

**KESSLER TOPAZ MELTZER
& CHECK, LLP**
JENNIFER L. JOOST (Bar No. 296164)
(jjoost@ktmc.com)
One Sansome Street, Suite 1850
San Francisco, CA 94104
Tel: (415) 400-3000
Fax: (415) 400-3001

*Counsel for Plaintiff Erie County Employees’
Retirement System*

[Additional counsel appear on signature page.]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ERIE COUNTY EMPLOYEES’
RETIREMENT SYSTEM, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

CUTERA, INC., DAVID H. MOWRY,
ROHAN SETH, and J. DANIEL PLANTS,

Defendants.

Case No. 3:23-cv-02560

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

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiff Erie County Employees' Retirement System ("Plaintiff"), by and through its
2 counsel, alleges the following based upon personal knowledge as to itself and its own acts, and upon
3 information and belief as to all other matters, including the investigation of Plaintiff's counsel, which
4 included, among other things, a review of Defendants' (defined below) United States Securities and
5 Exchange Commission ("SEC") filings, wire and press releases published by Cutera, Inc. ("Cutera"
6 or the "Company"), analyst reports and advisories about the Company, media reports concerning the
7 Company, judicial filings and opinions, and other publicly available information. Plaintiff believes
8 that substantial additional evidentiary support will exist for the allegations set forth herein after a
9 reasonable opportunity for discovery.

10 **I. NATURE OF THE ACTION AND OVERVIEW**

11 1. This is a federal securities class action on behalf of a class of all persons and entities
12 who purchased or otherwise acquired Cutera common stock between February 17, 2021, and May 9,
13 2023, inclusive (the "Class Period"), seeking to pursue remedies under Sections 10(b) and 20(a) of
14 the Securities Exchange Act of 1934 (the "Exchange Act"), and SEC Rule 10b-5 promulgated
15 thereunder.

16 2. Cutera, a Delaware corporation with its principal executive offices in Brisbane,
17 California, is a medical aesthetic device company that provides equipment for beauty treatments.
18 Cutera's common stock trades in the United States on the Nasdaq Global Select Market ("Nasdaq")
19 under the ticker symbol "CUTR."

20 3. Throughout the Class Period, Defendants repeatedly assured investors that the
21 Company would deliver sustainable revenue growth in the wake of the COVID-19 pandemic while
22 concealing that the Company maintained inadequate internal control over financial reporting and
23 significant conflicts among certain members of the Company's senior leadership and board of
24 directors (the "Board").

25 4. Plaintiff and other members of the class began to learn the truth about the Company
26 on January 9, 2023, when the Company reported its preliminary financial results for full-year 2022,
27 including the fact that Cutera had failed to meet its revenue guidance for 2022.
28

1 5. On this news, the price of Cutera common stock declined \$9.41 per share, or more
2 than 23%, from a close of \$40.45 per share on January 6, 2023, to close at \$31.04 per share on January
3 9, 2023.

4 6. After the market closed on February 28, 2023, Cutera filed a Notification of Late
5 Filing with the SEC, reporting that the Company would not be able to timely file its annual financial
6 report on Form 10-K by the March 1, 2023 deadline. The Company further disclosed that it “ha[d]
7 identified and expect[ed] to disclose in the Form 10-K material weaknesses in its internal control over
8 financial reporting related to . . . ineffective inventory count controls.”

9 7. On this news, the price of Cutera common stock declined \$0.32 per share, or
10 approximately 1%, from a close of \$32.43 per share on February 28, 2023, to close at \$32.11 per
11 share on March 1, 2023.

12 8. Then, on March 16, 2023, Cutera announced that it would not meet the extended
13 deadline for filing its 2022 annual report, and would endeavor to file its 2022 annual report “as soon
14 as practicable.” The Company also revealed that, in addition to the material weaknesses previously
15 identified, Cutera had identified material weaknesses related to stock-based compensation.

16 9. On this news, the price of Cutera common stock declined \$3.49 per share, or
17 approximately 12.5%, from a close of \$27.85 per share on March 16, 2023, to close at \$24.36 per
18 share on March 17, 2023.

19 10. A week later, on March 24, 2023, Cutera disclosed that Nasdaq notified the Company
20 that it was “not in compliance with Nasdaq Listing Rule 5250(c)(1)” for failing to timely file its 2022
21 annual financial report.

22 11. On this news, the price of Cutera common stock declined \$0.92 per share, or
23 approximately 3.4%, from a close of \$27.07 per share on March 24, 2023, to close at \$26.15 per share
24 on March 27, 2023.

25 12. On April 7, 2023, the Company disclosed that the Company’s Executive Chairman
26 and Chairman of the Board, Defendant J. Daniel Plants, demanded a special meeting of the
27 Company’s stockholders to vote on the removal of five members of the Company’s Board.
28

1 13. On April 10, 2023, Defendant Plants and Defendant David H. Mowry, the Company’s
2 Chief Executive Officer, issued statements in support of their separate demands calling for the Board
3 to remove five of its directors. In connection with their demands, Defendants Plants and Mowry cited
4 concerns that the Board had not made progress on a succession plan for the role of Chief Executive
5 Officer, and Mowry stated that “the approach the Entrenched Directors have taken to these matters
6 has been detrimental to the business and served no purpose other than to position certain Directors
7 closer to the CEO title that they seem to covet for themselves.”

8 14. Then, on April 12, 2023, the Company revealed that it had terminated Defendant
9 Plants as the Company’s Executive Chairman and Chairman of the Board and Defendant Mowry as
10 the Company’s Chief Executive Officer, appointing current Board members Janet D. Widmann and
11 Sheila A. Hopkins as Independent Chair of the Board and Interim Chief Executive Officer,
12 respectively. In connection with this announcement, the Company also formally withdrew its
13 full-year 2023 financial guidance.

14 15. On this news, the price of Cutera common stock declined \$7.63 per share, or more
15 than 28%, from a close of \$27.07 per share on April 11, 2023, to close at \$19.44 per share on April
16 12, 2023.

17 16. Then, on May 9, 2023, the Company reported disappointing financial results for the
18 first quarter 2023 that were “*below expectations due to execution challenges in the business*” and
19 announced that Defendant Rohan Seth had resigned as the Company’s Chief Financial Officer
20 (emphasis in original).

21 17. On this news, the price of Cutera common stock declined \$6.06 per share over two
22 trading sessions, or 30%, from a close of \$20.20 per share on May 9, 2023, to close at \$14.14 per
23 share on May 11, 2023.

24 18. This Complaint alleges that, throughout the Class Period, Defendants made materially
25 false and/or misleading statements, as well as failed to disclose material adverse facts, about the
26 Company’s business and operations. Specifically, Defendants overstated the sustainability of
27 Cutera’s revenue growth, failed to disclose significant conflicts among members of the Company’s
28 senior leadership and Board, and failed to disclose several material weaknesses in the Company’s

1 internal control over financial reporting. As a result of Defendant's wrongful acts and omissions, and
2 the significant decline in the market value of the Company's common stock, Plaintiff and other
3 members of the Class (defined below) have suffered significant damages.

4 **II. JURISDICTION AND VENUE**

5 19. Plaintiff's claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange
6 Act, 15 U.S.C. §§ 78j(b) and 78t(a), and the rules and regulations promulgated thereunder, including
7 SEC Rule 10b-5, 17 C.F.R. § 240.10b-5.

8 20. This Court has jurisdiction over the subject matter of this action under 28 U.S.C.
9 § 1331 and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

10 21. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C.
11 § 78aa, and 28 U.S.C. § 1391(b), because Cutera's principal executive offices are in Brisbane,
12 California, and because many of the acts and conduct that constitute the violations of law complained
13 of herein, including the dissemination to the public of materially false and misleading information,
14 occurred in this District.

15 22. In connection with the acts, conduct, and other wrongs alleged in this Complaint,
16 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
17 including, but not limited to, the United States mails, interstate telephone communications, and the
18 facilities of the national securities markets.

19 **III. PARTIES**

20 23. Plaintiff, as set forth in the accompanying certification, incorporated by reference
21 herein, purchased Cutera common stock at artificially inflated prices during the Class Period and
22 suffered damages as a result of the violations of the federal securities laws alleged herein.

23 24. Defendant Cutera is a Delaware corporation, with principal executive offices in
24 Brisbane, California.

25 25. Defendant David H. Mowry served as the Company's Chief Executive Officer during
26 the Class Period until his termination on April 11, 2023 and as a Director until his resignation from
27 the Board on May 11, 2023.

1 26. Defendant Rohan Seth served as the Company’s Chief Financial Officer during the
2 Class Period until his resignation on May 3, 2023, with Defendant Seth expected to remain with the
3 Company in an advisory capacity until May 26, 2023.

4 27. Defendant J. Daniel Plants, a member of Cutera’s Board since 2015, served as the
5 Company’s Executive Chairman, beginning on May 19, 2021, and Chairman of the Board, beginning
6 in October 2016, until his termination from those positions on April 11, 2023.

7 28. Defendants Mowry, Seth, and Plants are collectively referred to herein as the
8 “Individual Defendants.”

9 29. The Individual Defendants, because of their positions with the Company, possessed
10 the power and authority to control the contents of Cutera’s reports to the SEC, press releases, and
11 presentations to securities analysts, money and portfolio managers, and institutional investors, i.e.,
12 the market. Each Individual Defendant was provided with copies of the Company’s reports alleged
13 herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to
14 prevent their issuance or cause them to be corrected. Because of their positions and access to material
15 non-public information available to them, each of the Individual Defendants knew that the adverse
16 facts specified herein had not been disclosed to, and/or were being concealed from, the public, and
17 that the positive representations that were being made were then materially false and/or misleading.

18 30. Cutera and the Individual Defendants are collectively referred to herein as
19 “Defendants.”

20 **IV. SUBSTANTIVE ALLEGATIONS**

21 **A. Background**

22 31. Cutera designs, develops, and manufactures aesthetic medical devices used for a
23 variety of laser and energy-based beauty treatments.

24 **B. Defendants’ False and Misleading Statements**

25 32. The Class Period begins on February 17, 2021, to coincide with the Company’s
26 publication of its financial results for the fourth quarter 2020 and full-year 2020. In the Company’s
27 press release announcing the financial results, Defendant Mowry highlighted that the Company’s
28 “commitment to execution” had driven “steady improvement during the second half of 2020, posting

1 solid results despite the difficult [COVID-related] operating environment.” Defendant Mowry
2 further assured investors that the Company would “enter 2021 well-positioned to accelerate growth
3 and expand profitability as the impact of COVID-19 continues to wane.”

4 33. On March 23, 2021, the Company filed its 2020 annual report on Form 10-K (the
5 “2020 Annual Report”), which was signed by Defendants Mowry, Seth, and Plants, with the SEC.
6 The 2020 Annual Report noted that, as of December 31, 2020, there were no material changes to the
7 Company’s internal controls “that have materially affected, or are reasonably likely to materially
8 affect, the Company’s internal control over financial reporting.”

9 34. As required by the Sarbanes-Oxley Act of 2002, Defendants Mowry and Seth certified
10 that they had reviewed the 2020 Annual Report, that it “does not contain any untrue statement of a
11 material fact or omit to state a material fact necessary to make the statements made, in light of the
12 circumstances under which such statements were made, not misleading with respect to the period
13 covered by this report,” and that they had “[d]esigned such internal control over financial reporting,
14 or caused such internal control over financial reporting to be designed under the Company’s
15 supervision, to provide reasonable assurance regarding the reliability of financial reporting and the
16 preparation of financial statements for external purposes in accordance with generally accepted
17 accounting principles [(“GAAP”)].”

18 35. Throughout the Class Period, Defendants continued to tout the Company’s
19 purportedly sustainable revenue growth and to assert that the Company had implemented internal
20 controls over financial reporting that provided assurance of reliable financial reporting and
21 compliance with GAAP principles. For example, on May 5, 2021, during the Company’s quarterly
22 earnings call with investors, in response to a question from a Stephens analyst about the Company’s
23 ability to provide strong, sustainable year-over-year growth, Defendant Seth expressed a positive
24 outlook, stating that “we feel really good about the sustainability of the results that we’re delivering
25 and we’ll deliver for the rest of this year.”

26 36. On May 10, 2021, Cutera filed its first quarter 2021 Form 10-Q with the SEC, which
27 was signed by Defendant Seth. In the Form 10-Q, Defendants noted that “the Company’s disclosure
28 controls and procedures were effective at March 31, 2021,” and that, other than additional controls

1 related to newly-issued convertible notes, “there were no changes in the Company’s internal control
2 over financial reporting during the three months ended March 31, 2021 that have materially affected,
3 or are reasonably likely to materially affect, the Company’s internal control over financial reporting.”
4 As required by the Sarbanes-Oxley Act of 2002, Defendants Mowry and Seth certified that they had
5 reviewed the Form 10-Q, that it “does not contain any untrue statement of a material fact or omit to
6 state a material fact necessary to make the statements made, in light of the circumstances under which
7 such statements were made, not misleading with respect to the period covered by this report,” and
8 that they had “[d]esigned such internal control over financial reporting, or caused such internal
9 control over financial reporting to be designed under [the Company’s] supervision, to provide
10 reasonable assurance regarding the reliability of financial reporting and the preparation of financial
11 statements for external purposes in accordance with [GAAP].”

12 37. On August 6, 2021, Cutera filed its second quarter 2021 Form 10-Q with the SEC,
13 which was signed by Defendant Seth. In the Form 10-Q, Defendants noted that “the Company’s
14 disclosure controls and procedures were effective at June 30, 2021,” and that, other than additional
15 controls related to newly-issued convertible notes, “there were no changes in the Company’s internal
16 control over financial reporting during the six months ended June 30, 2021 that have materially
17 affected, or are reasonably likely to materially affect, the Company’s internal control over financial
18 reporting.”

19 38. As required by the Sarbanes-Oxley Act of 2002, Defendants Mowry and Seth certified
20 that they had reviewed the Form 10-Q, that it “does not contain any untrue statement of a material
21 fact or omit to state a material fact necessary to make the statements made, in light of the
22 circumstances under which such statements were made, not misleading with respect to the period
23 covered by this report,” and that they had “[d]esigned such internal control over financial reporting,
24 or caused such internal control over financial reporting to be designed under [the Company’s]
25 supervision, to provide reasonable assurance regarding the reliability of financial reporting and the
26 preparation of financial statements for external purposes in accordance with [GAAP].”

27 39. On November 3, 2021, Cutera announced its third quarter 2021 financial results.
28 During the Company’s quarterly earnings call with investors held that same day, Defendant Seth

1 emphasized that Cutera “continue[d] to lay a strong foundation for sustainable growth over the next
2 several years.”

3 40. On November 4, 2021, Cutera filed its third quarter 2021 Form 10-Q with the SEC,
4 which was signed by Defendant Seth. In the Form 10-Q, Defendants noted that “the Company’s
5 disclosure controls and procedures were effective at September 30, 2021,” and that, other than
6 additional controls related to newly-issued convertible notes, “there were no changes in the
7 Company’s internal control over financial reporting during the nine months ended September 30,
8 2021 that have materially affected, or are reasonably likely to materially affect, the Company’s
9 internal control over financial reporting.”

10 41. As required by the Sarbanes-Oxley Act of 2002, Defendants Mowry and Seth certified
11 that they had reviewed the Form 10-Q, that it “does not contain any untrue statement of a material
12 fact or omit to state a material fact necessary to make the statements made, in light of the
13 circumstances under which such statements were made, not misleading with respect to the period
14 covered by this report,” and that they had “[d]esigned such internal control over financial reporting,
15 or caused such internal control over financial reporting to be designed under [the Company’s]
16 supervision, to provide reasonable assurance regarding the reliability of financial reporting and the
17 preparation of financial statements for external purposes in accordance with [GAAP].”

18 42. Then, on February 22, 2022, the Company announced its financial results for the
19 fourth quarter and full-year 2021. In connection with this announcement, Defendant Mowry
20 explained that the Company’s performance “was driven by our team’s outstanding commercial
21 execution and supported by robust underlying patient demand” as “North American Capital business
22 eclipsed Pre-Covid levels and delivered 56% growth in the quarter.” According to Mowry, the
23 Company “anticipate[s] that this top-line momentum will continue as we move through the year,
24 driven by our growing capital equipment pipeline and the strong ongoing patient demand,” and that,
25 “[i]n light of our business strength, in combination with future product launches, we are tremendously
26 excited for the year ahead.” To this end, Cutera provided 2022 revenue guidance of between \$255
27 million and \$260 million.

1 43. On March 1, 2022, the Company filed its 2021 annual report on Form 10-K with the
2 SEC (the “2021 Annual Report”), which was signed by Defendants Mowry, Seth, and Plants. In the
3 2021 Annual Report, the Company noted “a material weakness in the Company’s internal control
4 over financial reporting. This material weakness is related to ineffective information technology
5 general controls . . . the areas of user access and segregation of duties related to certain information
6 technology (‘IT’) systems that support the Company’s financial reporting process at its Japan
7 subsidiary,” but reassured investors that the Company was “designing and implementing effective
8 internal control measures to improve its internal controls over financial reporting and remediate this
9 material weakness” and that “this material weakness did not result in any material misstatement of
10 the Company’s consolidated financial statements for the periods presented.”

11 44. As required by the Sarbanes-Oxley Act of 2002, Defendants Mowry and Seth certified
12 that they had reviewed the 2021 Annual Report, that it “does not contain any untrue statement of a
13 material fact or omit to state a material fact necessary to make the statements made, in light of the
14 circumstances under which such statements were made, not misleading with respect to the period
15 covered by this report,” and that they had “[d]esigned such internal control over financial reporting,
16 or caused such internal control over financial reporting to be designed under the Company’s
17 supervision, to provide reasonable assurance regarding the reliability of financial reporting and the
18 preparation of financial statements for external purposes in accordance with [GAAP].”

19 45. On May 10, 2022, the Company issued a press release announcing its financial results
20 for the first quarter of 2022, including a 17% year-over-year increase in revenue that was “driven by
21 robust performance across the business, with particular strength in North America.” Defendant
22 Mowry further highlighted that “the momentum we built in the second half of 2021 carried into the
23 new year.” The Company also reiterated its 2022 revenue guidance of between \$255 million and
24 \$260 million.

25 46. During the Company’s quarterly earnings call with investors held that same day,
26 Defendant Mowry touted the Company’s “continued momentum” and “solid execution” that
27 contributed to overall revenue growth of 17% over the prior year. Defendant Seth assured investors
28

1 that, “[g]iven our strong balance sheet, we are well positioned to continue supporting the growth of
2 our core business.”

3 47. That same day, Cutera filed its first quarter 2022 Form 10-Q with the SEC, which was
4 signed by Defendant Seth. In the Form 10-Q, Defendants reiterated that the Company’s
5 “[m]anagement identified a material weakness in the year ended December 31, 2021, over the
6 Company’s internal control over financial reporting,” noting that “[t]his material weakness is related
7 to ineffective information technology general controls,” but again reassured investors that “the
8 Company’s management, including the CEO and CFO, has concluded that the consolidated financial
9 statements, included in the 2021 Annual Report on Form 10-K, and in the Form 10-Q for the three
10 months ended March 31, 2022, fairly present, in all material respects, the Company’s financial
11 condition.”

12 48. As required by the Sarbanes-Oxley Act of 2002, Defendants Mowry and Seth certified
13 that they had reviewed the Form 10-Q, that it “does not contain any untrue statement of a material
14 fact or omit to state a material fact necessary to make the statements made, in light of the
15 circumstances under which such statements were made, not misleading with respect to the period
16 covered by this report,” and that they had “[d]esigned such internal control over financial reporting,
17 or caused such internal control over financial reporting to be designed under [the Company’s]
18 supervision, to provide reasonable assurance regarding the reliability of financial reporting and the
19 preparation of financial statements for external purposes in accordance with [GAAP].”

20 49. Then, on August 4, 2022, the Company announced its financial results for the second
21 quarter of 2022 and reiterated its previously-issued 2022 revenue guidance in the range of \$255
22 million to \$260 million. In connection with this announcement, Defendant Mowry touted that he is
23 “*excited by the momentum we continue to see in our core business, as prior investments in our sales*
24 *force drove strong results in capital and consumables product segments in North America, Europe,*
25 *and Australia/New Zealand in particular*” and that the “*team is further encouraged by the resiliency*
26 *and strength of underlying demand trends in the marketplace*” (emphases in original).

27 50. On August 8, 2022, Cutera filed its second quarter 2022 Form 10-Q with the SEC,
28 which was signed by Defendant Seth. In the Form 10-Q, Defendants again noted the previously

1 identified material weakness pertaining to IT controls, and reiterated that “the Company’s
2 management, including the CEO and CFO, has concluded that the consolidated financial statements,
3 included in the 2021 Annual Report on Form 10-K, and in the Form 10-Q for the three and six months
4 ended June 30, 2022, fairly present, in all material respects, the Company’s financial condition.”

5 51. As required by the Sarbanes-Oxley Act of 2002, Defendants Mowry and Seth certified
6 that they had reviewed the Form 10-Q, that it “does not contain any untrue statement of a material
7 fact or omit to state a material fact necessary to make the statements made, in light of the
8 circumstances under which such statements were made, not misleading with respect to the period
9 covered by this report,” and that they had “[d]esigned such internal control over financial reporting,
10 or caused such internal control over financial reporting to be designed under [the Company’s]
11 supervision, to provide reasonable assurance regarding the reliability of financial reporting and the
12 preparation of financial statements for external purposes in accordance with [GAAP].”

13 52. On November 3, 2022, the Company announced its financial results for the third
14 quarter of 2022 and revealed that the Company now expected to finish the year “at the upper end of
15 revenue guidance of \$255 million to \$260 million.” Defendant Mowry explained that he was
16 “*pleased by the momentum we continue to see in our core business, as prior investments in sales*
17 *force expansion deliver strong results in both our capital and consumables product segments across*
18 *North America and other direct-sales markets*” and that “[b]ased upon our current view, the strength
19 of our third quarter performance, and our capital equipment pipeline, we remain encouraged by the
20 resilience of our core markets” (emphases in original).

21 53. During the Company’s quarterly earnings call with investors that same day, Defendant
22 Mowry also highlighted that “underlying treatment and procedure volumes were steady and that the
23 customer demand for capital remains strong,” asserting that these factors would “enable[e] a strong
24 core business performance for Cutera with noteworthy year-over-year growth rates in both our capital
25 equipment sales as well as our consumable product sales.” Additionally, Defendant Seth confirmed
26 that the Company would “be at the upper end of our revenue guidance despite absorbing the entirety
27 of unprecedented foreign exchange rate declines in Japan, Europe, Britain and Australia.”
28

1 54. On November 9, 2022, Cutera filed its third quarter 2022 Form 10-Q with the SEC,
2 which was signed by Defendant Seth. In the Form 10-Q, Defendants again noted the previously
3 identified material weakness pertaining to IT controls, and reassured investors that “the Company’s
4 management, including the CEO and CFO, has concluded that the consolidated financial statements,
5 included in the 2021 Annual Report on Form 10-K, and in the Form 10-Q for the three and nine
6 months ended September 30, 2022, fairly present, in all material respects, the Company’s financial
7 condition.”

8 55. As required by the Sarbanes-Oxley Act of 2002, Defendants Mowry and Seth certified
9 that they had reviewed the Form 10-Q, that it “does not contain any untrue statement of a material
10 fact or omit to state a material fact necessary to make the statements made, in light of the
11 circumstances under which such statements were made, not misleading with respect to the period
12 covered by this report,” and that they had “[d]esigned such internal control over financial reporting,
13 or caused such internal control over financial reporting to be designed under [the Company’s]
14 supervision, to provide reasonable assurance regarding the reliability of financial reporting and the
15 preparation of financial statements for external purposes in accordance with [GAAP].”

16 56. The above statements identified in paragraphs 32-55 were materially false and
17 misleading, and failed to disclose material adverse facts about the Company’s business and
18 operations. Specifically, Defendants overstated the sustainability of Cutera’s revenue growth, failed
19 to disclose certain conflicts among members of the Company’s senior leadership and Board, and
20 failed to disclose several material weaknesses in the Company’s internal control over financial
21 reporting.

22 **C. The Truth Emerges**

23 57. Investors began to learn the truth about the Company’s performance and growth
24 prospects on January 9, 2023, when the Company announced its preliminary financial results for
25 full-year 2022. Despite assuring investors just two months earlier that the Company would finish the
26 year “at the upper end of revenue guidance of \$255 million to \$260 million,” Defendants revealed
27 that the Company now expected revenue between \$252 million and \$253 million.

1 58. On this news, the price of Cutera common stock declined \$9.41 per share, or more
2 than 23%, from a close of \$40.45 per share on January 6, 2023, to close at \$31.04 per share on January
3 9, 2023.

4 59. Then, after the market closed on February 28, 2023, Cutera filed a Notification of Late
5 Filing with the SEC, reporting that the Company would not be able to timely file its annual financial
6 report on Form 10-K by the March 1, 2023 deadline because “[a]dditional time is required to complete
7 the Form 10-K, including the financial statements that will be filed as part of the Form 10-K and
8 management’s assessment of the Company’s internal control over financial reporting.” The
9 Company further disclosed that it “ha[d] identified and expect[ed] to disclose in the Form 10-K
10 material weaknesses in its internal control over financial reporting related to . . . ineffective inventory
11 count controls.”

12 60. On this news, the price of Cutera common stock declined \$0.32 per share, or
13 approximately 1%, from a close of \$32.43 per share on February 28, 2023, to close at \$32.11 per
14 share on March 1, 2023.

15 61. Then, on March 16, 2023, the Company filed a second Notification of Late Filing with
16 the SEC, explaining that it would not meet the extended deadline to file its 2022 Annual Report. In
17 this filing, Defendants noted that “[t]he Company ha[d] identified and expect[ed] to disclose in the
18 Form 10-K material weaknesses in its internal control over financial reporting related to . . .
19 ineffective inventory count controls and stock-based compensation.”

20 62. On this news, the price of Cutera common stock declined \$3.49 per share, or
21 approximately 12.5%, from a close of \$27.85 per share on March 16, 2023, to close at \$24.36 per
22 share on March 17, 2023.

23 63. The following week, on March 24, 2023, the Company filed a Form 8-K regarding a
24 “Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing”
25 with the SEC, disclosing that that Cutera had received “a notice . . . from the Listing Qualifications
26 Department of [Nasdaq] on March 21, 2023 indicating that the Company is not currently in
27 compliance with Nasdaq’s Listing Rules . . . due to the Company’s inability to timely file its Form
28

1 10-K for the year ended December 31, 2022 . . . with the [SEC].” The Form 8-K further stated that
2 the Nasdaq required the Company to submit a plan to regain compliance on or before May 22, 2023.

3 64. On this news, the price of Cutera common stock declined \$0.92 per share, or
4 approximately 3.4%, from a close of \$27.07 per share on March 24, 2023, to close at \$26.15 per share
5 on March 27, 2023.

6 65. On April 7, 2023, the Company filed a Current Report on Form 8-K with the SEC
7 disclosing that, on April 3, 2023, Defendant Plants made a demand of a special meeting of the
8 stockholders to remove five directors (Gregory A. Barrett, Sheila A. Hopkins, Timothy J. O’Shea,
9 Juliane T. Park, and Janet D. Widmann) from the Board.

10 66. Also on April 7, 2023, the Company filed its 2022 annual report on Form 10-K with
11 the SEC (the “2022 Annual Report”), which was signed by Defendants Mowry, Seth, and Plants. In
12 the 2022 Annual Report, the Company stated “that the Company’s disclosure controls and procedures
13 were not effective at the reasonable assurance level as a result of the material weaknesses disclosed
14 below.” The material weaknesses further described in the 2022 Annual Report included:

- 15 • Information technology general controls (“ITGCs”) including, segregation of
16 duties, user access, and reports produced by certain IT systems that support the
17 Company’s financial reporting process including those related to the
18 implementation of an ERP system;
- 19 • Inventory controls related to the completeness, existence, and cut-off of
20 inventories held at third parties, inventories held by sales personnel, and
inventories in transit, and controls related to the calculation of adjustments to
inventory for items considered excessive and obsolete; and
- 21 • The completeness and accuracy of expense for routine and non-routine equity-
based awards.

22 67. On April 10, 2023, Defendants Plants and Mowry jointly issued a press release in
23 support of their demands calling for the Board to remove five of its directors at a special meeting of
24 the Company’s stockholders. In connection with their demands, Defendants Plants and Mowry cited
25 concerns that the Board had not made progress on a succession plan for the role of Chief Executive
26 Officer, and Mowry stated that “the approach the Entrenched Directors have taken to these matters
27 has been detrimental to the business and served no purpose other than to position certain Directors
28 closer to the CEO title that they seem to covet for themselves.” Furthermore, Mowry noted that “the

1 Board has reached such a level of dysfunction that critical decisions are not being made and vital
2 initiatives are unable to move forward.”

3 68. On April 11, 2023, Defendant Seth and senior members of Cutera management issued
4 a letter to the Board endorsing the current trajectory of the Company under Defendants Plants and
5 Mowry. In the letter, the signatories claimed that Plants and Mowry are “visibly and completely
6 committed to the Company, its people and its customers.” The letter also indicated that the signatories
7 believe that Cutera’s path is “the right one,” stating that “the new business model is driving a true
8 transformation of Cutera.”

9 69. On April 12, 2023, the Company announced that, on April 11, 2023, the Board had
10 terminated Plants as Cutera’s Executive Chairman and Chairman of the Board “with cause” and
11 Defendant Mowry as Cutera’s Chief Executive Officer “with cause.” The Company also disclosed
12 that the Board had simultaneously appointed Sheila A. Hopkins to serve as the Interim Chief
13 Executive Officer and Janet D. Widmann, as Independent Chair of the Board, effective immediately.
14 The Company explained that the terminations of Defendants Plants and Mowry came “following joint
15 and unanimous recommendations from a special committee comprising all members of the Board’s
16 Governance and Corporate Responsibility Committee and the majority of the members of the Board
17 of Directors.”

18 70. The Company further revealed that Plants “strongly recommended” the termination of
19 Defendant Mowry beginning in November 2022, explaining:

20 In November 2022, the Board’s independent directors began exploring a CEO
21 transition. Mr. Plants strongly recommended the immediate termination of Mr.
22 Mowry and indicated that he wanted to succeed him as the Company’s next CEO.
23 This followed a previous attempt by Mr. Plants to gain the CEO role in February
24 2021 by recommending removing Mr. Mowry. After serious consideration, the
25 Board instead decided to seek an external CEO candidate with the assistance of an
26 executive search firm.

25 Following that decision, in an apparent campaign to seize control of the Company,
26 Mr. Mowry and Mr. Plants issued a press release in which they disclosed – and
27 blatantly mischaracterized in a defamatory manner – highly confidential internal
28 deliberations of the Board in direct violation of their employment agreements and
their fiduciary duties as directors and officers under Delaware law.

1 71. In connection with these announcements, the Company announced that “it is
2 withdrawing its full-year 2023 outlook.”

3 72. On this news, the price of Cutera common stock declined \$7.63 per share, or more
4 than 28%, from a close of \$27.07 per share on April 11, 2023 to close at \$19.44 per share on April
5 12, 2023.

6 73. On May 9, 2023, the Company reported disappointing financial results for the first
7 quarter 2023 that were “*below expectations due to execution challenges in the business*” and
8 announced that Defendant Seth had resigned as the Company’s Chief Financial Officer on May 3,
9 2023, but would remain with the Company in an advisory capacity until May 26, 2023 (emphasis in
10 original).

11 74. On this news, the price of Cutera common stock declined \$6.06 per share over two
12 trading sessions, or 30%, from a close of \$20.20 per share on May 9, 2023, to close at \$14.14 per
13 share on May 11, 2023.

14 **V. PLAINTIFF’S CLASS ACTION ALLEGATIONS**

15 75. Plaintiff brings this class action under Rule 23 of the Federal Rules of Civil Procedure
16 on behalf of all persons and entities who purchased or otherwise acquired Cutera common stock
17 during the Class Period (the “Class”). Excluded from the Class are Defendants, their agents, directors
18 and officers of Cutera, and their families and affiliates.

19 76. The members of the Class are so numerous that joinder of all members is
20 impracticable. The disposition of their claims in a class action will provide substantial benefits to the
21 parties and the Court.

22 77. There is a well-defined community of interest in the questions of law and fact involved
23 in this case. Questions of law and fact common to the members of the Class which predominate over
24 questions which may affect individual Class members include:

- 25 a. Whether Defendants violated the Exchange Act;
26 b. Whether Defendants omitted and/or misrepresented material facts;

- c. Whether Defendants' statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- d. Whether Defendants knew or recklessly disregarded that their statements were false and/or misleading;
- e. Whether the price of Cutera common stock was artificially inflated; and
- f. The extent of damage sustained by members of the Class and the appropriate measure of damages.

78. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants' wrongful conduct.

79. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests that conflict with those of the Class.

80. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Joinder of all Class members is impracticable.

VI. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE MARKET DOCTRINE

81. Plaintiff will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

- a. Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- b. The omissions and misrepresentations were material;
- c. The Company's common stock traded in an efficient market;
- d. The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's common stock; and
- e. Plaintiff and the Class purchased Cutera common stock between the time the Company and the Individual Defendants misrepresented or failed to disclose

1 material facts and the time the true facts were disclosed, without knowledge of
2 the misrepresented or omitted facts.

3 82. At all relevant times, the market for the Company's common stock was efficient
4 because: (1) as a regulated issuer, the Company filed periodic public reports with the SEC; and (2) the
5 Company regularly communicated with public investors using established market communication
6 mechanisms, including through regular disseminations of press releases on the major news wire
7 services and through other wide-ranging public disclosures, such as communications with the
8 financial press, securities analysts, and other similar reporting services.

9 **VII. NO SAFE HARBOR**

10 83. Defendants' "Safe Harbor" warnings accompanying any forward-looking statements
11 issued during the Class Period were ineffective to shield those statements from liability.

12 84. Defendants are liable for any false and/or misleading forward-looking statements
13 pleaded because, at the time each forward-looking statement was made, the speaker knew the
14 forward-looking statement was false or misleading and the forward-looking statement was authorized
15 and/or approved by an executive officer of the Company who knew that the forward-looking
16 statement was false. None of the historic or present-tense statements made by Defendants were
17 assumptions underlying or relating to any plan, projection, or statement of future economic
18 performance, as they were not stated to be such assumptions underlying or relating to any projection
19 or statement of future economic performance when made, nor were any of the projections or forecasts
20 made by Defendants expressly related to or stated to be dependent on those historic or present-tense
21 statements when made.

22 **VIII. LOSS CAUSATION/ECONOMIC LOSS**

23 85. Defendants' wrongful conduct directly and proximately caused the economic loss
24 suffered by Plaintiff and the Class. The price of Cutera common stock significantly declined when
25 the misrepresentations made to the market, and/or the information alleged herein to have been
26 concealed from the market, and/or the effects thereof, were revealed, causing investors' losses. As a
27 result of their purchases of Cutera common stock during the Class Period, Plaintiff and the Class
28 suffered economic loss, i.e., damages, under the federal securities laws.

1 **IX. ADDITIONAL SCIENTER ALLEGATIONS**

2 86. During the Class Period, Defendants had both the motive and opportunity to commit
3 fraud. They also had actual knowledge of the misleading nature of the statements they made, or acted
4 in reckless disregard of the true information known to them at the time. In so doing, Defendants
5 participated in a scheme to defraud and committed acts, practices, and participated in a course of
6 business that operated as a fraud or deceit on purchasers of Cutera common stock during the Class
7 Period.

8 **X. CLAIMS AGAINST DEFENDANTS**

9 **COUNT I**

10 **Violations of Section 10(b) of the Exchange Act and**
11 **SEC Rule 10b-5 Promulgated Thereunder**
12 **Against All Defendants**

13 87. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

14 88. During the Class Period, Defendants carried out a plan, scheme, and course of conduct
15 that was intended to and, throughout the Class Period, did: (1) deceive the investing public, including
16 Plaintiff and the Class; and (2) cause Plaintiff and the Class to purchase Company common stock at
17 artificially inflated prices. In furtherance of this unlawful scheme, plan, and course of conduct,
18 Defendants, and each of them, took the actions set forth herein.

19 89. Defendants: (1) employed devices, schemes, and artifices to defraud; (2) made untrue
20 statements of material fact and/or omitted material facts necessary to make the statements not
21 misleading; and (3) engaged in acts, practices, and a course of business which operated as a fraud and
22 deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high
23 market prices thereof in violation of Section 10(b) of the Exchange Act and SEC Rule 10b-5.

24 90. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
25 Class suffered damages in connection with their respective purchases of the Company's common
26 stock during the Class Period.

COUNT II

Violations of Section 20(a) of the Exchange Act

Against the Individual Defendants

91. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

92. The Individual Defendants acted as controlling persons of Cutera within the meaning of Section 20(a) of the Exchange Act. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company’s operations, and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control—and did influence and control, directly or indirectly—the decision-making of the Company, including the content and dissemination of the various false and/or misleading statements. The Individual Defendants were provided with or had unlimited access to copies of the Company’s reports and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

93. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, are presumed to have had the power to control or influence the particular practices giving rise to the securities violations as alleged herein, and exercised the same.

94. As described above, the Company and the Individual Defendants each violated Section 10(b) of the Exchange Act and SEC Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable under Section 20(a) of the Exchange Act. As a direct and proximate result of this wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of Company common stock during the Class Period.

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

- a. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

- 1 b. Awarding compensatory damages and equitable relief in favor of Plaintiff and
2 other members of the Class against all Defendants, jointly and severally, for
3 all damages sustained as a result of Defendants' wrongdoing, in an amount to
4 be proven at trial, including interest thereon;
- 5 c. Awarding Plaintiff and the Class their reasonable costs and expenses incurred
6 in this action, including counsel fees and expert fees; and
- 7 d. Such other and further relief as the Court may deem just and proper.

8 **XI. DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial by jury.

10
11 DATED: May 24, 2023

Respectfully submitted,

12 **KESSLER TOPAZ MELTZER**
13 **& CHECK, LLP**

14 /s/ Jennifer L. Joost

JENNIFER L. JOOST (Bar No. 296164)

(jjoost@ktmc.com)

One Sansome Street, Suite 1850

San Francisco, CA 94104

Tel: (415) 400-3000

Fax: (415) 400-3001

17 -and-

18 NAUMON A. AMJED

(namjed@ktmc.com)

19 RYAN T. DEGNAN

(rdegan@ktmc.com)

20 BARBARA A. SCHWARTZ

(bschwartz@ktmc.com)

21 280 King of Prussia Road

Radnor, PA 19087

Tel: (610) 667-7706

Fax: (610) 667-7056

22 *Counsel for Plaintiff Erie County Employees'*
23 *Retirement System*