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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 VICKY NGUYEN, Individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 ENDOLOGIX, INC., JOHN
16 MCDERMOTT, and VASEEM
17 MAHBOOB,

18 Defendants.

Case No:

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

JURY TRIAL DEMANDED

19
20 Plaintiff Vicky Nguyen, (“Plaintiff”), individually and on behalf of all other
21 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
22 complaint against Defendants (defined below), alleges the following based upon
23 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and
24 belief as to all other matters, based upon, inter alia, the investigation conducted by
25 and through Plaintiff’s attorneys, which included, among other things, a review of
26 the defendants’ public documents, conference calls and announcements made by
27 defendants, United States Securities and Exchange Commission (“SEC”) filings,
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1 wire and press releases published by and regarding Endologix, Inc. (“Endologix” or
2 the “Company”), analysts’ reports and advisories about the Company, and
3 information readily obtainable on the Internet. Plaintiff believes that substantial
4 evidentiary support will exist for the allegations set forth herein after a reasonable
5 opportunity for discovery.

6 **NATURE OF THE ACTION**

7 1. This is a federal securities class action on behalf of a class consisting of
8 all persons and entities other than Defendants who purchased or otherwise acquired
9 the publicly traded securities of Endologix between August 2, 2016 and November
10 16, 2016, both dates inclusive (the “Class Period”). Plaintiff seeks to recover
11 compensable damages caused by Defendants’ violations of the federal securities laws
12 and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange
13 Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

14 **JURISDICTION AND VENUE**

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

18 3. This Court has jurisdiction over the subject matter of this action under
19 28 U.S.C. §1331 and §27 of the Exchange Act.

20 4. Venue is proper in this District pursuant to §27 of the Exchange Act (15
21 U.S.C. §78aa) and 28 U.S.C. §1391(b) as Defendants conduct business and operate
22 facilities in this district, and a significant portion of the Defendants’ actions, and the
23 subsequent damages, took place within this District.

24 5. In connection with the acts, conduct and other wrongs alleged in this
25 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of
26 interstate commerce, including but not limited to, the United States mail, interstate
27 telephone communications and the facilities of the national securities exchange.

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PARTIES

6. Plaintiff, as set forth in the accompanying Certification, purchased Endologix securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosure.

7. Defendant Endologix develops, manufactures, markets, and sells medical devices for the treatment of abdominal aortic aneurysms in the United States and internationally. The Company is incorporated in Delaware and its principal executive offices are located at 2 Musick, Irvine, CA. Endologix securities are traded on NASDAQ under the ticker symbol “ELGX.”

8. Defendant John McDermott (“McDermott”) has been the Chief Executive Officer (“CEO”) of Endologix since May 2008.

9. Defendant Vaseem Mahboob (“Mahboob”) has been the Chief Financial Officer (“CFO”) and Corporate Secretary of Endologix since January 15, 2015.

10. Defendants McDermott and Mahboob are sometimes referred to herein as the “Individual Defendants.”

11. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company’s internal controls;

1 (f) was aware of or recklessly disregarded the fact that the false and
2 misleading statements were being issued concerning the Company;
3 and/or

4 (g) approved or ratified these statements in violation of the federal securities
5 laws.

6 12. The Company is liable for the acts of the Individual Defendants and its
7 employees under the doctrine of *respondeat superior* and common law principles of
8 agency because all of the wrongful acts complained of herein were carried out within
9 the scope of their employment.

10 13. The scienter of the Individual Defendants and other employees and
11 agents of the Company is similarly imputed to the Company under *respondeat*
12 *superior* and agency principles.

13 14. The Company and the Individual Defendants are referred to herein,
14 collectively, as the “Defendants.”

15 **Background**

16 15. Endologix’s products are intended for the minimally invasive
17 endovascular treatment of abdominal aortic aneurysms. One of its products is built on
18 the platform of endovascular sealing (“EVAS”). Endologix’s current EVAS product
19 is the Nellix® EndoVascular Aneurysm Sealing System (“Nellix EVAS System”).

20 16. The Nellix EVAS System is currently engaged in the U.S. Food and
21 Drug Administration (“FDA”) premarket approval process (the “PMA process”),
22 which requires Endologix to collect and submit nonclinical and human clinical data
23 on Nellix EVAS System for its intended use to demonstrate that it is safe and
24 effective. In the PMA process, the FDA will approve the medical device and thereby
25 authorize its commercial distribution in the U.S. if it determines that the probable
26 benefits outweigh the risks for the intended patient population, and, therefore, makes
27 a determination of reasonable assurances of safety and effectiveness.

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1 17. In December 2013, Endologix received Investigational Device
2 Exemption (“IDE”) approval in the United States to begin a clinical trial for the
3 Nellix EVAS System, which commenced in January 2014 (the “IDE Study”).
4 Enrollment in the IDE study was completed in November 2014. In the third quarter of
5 2015, Endologix obtained IDE continued access approval for additional patients.

6 18. On May 26, 2016, Endologix reported purportedly positive clinical data
7 from the IDE Study and submitted the results to the FDA as part of the PMA process
8 for the Nellix EVAS System.

9 **SUBSTANTIVE ALLEGATIONS**

10 **Materially False and Misleading Statements**

11 19. On August 2, 2016, during aftermarket hours, the Company held a
12 conference call with investors to discuss the Company’s financial results for the
13 quarter ended June 30, 2016 (the “Q2 2016 Conference Call”). During the Q2 2016
14 Conference Call, Defendant McDermott stated that “we remain very positive about
15 the likelihood of approval [for Nellix EVAS System] and the significant growth we
16 expect to drive with Nellix.”

17 20. During the Q2 2016 Conference call, Defendant McDermott assured
18 investors that no issues exist with the data from the IDE Study, stating in pertinent
19 part:

20 **Matt Blackman**

21 Okay, that’s very helpful. And I’m going flip in one last question back
22 on the panel. I’m sure you’re eager to provide the intimate details of
23 your FDA discussions...But maybe give us a little bit more color,
24 more sense of comfort that there is not something else going on, there
25 is no sort of red flag raised in terms of data that they saw. I guess,
26 anything that you could give us that, gives us any comfort there would
27 be helpful? Thank you.

27 **John McDermott**

28 Sure. So, the three reasons that the agency will typically consider
sending a device to panel is one; if there is, any new clinical issues of

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safety efficacy and obviously **everyone has seen the data so we know there aren't any issues there.** The second reason is if they feel - the FDA feels they don't have the clinical or technical expertise to complete the review of a PMA, that's not the case. So and the third is if it's novel technology.

[Emphasis added].

21. During the Q2 2016 Conference call, Defendant McDermott indicated that none of the questions the FDA posed to the Company detracted from the approvability of the device, stating in pertinent part:

Joanne Wuensch

Hi. Can we talk a little bit about what type of additional data or questions that you're receiving? I mean, is there any way to give us some information regarding that?

John McDermott

Yes, I don't want to get too detailed with that Joanne. What I can tell you, is that **none of the questions we got asked are what I would characterize as big surprises.** There is clarification on some things, some requests for additional analysis, some additional testing. **Nothing that would suggest in our view any question or risk of approvability, just some more blocking and tackling and clarification of the data we submitted.**

So, we don't see anything in there that's given us heartburn. It will just take a little time to pull it altogether. And we'd also like to take another run at this novelty question and see if we can provide the agency with enough evidence that the device isn't novel so that we don't have to go to panel. So that would be the focus of the work we do over the next few months.

[Emphasis added].

22. During the Q2 2016 Conference call, Defendant McDermott stated that, based on a meeting with the FDA, the Company has the requisite clinical data for approval of the Nellix EVAS System, stating in pertinent part:

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John McDermott

Yes. We didn't get that impression from the meeting. So, they basically said listen, we understand why you made the enhancements. And it looks like they're all good enhancements. We just would like to see some clinical data for that device. And since going back to say well, that timeline is not interesting to us, **you've got the clinical data you need on the IDE device, we'll pursue approval for that and follow with a supplement.**

[Emphasis added].

23. On August 5, 2016, the Company filed a Form 10-Q for the quarter ended June 30, 2016 (the "2Q 2016 10-Q") with the SEC, which provided the Company's second quarter 2016 financial results and position and stated that the Company's disclosure controls were effective as of June 30, 2016. The 2Q 2016 10-Q was signed by Defendants McDermott and Mahboob. The 2Q 2016 10-Q contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by Defendants McDermott and Mahboob attesting to the accuracy of financial reporting and the disclosure of all fraud.

24. On November 1, 2016, during aftermarket hours, the Company held a conference call with investors to discuss the Company's financial results for the quarter ended September 30, 2016 (the "Q3 2016 Conference Call"). During the Q3 2016 Conference Call, Defendant McDermott touted the Company's positive interaction with the FDA, stating in pertinent part:

John McDermott

In terms of the U.S. PMA, we achieved the clinical endpoints in the IDE share dilated clinical data with FDA. We've also provided them with our updated patient selection criteria and **have had positive discussion so far.** Nellix PMA approval time lines are unchanged although we think a panel is more likely now given the updated indications.

1 [Emphasis added].

2 25. On November 8, 2016, the Company filed a Form 10-Q for the quarter
3 ended September 30, 2016 (the “3Q 2016 10-Q”) with the SEC, which provided the
4 Company’s third quarter 2016 financial results and position and stated that the
5 Company’s disclosure controls were effective as of September 30, 2016. The 3Q
6 2016 10-Q was signed by Defendants McDermott and Mahboob. The 3Q 2016 10-Q
7 contained signed SOX certifications by Defendants McDermott and Mahboob
8 attesting to the accuracy of financial reporting and the disclosure of all fraud.

9 26. The statements referenced in ¶¶ 19-25 above were materially false
10 and/or misleading because they misrepresented and failed to disclose the following
11 adverse facts pertaining to the Company’s business, operational and financial results,
12 which were known to Defendants or recklessly disregarded by them. Specifically,
13 Defendants made false and/or misleading statements and/or failed to disclose that:
14 (1) Endologix did not have the requisite clinical data for FDA premarket approval of
15 the Nellix EVAS System; and (2) as a result, Endologix’s public statements were
16 materially false and misleading at all relevant times.

17 **The Truth Emerges**

18 27. On November 16, 2016, before market hours, Endologix issued a press
19 release entitled “Endologix Provides Update on Nellix PMA Process,” revealing “that
20 the U.S Food and Drug Administration (FDA) has requested the Company provide 2-
21 year patient follow-up data from the EVAS-FORWARD IDE Study of the Nellix®
22 EndoVascular Aneurysm Sealing System (Nellix EVAS System).”

23 28. On this news, shares of Endologix fell \$2.02 per share, or over 20.5%,
24 from its previous closing price to close at \$7.82 per share on November 16, 2016,
25 damaging investors.

26 29. As a result of Defendants’ wrongful acts and omissions, and the
27 precipitous decline in the market value of the Company’s securities, Plaintiff and
28 other Class members have suffered significant losses and damages.

PLAINTIFF’S CLASS ACTION ALLEGATIONS

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2 30. Plaintiff brings this action as a class action pursuant to Federal Rule of
3 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
4 purchased or otherwise acquired Endologix securities publicly traded on the
5 NASDAQ during the Class Period (the “Class”); and were damaged upon the
6 revelation of the alleged corrective disclosure. Excluded from the Class are
7 Defendants herein, the officers and directors of the Company, at all relevant times,
8 members of their immediate families and their legal representatives, heirs, successors
9 or assigns and any entity in which Defendants have or had a controlling interest.

10 31. The members of the Class are so numerous that joinder of all members is
11 impracticable. Throughout the Class Period, Endologix securities were actively
12 traded on the NASDAQ. While the exact number of Class members is unknown to
13 Plaintiff at this time and can be ascertained only through appropriate discovery,
14 Plaintiff believes that there are hundreds or thousands of members in the proposed
15 Class. Record owners and other members of the Class may be identified from records
16 maintained by the Company or its transfer agent and may be notified of the pendency
17 of this action by mail, using the form of notice similar to that customarily used in
18 securities class actions.

19 32. Plaintiff’s claims are typical of the claims of the members of the Class as
20 all members of the Class are similarly affected by Defendants’ wrongful conduct in
21 violation of federal law that is complained of herein.

22 33. Plaintiff will fairly and adequately protect the interests of the members
23 of the Class and has retained counsel competent and experienced in class and
24 securities litigation. Plaintiff has no interests antagonistic to or in conflict with those
25 of the Class.

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

- 1 • whether the federal securities laws were violated by Defendants' acts as
2 alleged herein;
- 3 • whether statements made by Defendants to the investing public during
4 the Class Period misrepresented material facts about the financial
5 condition, business, operations, and management of the Company;
- 6 • whether Defendants' public statements to the investing public during the
7 Class Period omitted material facts necessary to make the statements
8 made, in light of the circumstances under which they were made, not
9 misleading;
- 10 • whether the Individual Defendants caused the Company to issue false
11 and misleading SEC filings and public statements during the Class
12 Period;
- 13 • whether Defendants acted knowingly or recklessly in issuing false and
14 misleading SEC filings and public statements during the Class Period;
- 15 • whether the prices of Endologix securities during the Class Period were
16 artificially inflated because of the Defendants' conduct complained of
17 herein; and
- 18 • whether the members of the Class have sustained damages and, if so,
19 what is the proper measure of damages.

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

26 36. Plaintiff will rely, in part, upon the presumption of reliance established
27 by the fraud-on-the-market doctrine in that:

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- 1 • Defendants made public misrepresentations or failed to disclose material
- 2 facts during the Class Period;
- 3 • the omissions and misrepresentations were material;
- 4 • Endologix securities are traded in efficient markets;
- 5 • the Company's securities were liquid and traded with moderate to heavy
- 6 volume during the Class Period;
- 7 • the Company traded on the NASDAQ, and was covered by multiple
- 8 analysts;
- 9 • the misrepresentations and omissions alleged would tend to induce a
- 10 reasonable investor to misjudge the value of the Company's securities;
- 11 and
- 12 • Plaintiff and members of the Class purchased and/or sold Endologix
- 13 securities between the time the Defendants failed to disclose or
- 14 misrepresented material facts and the time the true facts were disclosed,
- 15 without knowledge of the omitted or misrepresented facts.

16 37. Based upon the foregoing, Plaintiff and the members of the Class are
17 entitled to a presumption of reliance upon the integrity of the market.

18 38. Alternatively, Plaintiff and the members of the Class are entitled to the
19 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of*
20 *the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants
21 omitted material information in their Class Period statements in violation of a duty to
22 disclose such information, as detailed above.

23 **COUNT I**

24 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5** 25 **Against All Defendants**

26 39. Plaintiff repeats and realleges each and every allegation contained above
27 as if fully set forth herein.

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1 40. This Count is asserted against the Company and the Individual
2 Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b),
3 and Rule 10b-5 promulgated thereunder by the SEC.

4 41. During the Class Period, the Company and the Individual Defendants,
5 individually and in concert, directly or indirectly, disseminated or approved the false
6 statements specified above, which they knew or deliberately disregarded were
7 misleading in that they contained misrepresentations and failed to disclose material
8 facts necessary in order to make the statements made, in light of the circumstances
9 under which they were made, not misleading.

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

- 12 • employed devices, schemes and artifices to defraud;
- 13 • made untrue statements of material facts or omitted to state material
14 facts necessary in order to make the statements made, in light of the
15 circumstances under which they were made, not misleading; or
- 16 • engaged in acts, practices and a course of business that operated as a
17 fraud or deceit upon plaintiff and others similarly situated in connection
18 with their purchases of Endologix securities during the Class Period.

19 43. The Company and the Individual Defendants acted with scienter in that
20 they knew that the public documents and statements issued or disseminated in the
21 name of the Company were materially false and misleading; knew that such
22 statements or documents would be issued or disseminated to the investing public; and
23 knowingly and substantially participated, or acquiesced in the issuance or
24 dissemination of such statements or documents as primary violations of the securities
25 laws. These defendants by virtue of their receipt of information reflecting the true
26 facts of the Company, their control over, and/or receipt and/or modification of the
27 Company's allegedly materially misleading statements, and/or their associations with
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1 the Company which made them privy to confidential proprietary information
2 concerning the Company, participated in the fraudulent scheme alleged herein.

3 44. Individual Defendants, who are the senior officers and/or directors of
4 the Company, had actual knowledge of the material omissions and/or the falsity of
5 the material statements set forth above, and intended to deceive Plaintiff and the other
6 members of the Class, or, in the alternative, acted with reckless disregard for the truth
7 when they failed to ascertain and disclose the true facts in the statements made by
8 them or other personnel of the Company to members of the investing public,
9 including Plaintiff and the Class.

10 45. As a result of the foregoing, the market price of Endologix securities was
11 artificially inflated during the Class Period. In ignorance of the falsity of the
12 Company's and the Individual Defendants' statements, Plaintiff and the other
13 members of the Class relied on the statements described above and/or the integrity of
14 the market price of Endologix securities during the Class Period in purchasing
15 Endologix securities at prices that were artificially inflated as a result of the
16 Company's and the Individual Defendants' false and misleading statements.

17 46. Had Plaintiff and the other members of the Class been aware that the
18 market price of Endologix securities had been artificially and falsely inflated by the
19 Company's and the Individual Defendants' misleading statements and by the material
20 adverse information which the Company's and the Individual Defendants did not
21 disclose, they would not have purchased Endologix securities at the artificially
22 inflated prices that they did, or at all.

23 47. As a result of the wrongful conduct alleged herein, Plaintiff and other
24 members of the Class have suffered damages in an amount to be established at trial.

25 48. By reason of the foregoing, the Company and the Individual Defendants
26 have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder
27 and are liable to the Plaintiff and the other members of the Class for substantial
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1 damages which they suffered in connection with their purchases of Endologix
2 securities during the Class Period.

3 **COUNT II**

4 **Violation of Section 20(a) of The Exchange Act**
5 **Against The Individual Defendants**

6 49. Plaintiff repeats and realleges each and every allegation contained in the
7 foregoing paragraphs as if fully set forth herein.

8 50. During the Class Period, the Individual Defendants participated in the
9 operation and management of the Company, and conducted and participated, directly
10 and indirectly, in the conduct of the Company's business affairs. Because of their
11 senior positions, they knew the adverse non-public information regarding the
12 Company's business practices.

13 51. As officers and/or directors of a publicly owned company, the Individual
14 Defendants had a duty to disseminate accurate and truthful information with respect
15 to the Company's financial condition and results of operations, and to correct
16 promptly any public statements issued by the Company which had become materially
17 false or misleading.

18 52. Because of their positions of control and authority as senior officers, the
19 Individual Defendants were able to, and did, control the contents of the various
20 reports, press releases and public filings which the Company disseminated in the
21 marketplace during the Class Period. Throughout the Class Period, the Individual
22 Defendants exercised their power and authority to cause the Company to engage in
23 the wrongful acts complained of herein. The Individual Defendants therefore, were
24 "controlling persons" of the Company within the meaning of Section 20(a) of the
25 Exchange Act. In this capacity, they participated in the unlawful conduct alleged
26 which artificially inflated the market price of Endologix securities.

27 53. Each of the Individual Defendants, therefore, acted as a controlling
28 person of the Company. By reason of their senior management positions and/or being

1 directors of the Company, each of the Individual Defendants had the power to direct
2 the actions of, and exercised the same to cause, the Company to engage in the
3 unlawful acts and conduct complained of herein. Each of the Individual Defendants
4 exercised control over the general operations of the Company and possessed the
5 power to control the specific activities which comprise the primary violations about
6 which Plaintiff and the other members of the Class complain.

7 54. By reason of the above conduct, the Individual Defendants are liable
8 pursuant to Section 20(a) of the Exchange Act for the violations committed by the
9 Company.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

12 A. Determining that the instant action may be maintained as a class action
13 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the
14 Class representative;

15 B. Requiring Defendants to pay damages sustained by Plaintiff and the
16 Class by reason of the acts and transactions alleged herein;

17 C. Awarding Plaintiff and the other members of the Class prejudgment and
18 post-judgment interest, as well as their reasonable attorneys' fees, expert fees and
19 other costs; and

20 D. Awarding such other and further relief as this Court may deem just and
21 proper.

22 **DEMAND FOR TRIAL BY JURY**

23 Plaintiff hereby demands a trial by jury.

24 Dated: January 3, 2017

Respectfully submitted,

26 **THE ROSEN LAW FIRM, P.A.**

27 By: /s/ Laurence M. Rosen

28 Laurence M. Rosen, Esq. (SBN 219683)

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