founded the Company.

14. In 2017, Travers received \$491,226 in total compensation from the Company. This included \$475,000 in salary and \$16,226 in all other compensation. In 2016, Travers received \$577,079 in total compensation from the Company. This included \$425,000 in salary, \$145,000 cash bonus, and \$7,079 in all other compensation. In 2015, Travers received \$892,611 in total compensation from the Company. This included \$383,333 in salary, \$500,000 stock award, and \$9,278 in all other compensation.

15. As of April 27, 2018, Defendant Travers beneficially owned 2,612,531 shares of the Company's common stock, representing 9.6% of the Company's common stock.

16. The Company's Schedule 14A Definitive Proxy Statement filed with the SEC on April 27, 2018 ("2018 Proxy Statement") stated the following about Defendant Travers:

Paul J. Travers, age 56, was the founder of Vuzix and has served as our President and Chief Executive Officer since 1997 and as a member of our board of directors since November 1997. Prior to the formation of Vuzix, Mr. Travers founded both e-Tek Labs, Inc. and Forte Technologies Inc. He has been a driving force behind the development of our products. With more than 30 years' experience in the consumer electronics field, and 25 years' experience in the virtual reality and virtual display fields, he is a nationally recognized industry expert. He holds an Associate degree in engineering science from Canton, ATC and a Bachelor of Science degree in electrical and computer engineering from Clarkson University. Mr. Travers resides in Honeoye Falls, New York. Mr. Travers' experience as our founder and Chief Executive Officer qualifies him to serve on our board of directors.

17. Travers is named as a defendant in the Securities Class Action case.

18. In his capacity as CEO and director, Travers signed or authorized the signing of the Company's Registration Statement.

19. Upon information and belief, Defendant Travers is a citizen of New York.

Grant Russell

20. Defendant Grant Russell ("Russell") has been the Company's Executive Vice President and Chief Financial Officer ("CFO") since 2000 and a Director since April 2009.

21. In 2017, Russell received \$423,333 in total compensation from the Company. This included \$400,000 in salary and \$23,333 in all other compensation. In 2016, Russell received \$512,171 in total compensation from the Company. This included \$350,000 in salary, \$145,000 cash bonus, and \$17,171 in all other compensation. In 2015, Russell received \$844,700 in total compensation from the Company. This included \$325,000 in salary, \$500,000 stock award, and \$19,700 in all other compensation.

22. As of April 27, 2018, Defendant Russell beneficially owned 1,013,547 shares of the Company's common stock, representing 3.7% of the Company's common stock.

23. The Company's 2018 Proxy Statement stated the following about Defendant Russell:

Grant Russell, age 65, has served as our Chief Financial Officer and Executive Vice President since 2000 and as a member of our board of directors since April 2009. From 1997 to 2004, Mr. Russell developed and subsequently sold a successful software firm and a new concept computer store and cyber café. In 1984, he co-founded Advanced Gravis Computer (Gravis), which, under his leadership as President, grew to become the world's largest PC and Macintosh joystick manufacturer with sales of \$44 million worldwide and 220 employees. Gravis was listed on NASDAQ and the Toronto Stock Exchange. In September 1996 it was acquired by a US-based Fortune 100 company in a successful public tender offer. Mr. Russell holds a Bachelor of Commerce degree in finance from the University of British Columbia and is both a US Certified Public Accountant and a Canadian Chartered Professional Accountant. Mr. Russell resides in Vancouver, British

Columbia, Canada and has a secondary residence in West Henrietta, New York. Mr. Russell's business executive and financial experience qualifies him to serve on our board of directors.

24. Russell is named as a defendant in the Securities Class Action case.

25. In his capacity as CFO and director, Russell signed or authorized the signing of the Company's Registration Statement.

26. Upon information and belief, Defendant Russell is a citizen of New York.

Alexander Ruckdaeschel

27. Defendant Alexander Ruckdaeschel ("Ruckdaeschel") has served as a Director of the Company since November 2012. Ruckdaeschel is the Chairperson of the Compensation Committee. Ruckdaeschel is also a member of the Audit Committee and the Nominating and Corporate Governance Committee.

28. In 2017, Ruckdaeschel received \$121,000 in total compensation from the Company. This included \$54,000 in cash and \$67,000 in stock awards in the form of restricted common stock. In 2016, Ruckdaeschel received \$117,500 in total compensation from the Company. This included \$54,000 in cash and \$63,500 in stock awards in the form of restricted common stock.

29. As of April 27, 2018, Defendant Ruckdaeschel beneficially owned 104,666 shares of the Company's common stock.

30. The Company's 2018 Proxy Statement stated the following about Defendant Ruckdaeschel:

Alexander Ruckdaeschel, age 45, joined our board of directors in November 2012. Since March 2001, Mr. Ruckdaeschel has worked in the financial industry in the United States and Europe as a co-founder, partner and/or in senior management. Mr. Ruckdaeschel cofounded Herakles Capital Management and AMK Capital Advisors in 2008. Mr. Ruckdaeschel has also been a partner with Alpha Plus Advisors, from 2006 to 2010, and Nanostart AG, from 2002 to 2006, where he was

the head of their US group. Mr. Ruckdaeschel has significant experience in startup operations as the manager of DAC Nanotech-Fund and Biotech-Fund from 2002 to 2006. Following service in the German military, Mr. Ruckdaeschel was a research assistant at Dunmore Management focusing on intrinsic value identifying firms that were undervalued and had global scale potential. From October 1992 to October 2000 Mr. Ruckdaeschel was in the German military and supported active operations throughout the Middle East while also participating as a professional biathlon athlete. Mr. Ruckdaeschel's financial experience qualifies him to serve on our board of directors.

31. Ruckdaeschel is named as a defendant in the Securities Class Action case.

32. In his capacity as a Vuzix Director, Ruckdaeschel signed or authorized the signing of the Company's Registration Statement.

33. Upon information and belief, Defendant Ruckdaeschel is a citizen of North Carolina or New York.

Edward Kay

34. Defendant Edward Kay ("Kay") has served as a Director of the Company since April 2016. Kay is the chairperson of the Audit Committee. Kay is also a member of the Audit Committee and Nominating and Corporate Governance Committee.

35. In 2017, Kay received \$122,000 in total compensation from the Company. This included \$55,000 in cash and \$67,000 in stock awards in the form of restricted common stock. In 2016, Kay received \$150,067 in total compensation from the Company. This included \$36,667 in cash and \$114,300 in stock awards in the form of restricted common stock.

36. As of April 27, 2018, Defendant Kay beneficially owned 40,000 shares of the Company's common stock.

37. The Company's 2018 Proxy Statement stated the following about Defendant Kay:

Edward Kay, age 62, has been a director of the Company since April 2016. Mr. Kay is a Certified Public Accountant who spent his 33-year career with PricewaterhouseCoopers LLP (PwC) working with companies in a wide variety of industries, including manufacturing, distribution, software and technology. Mr.

Kay served as PwC's Rochester NY Office Managing Partner for 13 years from 1999 to 2012 and, for a time, Managing Partner of the firm's Upstate NY practice and had been the Leader of PwC's high technology practice in Dallas, TX from 1993 to 1999. Mr. Kay was formerly a Board member, Executive Committee member, and Audit Committee Chair of IEC Electronics (NYSE: IEC) from 2013 to 2015, and is currently on the board of a large private company in the product distribution business. During Mr. Kay's tenure at PwC and through his service on other corporate boards, he accumulated extensive experience in financial, securities, and business matters, including significant leadership roles in dealing with accounting and auditing matters related to public companies, which make Mr. Kay a financial expert and enable him to be a valuable contributor to the Vuzix board.

38. Upon information and belief, Defendant Kay is a citizen of New York.

Timothy Harned

39. Defendant Timothy Harned ("Harned") has served as a Director of the Company since June 2017. Harned is the Chairperson of the Nominating and Corporate Governance Committee. Harned is also member of the Audit Committee and Compensation Committee.

40. In 2017, Harned received \$158,375 in total compensation from the Company. This included \$24,375 in cash and \$109,965 in stock awards in the form of restricted common stock.

41. As of April 27, 2018, Defendant Harned beneficially owned 22,500 shares of the Company's common stock.

42. The Company's 2018 Proxy Statement stated the following about Defendant Harned:

Timothy Harned, age 53, is an investment banking, corporate development, and financial advisory veteran with more than 30 years of experience in mergers and acquisitions and related activities. Mr. Harned is also a technology specialist with more than twenty years of experience in various technology fields and another ten years working with consumer and industrial companies. Mr. Harned is currently the Founder and Managing Partner of 8Nineteen Advisory, LLC where he serves as a strategic consultant regarding growth matters and provides financial advisory services, with a specialty in mergers and acquisitions and corporate and business development. He has been with 8Nineteen Advisory, LLC since December 2016. He began his career at Lehman Brothers (1987 to 1992) within the mergers and acquisitions group and later joined Banc of America Securities (1996 to 2000)

where he became a Managing Director. Mr. Harned subsequently joined Morgan Stanley & Co. (2000 to 2002), where he served as an Executive Director focused on merger and acquisition and capital markets advisory for technology companies. Mr. Harned also spent more than a decade (2003 to 2016) with several technology-focused financial advisory boutiques and has also served as a corporate development executive (1994 to 1996). Mr. Harned's corporate development and strategic and financial advisory experience in the technology and consumer fields qualifies him to serve on our board of directors.

43. Upon information and belief, Defendant Harned is a citizen of Massachusetts.

Michael D. Scott

44. Defendant Michael D. Scott ("Scott") served as a Director of the Company since June 2013. According to the Company's 2018 Proxy Statement, Scott was not nominated for re-election at the annual meeting held on June 13, 2018 and is no longer a member of the Board.

45. In 2017, Scott received \$121,000 in total compensation from the Company. This included \$54,000 in cash and \$67,000 in stock awards in the form of restricted common stock. In 2016, Scott received \$117,500 in total compensation. This included \$54,000 in cash and \$63,500 in stock awards in the form of restricted common stock.

46. As of April 27, 2018, Defendant Scott beneficially owned 91,333 shares of the Company's common stock.

47. The Company's Schedule 14A Definitive Proxy Statement filed with the SEC on April 26, 2017 ("2017 Proxy Statement") stated the following about Defendant Scott:

Michael Scott, age 71, joined our board of directors in June 2013. Mr. Scott has been a Professor of Law at the Southwestern Law School in Los Angeles, CA, since 2006. Previously, he was Partner at various legal firms specializing in Technology and IP Practices, including Perkins Coie LLP, and Graham & James. He previously served on the board of Sanctuary Woods Multimedia, Inc., a NASDAQ publicly traded company. He is the author of 7 books on Technology Law as well as the writer of numerous legal IP-related articles published in journals, newspapers and magazines. He is the Founder and Editor-in-Chief of the E-Commerce Law Report and the Cyberspace Lawyer. Mr. Scott's technology and intellectual property experience qualify him to serve on our board of directors.

48. In his capacity as a Vuzix Director, Scott signed or authorized the signing of the Company's Registration Statement.

49. Upon information and belief, Defendant Scott is a citizen of California.

Paul A. Boris

50. Defendant Paul A. Boris ("Boris") served as the Company's Chief Operating Officer ("COO") from May 2017 until June 2018. Boris served as a Director of the Company from June 20, 2016 until May 8, 2017. Boris was then re-appointed to the Board on June 15, 2017 until his departure from the Company in June 2018.

51. In 2017, Boris received \$1,720,428 in total compensation from the Company. This included \$309,789 in salary (\$500,000 base salary beginning on May 8, 2017), \$810,700 in option awards, \$590,000 in stock awards and \$1,183 in all other compensation. Boris' stock and option awards vest over a 48-month period.

52. As of April 27, 2018, Defendant Boris beneficially owned 166,670 shares of the Company's common stock.

53. The Company's 2017 Proxy Statement stated the following about Defendant Boris:

Paul Boris, age 53, was appointed to our board on June 20, 2016. Mr. Boris has driven digital transformation within industrial operations for decades. In the mid-90's, Paul led the trend of deployment of technology within manufacturing as a senior consultant with one of the largest MES integration firms - concepts we now call the Industrial Internet of Things (IIoT). Paul was the dynamic force behind the Perfect Plant initiatives at SAP where he was Global Vice President, Enterprise Operations Management. He served as director as the National Association of Manufacturers (NAM), the US's largest industrial trade association for just under 5 years to 2014. As CIO of Advanced Manufacturing Strategy for GE, he focused on driving GE's innovative factory strategy to increase productivity and deliver asset and operations optimization and is currently the Vice President of Manufacturing Industries for GE Digital at GE. Mr. Boris's breath of engineering and technology-related capabilities and experiences enable him to bring significant value to the Vuzix board.

54. Upon information and belief, Defendant Boris is a citizen of Pennsylvania.

Matt Margolis

55. Defendant Matt Margolis (“Margolis”) serves as the Director of Corporate Communications and Investor Relations. Upon information and belief, Margolis was hired by the Company in January 2017.

56. Upon information and belief, Defendant Margolis is a citizen of New York.

57. Defendants Travers, Russell, Ruckdaeschel, Kay and Harned are sometimes collectively referred to herein as the “Current Director Defendants.”

58. Defendants Travers, Russell, Ruckdaeschel, Kay, Harned, Scott, Boris and Margolis are sometimes collectively referred to herein as the “Individual Defendants.”

FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS

59. By reason of their positions as officers, directors and/or fiduciaries of Vuzix and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed Vuzix and its shareholders fiduciary obligations of good faith, loyalty and candor, and were and are required to use their utmost ability to control and manage the Company in a fair, just, honest and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Vuzix and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit.

60. Each director and officer of the Company owes to Vuzix and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the Company’s affairs and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

61. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Vuzix, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public

statements issued by the Company. Due to their positions with Vuzix, each of the Individual Defendants had knowledge of material non-public information regarding the Company.

62. To discharge their duties, the Individual Defendants were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of Vuzix were required to, among other things:

- a. Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;
- b. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal, state and foreign laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority;
- c. Exercise good faith in supervising the preparation, filing and/or dissemination of financial statements, press releases, audits, reports or other information required by law, and in examining and evaluating any reports or examinations, audits, or other financial information concerning the financial condition of the Company;
- d. Refrain from unduly benefiting themselves and other Company insiders at the expense of the Company; and
- e. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

63. Moreover, Vuzix maintains a Code of Ethics and Business Conduct (the “Code”), which applies to everyone at every level of the Company, including all employees, officers, and all members of the Board. The Code states the following, in part:

Compliance Standards and Procedures. Our Board of Directors will designate an Ethics Officer to be available to assist you with questions regarding this Code or report violations of the Code misconduct. The Ethics officer is responsible for applying these policies to specific situations in which questions may arise and has the authority to interpret these policies in any particular situation. Any questions relating to how these policies should be interpreted or applied should be addressed to the Ethics Officer.

Any employee, officer or director who becomes aware of any existing or potential violation of laws, rules, regulations or this Code is required to notify the Ethics Officer promptly. Failure to do so is itself a violation of this Code.

* * *

Fair Dealing. Each employee and director shall endeavor to deal fairly with the Company’s shareholders, customers, suppliers, competitors and employees. No Company employee, director or officer should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice.

* * *

Securities Laws and Insider Trading. It is usually illegal to buy or sell securities using material information not available to the public. Persons who give such undisclosed “inside” information to others may be as liable as person who trade securities while possessing such information. Securities laws may be violated if you, or any relative or friends trade in securities of the Company, or any of its customers or vendors, while possessing inside information or unpublished knowledge. If you are uncertain about the legality of a particular trade, you should consult with the Ethics Officer before making any such purchase or sale.

64. The Company has an Insider Trading Policy in order to “establish guidelines for the Company’s employees, officers, directors, consultants and contractors with respect to transactions in the Company’s securities.” The purpose of the Insider Trading Policy is to “help prevent any actual or apparent impropriety, either of which could lead to allegations of insider trading and the potential for significant liability on the part of any implicated parties.”

65. The Company also has an Audit Committee, Compensation Committee, and a Nominating and Corporate Governance Committee. Each committee has a respective charter to govern the committee members' duties and responsibilities.

66. Each Individual Defendant, by virtue of his or her position as a director and/or officer owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and/or officers of Vuzix, the absence of good faith on their part and a reckless disregard for their duties to the Company and its shareholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company.

67. The Individual Defendants breached their duties of loyalty, care and good faith by: (i) failing to implement and enforce a system of effective internal controls and procedures; (ii) failing to exercise their oversight duties by not monitoring the Company's compliance with Company procedures and federal and state regulations; and (iii) consciously disregarding and failing to ensure that the Company was not partaking in a promotional scheme.

SUBSTANTIVE ALLEGATIONS

A. Background

68. Vuzix designs, manufactures, markets and sells devices that are worn like eyeglasses and feature built-in video screens. The Company's products purportedly enable users to view video and digital content, such as movies, websites and video games.

69. On January 25, 2018, Vuzix priced its SPO of 3 million shares of common stock at a price of \$10 per share. On January 26, 2018, the Company filed its SPO prospectus supplement on Form 424(b)(5) with the SEC, which forms part of the Registration Statement/Prospectus

Supplement. In the SPO, the Company sold 3,000,000 shares of common stock at a price of \$10.00 per share. Prior to the SPO, the stock promotion scheme had its desired effect. On January 2, 2018, the Company's stock closed at \$6.30 per share. By the time of the SPO, the Company's shares had reached above \$10.00 per share in just over three weeks, gaining over 70% in value in anticipation of the SPO. The stock promotion scheme was a success. The Company received proceeds of approximately \$28.4 million from the SPO, net of underwriting discounts and commissions. The proceeds from the SPO were purportedly to be used for general corporate purposes, including expanding Vuzix's product lines and for general working capital purposes.

70. Under applicable SEC rules and regulations, the Registration Statement/Prospectus Supplement was required to disclose known trends, events or uncertainties that were having, and were reasonably likely to have, an impact on the Company's continuing operations.

B. Certain Individual Defendants Cause Vuzix to Misrepresent and/or Conceal Material Information

71. On November 9, 2017, the Company announced its Third Quarter 2017 Financial Results by publishing the following press release:

Vuzix Provides Business Update and Reports its Third Quarter 2017 Financial Results

Total third quarter revenue increased by 141% over the prior year

ROCHESTER, N.Y., November 9, 2017 - Vuzix® Corporation (NASDAQ: VUZI), a leading supplier of Smart Glasses, Augmented Reality (AR) technologies and products for the consumer and enterprise markets, today reported its third quarter financial results for the period ended September 30, 2017.

Third Quarter 2017 and recent highlights included:

- Posted third consecutive quarter of sequential growth and record revenue. Revenue for the third quarter 2017 was \$1,405,100 or an increase of 141% compared to \$582,549 for the third quarter of 2016.

- Vuzix quarterly smart glasses revenues eclipsed \$1,000,000 for the first time in the Company's history with \$1,027,397 of sales, an increase of 171% compared to \$379,053 for the third quarter of 2016, representing sequential growth of 45% compared to the second quarter of 2017.
- Recognized \$266,687 of engineering services revenues during the third quarter on our enterprise smart glasses development project with Toshiba. The remaining development work associated with Toshiba is expected to be completed in the fourth quarter, which will result in approximately \$221,000 of revenue in the fourth quarter and the delivery of PVT devices. Vuzix expects to move this new product into volume production for Toshiba in early 2018.
- Realized further improvements in the gross margins on sales of the M300 Smart Glasses now that offshore volume manufacturing has been brought online.
- Added a new Tier-1 consumer electronics firm focused on integrating our waveguide and display engine technology into their future consumer products roadmap.

Management Commentary

“We saw direct product gross margin improvements from our flagship enterprise device, the M300 in the third quarter compared to the second quarter of 2017. And while our third quarter smart glasses sales were impacted by limited supply of inventory due to some manufacturing challenges related to the M300, the Company achieved record quarterly smart glasses product revenue despite these headwinds,” said Paul Travers, President and CEO of Vuzix. “The manufacturing challenges have been addressed by our offshore contract manufacturer and their production line is now producing M300s in high volume. During the third quarter, we continued to leverage our industry leading optics and wearable display technology and added a third Tier-1 consumer electronic customer. This new Tier-1 customer is working with us to develop a consumer product using Vuzix waveguides and projector engines that is unrelated to smart glasses.[”]

72. Also on November 9, 2017, the Company filed its quarterly report with the SEC on Form 10-Q for the period ending September 30, 2017, reiterating the Company's financial results in the November 9, 2017 press release issued the same day.

73. On March 16, 2018, the Company filed with the SEC its annual report on Form 10-K for the year ending December 31, 2017 (“2017 Form 10-K”). The Company included the following regarding its presentation at the Consumer Electronics Show (“CES”):

In January 2018, we introduced our Vuzix Blade™ (The Blade) Smart Glasses at CES 2018. The Vuzix Blade received 4 innovation awards at CES and was named “Best of CES” by several notable media firms including TIME, Rolling Stone, CNET, Fox News, Tom’s Guide and TechRadar. The Blade provides a wearable AR smart display with a see-through viewing experience utilizing Vuzix’ proprietary waveguide optics and Cobra II display engine. Using the Vuzix Blade is like having a computer or smartphone screen information right in front of the user, wherever they go and is designed to allow the user to keep their phone in their pocket. The lightweight (less than 2.8 oz) Blade Smart Glasses are the first smart glasses featuring style, performance and advanced see-through waveguide optics for hands-free computing and connectivity. The Blade is ideal for mobile applications including social media, navigation, artificial intelligence (AI) and HD photography and videography as well as a AR wearable display for the enterprise sector. The Blade also is designed to integrate with AI engines and will ship out of the box with Amazon Alexa, an intelligent personal assistant featuring AI.³ It is capable of voice interaction, making to-do lists, setting alarms, streaming podcasts, playing audiobooks, taking pictures and providing weather, traffic, and other real time information.

74. The above statements identified in ¶¶ 71-73 were materially false and/or misleading when made because Defendants failed to disclose: (1) that Vuzix used unlawful stock promotion tactics to boost the Company’s stock price in anticipation of conducting the SPO; (2) that Vuzix used misleading stock promotion tactics to raise nearly \$30 million at an all-time high share price; and (3) that, as a result of the foregoing, Defendants’ statements in the Registration Statement/Prospectus Supplement regarding Vuzix’s business, operations, and prospects were materially false and/or misleading.

³ The use of the term “personal assistant” is prohibited by Amazon to be used in connection with Amazon Alexa, which the Individual Defendants caused the Company to disregard in marketing the Vuzix Blade product. See “Marketing and Branding Guidelines,” Amazon Alexa, <https://developer.amazon.com/docs/alexa-voice-service/marketing-and-branding-guidelines.html#integration> (last accessed October 25, 2018).

C. MOX Reports Publishes a Report Exposing the Unlawful Stock Promotion Scheme and Raising Questions about the Company's Business and Operations

75. In March of 2018, MOX Reports published a series of posts alleging that the Company unlawfully used certain stock promotion tactics to boost Vuzix's share price, and then offered shares at \$10 per share. The MOX Reports Publication stated in relevant part:

- Vuzix recently used an undisclosed stock promotion involving dozens of mainstream media outlets to artificially inflate the share price and volume, and then raise \$30 million;
- Photos of leaked documents from IRTH Communications show IRTH bragging to potential clients that it was responsible for more than 30 articles from mainstream media outlets which all simultaneously erupted in connection with Margolis' "Alexa ruse". These specific IRTH sponsored articles were conspicuous in that they offered effusive praise for Vuzix but appeared as standard news on dozens of mainstream sites;
- The information contained in the articles and product review was flat out wrong, but was then repeatedly re-broadcast by Vuzix (esp. Margolis) in order to inflate the stock. Margolis made heavy use of social media, adding the \$VUZI ticker next to the sponsored articles;
- Vuzix's "Blade" is little more than a low tech mock-up which serves as a prop for journalists to conduct sham reviews. When these journalists "reviewed" the product at CES, neither the Alexa feature nor the browser were functioning – not for any of the journalists. Yet these same journalists then widely touted the device in their mainstream bylines, overwhelmingly on the basis of the Alexa features that actually don't exist;
- Matt Margolis conceals his past employment by multiple fraudsters who had also been behind undisclosed promotion on Vuzix for years. Margolis' former employer Mark Gomes was shut down under SEC fraud proceedings in September just after running his latest promotion on Vuzix;
- With a separate promoter, Margolis was actively promoting Cemtrex and other IRTH clients without disclosing that he was being paid via IRTH Communications. Cemtrex subsequently collapsed;
- Vuzix's recent "Alexa ruse" was actually a recycled ploy that Margolis had used on Vuzix in 2016, while he was still employed by outside promoters. Just like with the "GoPro ruse" in 2016, adding Alexa functionality costs nothing and can be done in just one hour by downloading a simple developer kit. Margolis then uses this non-event as a pretense to run a stock promotion

- Over the past 11 months, we have seen a very visible acceleration in SEC enforcement against this exact type of fraud. The recent undisclosed IRTH promotions were now too blatant and were then used for an immediate \$30 million capital raise at \$9.95. Investors in that offering ended up seeing nearly immediate losses after the pump campaign stopped.

76. On this news, the Company's share price fell \$1.70 per share, or more than 22%, on heavy trading volume, over the course of three trading sessions, to close on March 21, 2018 at \$5.95 per share.

D. Vuzix Blade Release and Amazon Alexa

77. On October 18, 2018, Vuzix issued a press release that finally provided more information on the release of the Vuzix Blade ("October 18 Press Release"). According to the October 18 Press Release, shipments of the commercial edition of the Vuzix Blade would begin the first week of November 2018.

78. In the October 18 Press Release, Defendant Travers also provides more information on the general release date: "Vuzix continues to work diligently on the next Vuzix Blade General release for both consumers and business . . . It is expected to be released in January 2019." Therefore, the release date to consumers is "expected" to occur after the holiday season in January 2019, recognized as the worst retail month of the year due to Christmas returns, instead of the Christmas holiday season when sales could be maximized. The failure of the Company to have the Vuzix Blade product rolled out in time for the Christmas holiday season raises the very issues of functionality addressed by the MOX Reports Publication.

79. The October 18, 2018 Press Release does not mention Amazon Alexa, and the Company has not disclosed whether the version of the Vuzix Blade that will be available in November 2018 and January 2019 will be compatible with Amazon Alexa. The Company's silence diverges from its earlier disclosure in its 2017 Form 10-K, which states that the Vuzix

Blade “will ship out of the box with Amazon Alexa, an intelligent personal assistant⁴ featuring AI.”

80. On May 10, 2018, the Company filed with the SEC its Form 10-Q for the period ending March 31, 2018. Amazon Alexa is not mentioned in this Form 10-Q.

81. On August 9, 2018, the Company filed with the SEC its Form 10-Q for the period ending June 30, 2018. Amazon Alexa is once again not mentioned in this Form 10-Q.

82. Other than the 2017 Form 10-K, the only other time that the Company has made a disclosure in an SEC filing regarding Vuzix Blade’s compatibility with Amazon Alexa was in a letter sent by Defendant Travers to Vuzix shareholders and attached to a Form 8-K filed with the SEC on July 5, 2018 (the “Shareholder Letter”). According to the Shareholder Letter, “2018 started with the successful unveiling of our Vuzix Blade Smart Glass ‘powered by Amazon Alexa’⁵ at the Consumer Electronics Show (CES) in January and at Mobile World Congress (MWV) in February.”

83. Prior to filing the 2017 Form 10-K, on January 10, 2018, the Company issued a press release regarding Amazon Alexa, which was not filed with the SEC. This press release was titled “Vuzix Showcases Alexa-enabled⁶ Vuzix Blade™ Smart Sunglasses at CES.” The press release touts the “Alexa-enabled” features at length. According to Defendant Travers, “Vuzix continues to lead the way in wearable smart glasses innovation and it should come as no surprise

⁴ See *supra* note 3.

⁵ The use of the phrase “powered by Amazon Alexa” is not the proper language to use when referring to a product’s integration with Alexa according to Amazon. Amazon requires the following description: “[Product Name] with Alexa built-in.” See “Marketing and Branding Guidelines,”

Amazon Alexa, <https://developer.amazon.com/docs/alexa-voice-service/marketing-and-branding-guidelines.html#integration> (last accessed October 25, 2018).

⁶ The use of the description “Alexa-enabled Vuzix Blade” is not the proper language to use when referring to a product’s integration with Alexa. See *supra* note 5.

that the Vuzix Blade AR Smart Sunglasses will be the first pair of smart glasses to be Alexa-Enabled.”

84. The Company’s silence regarding Amazon Alexa since the Shareholder Letter lends credence to the MOX Reports Publication, which refers to the Amazon Alexa features as a “ruse” and that “journalists widely touted the device in their mainstream bylines, overwhelmingly on the basis of the Alexa features that actually don’t exist.”

85. Moreover, prior to Amazon granting approval to use the “Alexa Built-in badge” the following requirements must be met to Amazon’s satisfaction: (1) “Build the required features and capabilities”; (2) “Meet the minimum security requirements”; (3) “Submit your product for certification”; (4) “Maintain a quality product”; (5) “Display the Alexa Built-in badge on Amazon”; and (6) “Add the Alexa Built-in badge to your marketing materials.”⁷

86. Amazon Alexa’s marketing approval process also requires, “[a]ll marketing materials, which include press releases, packaging, retail fixtures, websites, Amazon product detail page content, and videos that reference Amazon Alexa, must be sent to [Amazon] for approval before use.”⁸

87. Furthermore, the Company has repeatedly violated Amazon’s terms and conditions when marketing and branding the Vuzix Blade as described throughout this complaint.

DAMAGES TO VUZIX CAUSED BY THE INDIVIDUAL DEFENDANTS

88. As a direct and proximate result of the Individual Defendants’ misconduct, the Individual Defendants allowed for materially inadequate controls over the Company’s policies and

⁷ See “Badging Requirements,” Amazon Alexa, <https://developer.amazon.com/docs/alexa-voice-service/badging-requirements.html> (last accessed October 25, 2018).

⁸ See “Marketing and Branding Guidelines,” Amazon Alexa, <https://developer.amazon.com/docs/alexa-voice-service/marketing-and-branding-guidelines.html#integration> (last accessed October 25, 2018).

practices, caused the Company to issue materially false and misleading statements, and substantially damaged the Company's credibility, corporate image and goodwill.

89. Vuzix has expended and will continue to expend significant sums of money. Additional expenditures and damages that the Company has incurred as a result of the Individual Defendants' breaches of their fiduciary duty include:

- a. Costs incurred from compensation and benefits paid to the Individual Defendants who have breached their duties to Vuzix;
- b. Costs and fees paid to stock promoters and other third-parties who assisted the Individual Defendants in engaging in the illicit stock promotion scheme;
- c. Costs incurred from investigating, defending and paying any settlement or judgment in connection with the Securities Class Action for violations of federal securities laws and governing accounting principles;
- d. Costs incurred by the Company for filing a defamation lawsuit against Ricardo Antonio Pearson, publisher of the MOX Reports Publication; and
- e. Costs incurred from the loss of Vuzix's customers' confidence in the Company's services.

90. Finally, Vuzix's credibility, reputation and goodwill have likewise been damaged, and the Company remains exposed to significant potential liability going forward.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

91. Plaintiff brings this action derivatively in the right and for the benefit of Vuzix to redress injuries suffered, and to be suffered, by Vuzix as a direct result of Individual Defendants' multiple breaches of fiduciary duty.

92. Plaintiff is a shareholder of Vuzix, was a shareholder of Vuzix at the time of the wrongdoing alleged herein and has been a shareholder of Vuzix continuously since that time.

93. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights.

94. Vuzix is named as a nominal defendant in this case solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have. Prosecution of this action, independent of the current Board of Directors, is in the best interests of the Company.

95. The wrongful acts complained of herein subject, and will continue to subject, Vuzix to continuing harm because the adverse consequences of the actions are still in effect and ongoing.

96. The wrongful acts complained of herein were unlawfully concealed from Vuzix shareholders.

97. As a result of the facts set forth herein, Plaintiff has not made any demand on the Current Director Defendants to institute this action since demand would be a futile and useless act because the Current Director Defendants are incapable of making an independent and disinterested decision to institute and vigorously prosecute this action. The wrongful acts complained of herein show multiple breaches by the Current Director Defendants of their fiduciary duties of loyalty, due care and oversight.

98. At the time this action was initiated, the Board was comprised of five directors: Defendants Travers, Russell, Ruckdaeschel, Kay and Harned. Plaintiff did not make a demand on the Board to institute this action because such a demand would have been a futile, wasteful and useless act.

99. Demand upon the Current Director Defendants is futile because a majority of the Board is already predisposed to refuse a demand as demonstrated by the Current Director Defendants' position on the merits of the allegations set forth in the MOX Reports Publication, whose allegations also form the basis, in part, of the liability of the Current Director Defendants in the Securities Class Action and the instant litigation. In the Company's Form 10-Q for the period ending June 30, 2018, filed by the Company with the SEC on August 9, 2018, the Company stated the following, in relevant part:

We filed a defamation lawsuit against Ricardo Antonio Pearson (a/k/a Richard Pearson) in the Supreme Court of the State of New York, County of New York on April 5, 2018. The Company's complaint against Mr. Pearson alleges he published false and defamatory articles about the Company. Vuzix is seeking damages in excess of \$80 million, including punitive damages, and money damages.

On July 24, 2018, a purported shareholder class action lawsuit was filed in the United States District Court, Southern District of New York, against the Company, certain of its current and former directors and executive officers and the placement agents of the Company's registered direct offering that was completed in January 2018. The complaint alleges violations of federal securities laws under Sections 11 and 15 of the Securities Act and under Sections 10(b) and 20(a) of the Exchange Act on behalf of a putative class of shareholders that purchased stock between November 9, 2017 and March 20, 2018, or pursuant and/or traceable to the Company's registration statement and prospectus filed in connection with the registered direct offering. The complaint alleges that the Company and certain of its officers and directors made materially false and/or misleading statements and failed to disclose material adverse events about the Company's business, operations and prospects in press releases and public filings. The complaint seeks damages in unspecified amounts, costs and expenses of bringing the action, and other unspecified relief. A similar purported class action was filed against the Company and certain of its current and former executive officers and directors on July 27, 2018, in the United States District Court, Southern District of New York. ***The Company believes the allegations are false and intends to vigorously defend itself. The Company plans to file a motion to dismiss the complaints.***

(Emphasis added).

100. Thus, because the Current Director Defendants have already determined that they believe that the allegations in the MOX Reports Publication and, consequently, the Securities Class

Action are false, the Current Director Defendants are incapable of making an independent and disinterested decision to institute and vigorously prosecute this derivative action. Even more important is the reaction of the Current Director Defendants to the MOX Reports Publication. On April 5, 2018, the Company filed a defamation suit against Ricardo Antonio Pearson (a/k/a Richard Pearson), the author of the MOX Reports Publication.⁹ The following day, April 6, 2018, the Company issued a press release to announce the filing of the defamation suit and Defendant Travers explained, “[t]he decision to pursue legal action against the short seller was a unanimous decision by our Board of Directors.” The Board’s unanimous approval to pursue legal action against the author of the MOX Reports Publication demonstrates the Board’s predisposition to refuse any shareholder demand for action.

101. In addition, Travers, Russell and Ruckdaeschel are all named Defendants in the Securities Class Action. Therefore, Travers, Russell and Ruckdaeschel face a substantial likelihood of liability, rendering them incapable of independently exercising their business judgment and demand futile.

A Majority Of The Board Lacks Independence Or Is Interested

102. **Defendant Travers** cannot disinterestedly and independently consider a demand. Travers is currently the CEO, President and a director of Vuzix. As conceded in the Company’s public filings, including the Company’s 2018 Proxy Statement, Travers lacks independence.

103. Travers owns 2,612,531 shares of the Company’s common stock representing 9.6% of the Company’s issued and outstanding common stock as of April 27, 2018. Accordingly,

⁹ According to the docket on the New York State Unified Court System, New York County Supreme Court index no. 153125/2018, there has been no activity in this case since the filing of the complaint on April 5, 2018. There has been no Request for Judicial Intervention form filed and no judge has been assigned.

Travers is a significant shareholder of the Company. Travers also receives lavish compensation from the Company as detailed above. Travers, as a member of senior management of Vuzix and a significant shareholder, is not an independent director due to his insider status. Additionally, as demonstrated above, Travers has repeatedly made and/or caused the Company to issue statements to the public regarding the Company's, and the Individual Defendants', lack of involvement in the illicit stock promotion scheme.

104. In his capacity as CEO and director, Travers signed or authorized the signing of the Company's Registration Statement and permitted the issuance of shares pursuant to the Registration Statement/Prospectus Supplement.

105. **Defendant Russell** cannot disinterestedly and independently consider a demand. Russell is currently the CFO and a director of Vuzix. As conceded in the Company's public filings, including the Company's 2017 Proxy Statement, Russell lacks independence.

106. Russell owns 1,013,547 shares of the Company's common stock representing 3.7% of the Company's issued and outstanding common shares as of April 27, 2018. Accordingly, Russell is a significant shareholder of the Company. Russell also receives lavish compensation from the Company as detailed above. Russell, as a member of senior management of Vuzix and a significant shareholder, is not an independent director due to his insider status.

107. In his capacity as CFO and director, Russell signed or authorized the signing of the Company's Registration Statement and permitted the issuance of shares pursuant to the Registration Statement/Prospectus Supplement.

108. **Defendant Ruckdaeschel** cannot disinterestedly and independently consider a demand.

109. Ruckdaeschel has been compensated with lucrative director fees as a Director of Vuzix. In 2017, Ruckdaeschel received \$121,000 in total compensation from the Company. This included \$54,000 in cash and \$67,000 in stock awards in the form of restricted common stock. In 2016, Ruckdaeschel received \$117,500 in total compensation from the Company. This included \$54,000 in cash and \$63,500 in stock awards in the form of restricted common stock.

110. As of April 27, 2018, Defendant Ruckdaeschel beneficially owned 104,666 shares of the Company's common stock.

111. In his capacity as a Vuzix Director, Ruckdaeschel signed or authorized the signing of the Company's Registration Statement and permitted the issuance of shares pursuant to the Registration Statement/Prospectus Supplement.

112. Ruckdaeschel, along with Travers and Russell, are named Defendants in the Securities Class Action. As a result, Ruckdaeschel faces a substantial likelihood of liability.

113. **Defendant Kay** cannot disinterestedly and independently consider a demand.

114. Kay has been compensated with lucrative director fees as a Director of Vuzix. In 2017, Kay received \$122,000 in total compensation from the Company. This included \$55,000 in cash and \$67,000 in stock awards in the form of restricted common stock. In 2016, Kay received \$150,067 in total compensation from the Company. This included \$36,667 in cash and \$114,300 in stock awards in the form of restricted common stock.

115. As of April 27, 2018, Defendant Kay beneficially owned 40,000 shares of the Company's common stock.

116. **Defendant Harned** cannot disinterestedly and independently consider a demand.

117. Harned has been compensated with lucrative director fees as a Director of Vuzix. In 2017, Harned received \$158,375 in total compensation from the Company. This included \$24,375 in cash and \$109,965 in stock awards in the form of restricted common stock.

118. As of April 27, 2018, Defendant Harned beneficially owned 22,500 shares of the Company's common stock.

119. Given the Company's precarious financial condition, inability to make a profit since inception and its negative operating cash flow, coupled with the fact that all of the Current Director Defendants' have received substantial equity compensation, there is a financial motive to keep the Company's stock price as high as possible. Furthermore, the Company was able to raise \$30 million based on the inflated stock price.

120. Additionally, given the Current Director Defendants responsibility for risk oversight, it can be reasonably inferred that the Current Director Defendants approved and/or were aware of the illicit stock promotion scheme and, in breach of their fiduciary duties, falsely misrepresented and/or concealed the Company's involvement in and/or knowledge of the foregoing to the investing public.

121. The Individual Defendants' conduct described herein and summarized above demonstrates a pattern of misconduct that could not have been the product of legitimate business judgment as it was based on intentional, reckless, and disloyal misconduct. As a majority of the Individual Defendants face a substantial likelihood of liability, they are self-interested in the transactions challenged herein and cannot be presumed to be capable of exercising independent and disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company.

122. Based on the foregoing, the Current Director Defendants face a sufficiently substantial likelihood of liability and, accordingly, there is a reasonable doubt as to each of the Current Director Defendants' disinterestedness in deciding whether pursuing legal action would be in the Company's best interest. Accordingly, demand upon the Current Director Defendants is excused as being futile.

CAUSES OF ACTION

COUNT I

(Against the Individual Defendants for Breach of Fiduciary Duty)

123. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

124. The Individual Defendants owed and owe Vuzix fiduciary obligations, including the obligations of good faith, fair dealing, loyalty and care. Among other things, the Individual Defendants owed a fiduciary duty to Vuzix to disseminate truthful, accurate and complete information to shareholders. Each director and officer of the Company owed to Vuzix and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the Company's affairs and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

125. The Individual Defendants breached their fiduciary duty by: (i) approving and/or causing the Company to engage in an illicit stock promotion scheme for the purpose of inflating the price of Vuzix shares in anticipation of the SPO at \$10.00 per share; (ii) failing to exercise their oversight duties by not monitoring the Company's compliance with Company procedures and federal and state regulations; (iii) making and/or causing the Company to make false and misleading statements and/or material omissions; and (iv) failing to maintain an effective system of internal controls over financial reporting.

126. The Individual Defendants had actual or constructive knowledge that the Company issued materially false and misleading statements, and they failed to correct the Company's public statements and representations. The Individual Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth, in that they failed to ascertain and to disclose such facts even though such facts were available to them. Such material misrepresentations and omissions were committed knowingly or recklessly.

127. The Individual Defendants had actual or constructive knowledge that the Company was engaging in the practices as set forth herein, and that internal controls were not adequately maintained.

128. As a direct and proximate result of the breaches of fiduciary obligations by the Individual Defendants, Vuzix has sustained and continues to sustain significant damages, as alleged herein. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

129. The Individual Defendants' misconduct – through both their actions and conscious inaction – cannot be exculpated under Delaware or other applicable law as it implicated bad faith and a breach of the duty of loyalty.

130. Plaintiff, on behalf of Vuzix, has no adequate remedy at law.

COUNT II

(Against the Individual Defendants for Unjust Enrichment)

131. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

132. Through the wrongful course of conduct and actions complained of herein, the Individual Defendants were unjustly enriched at the expense of, and to the detriment of, Vuzix. The wrongful conduct was continuous and resulted in ongoing harm to the Company. The Individual Defendants were unjustly enriched pursuant to receiving compensation and director remuneration.

133. Plaintiff, as a shareholder of Vuzix, seeks restitution from the Individual Defendants, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by the Individual Defendants from their wrongful course of conduct and fiduciary breaches.

134. By reason of the foregoing, Vuzix has sustained and continues to sustain damages.

135. Plaintiff, on behalf of Vuzix, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Determining that this action is a proper derivative action maintainable under the law and demand was excused;

B. Directing Individual Defendants to account to Vuzix for all damages sustained or to be sustained by the Company by reason of the wrongs alleged herein;

C. Directing Vuzix to take all necessary actions to reform its corporate governance and internal procedures to comply with applicable laws and protect the Company and its shareholders from a recurrence of the events described herein, including, but not limited to, a shareholder vote for amendments to Vuzix's By-Laws or Articles of Incorporation, appointing or creating a Board-level committee and executive officer position charged with oversight, and

taking such other action as may be necessary to place before shareholders for a vote on corporate governance policies;

D. Awarding to Vuzix restitution from the Individual Defendants and ordering disgorgement of all profits, benefits and other compensation obtained by the Individual Defendants;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees and expenses; and

F. Granting such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: October 29, 2018

Respectfully submitted,

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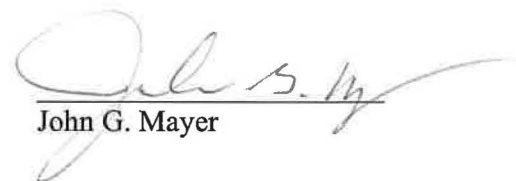
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VERIFICATION

I, John G. Mayer, declare that I have reviewed this Verified Shareholder Derivative Complaint (“Complaint”) and I authorize its filing. The Complaint is true and correct to the best of my knowledge, information, and belief. As to those allegations of which I have personal knowledge, I believe the allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel’s investigation and believe those allegations to be true. I am a holder of Vuzix Corporation common stock, and I was a holder of Vuzix Corporation common stock during the relevant time period in which the wrongful conduct alleged in the Complaint was occurring. I declare under penalty of perjury that the foregoing is true and correct.

10/26/18
Date


John G. Mayer