IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

_____, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

ZYNEX, INC.,
THOMAS SANDGAARD, and
DANIEL MOORHEAD,

Defendants.

CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Plaintiff_____("Plaintiff"), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following 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, his counsel's investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Zynex, Inc. ("Zynex" or the "Company") with the United States ("U.S.") Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and media reports issued by and disseminated by Zynex; and (c) review of other publicly available information concerning Zynex.

NATURE OF THE ACTION AND OVERVIEW

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Zynex securities between March 13, 2023 to March 11, 2025, inclusive (the "Class Period"). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Zynex is a medical device manufacturer that produces and markets electrotherapy devices for use in pain management and physical rehabilitation. The Company's products are small, battery powered electronic devices which deliver electric pulses via wires and electrode pads.

3. On June 4, 2024, medical journal *STAT* published a report on Zynex entitled "How a device maker inundated pain patients with unwanted batteries and surprise bills." The report claimed Zynex engaged in an "oversupplying scheme" by sending inordinate amounts of monthly supplies like electrode pads and batteries in order to "bill insurers for

thousands of dollars more than it otherwise could." The report further revealed that, as a result of this practice, insurers were "kicking the company out of network."

4. On this news, Zynex's stock price fell $0.50 per share, or 5%, to close at $9.35 per share on June 4, 2024, on unusually heavy trading volume.

5. On March 11, 2025, after the market closed, Zynex reported its fourth quarter and full year 2024 financial results, revealing a significant revenue "shortfall" in the quarter "due to slower than normal payments from certain payers." Zynex further revealed "***Tricare has temporarily suspended payments as they review prior claims.***" Tricare is the health insurance program for the U.S. military.

6. On this news, Zynex's stock price fell $3.59 per share, or 51.3%, to close at $3.41 per share on March 12, 2025, on unusually heavy trading volume.

7. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Zynex shipped products, including electrodes, in excess of need; (2) that, as a result of this practice, the Company inflated its revenue; (3) that the Company's practice of filing false claims drew scrutiny from insurers, including Tricare; (4) that, as a result, it was reasonably likely that Zynex would face adverse consequences, including removal from insurer networks and penalties from the federal government; and (5) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

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

JURISDICTION AND VENUE

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

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

11. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, the Company's principal executive offices are located in this District.

12. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

PARTIES

13. Plaintiff _____, as set forth in the accompanying certification, incorporated by reference herein, purchased Zynex securities during the Class Period,

and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

14. Defendant Zynex is incorporated under the laws of Nevada with its principal executive offices located in Englewood, Colorado. Zynex's common stock trades on the NASDAQ exchange under the symbol "ZYXI."

15. Defendant Thomas Sandgaard ("Sandgaard") is the founder and was the Company's Chief Executive Officer ("CEO") at all relevant times.

16. Defendant Daniel Moorhead ("Moorhead") was the Company's Chief Financial Officer ("CFO") at all relevant times.

17. Defendants Sandgaard and Moorhead (together, the "Individual Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

SUBSTANTIVE ALLEGATIONS

Background

18. Zynex is a medical device manufacturer that produces and markets electrotherapy devices for use in pain management and physical rehabilitation. The Company's products are small, battery powered electronic devices which deliver electric pulses via wires and electrode pads.

Materially False and Misleading

Statements Issued During the Class Period

19. The Class Period begins on March 13, 2023. On that day, Zynex announced its fourth quarter and full year 2022 financial results in a press release for the period ended December 31, 2022, stating as follows in relevant part:

> **2022 Fourth Quarter Highlights:**
> - Orders increased 48%; highest number of orders in Company history for the 3rd consecutive quarter
> - Revenue increased 21% year over year to $48.8 million
> - Net income of $7.5 million; Diluted EPS $0.20
> - Adjusted EBITDA of $11.4 million
>
> **2022 Full Year Highlights:**
> - Orders increased 23%
> - Revenue increased 21% year over year to $158.2 million
> - Net income of $17.0 million; Diluted EPS of $0.44
> - Adjusted EBITDA increased 5% to $28.1 million
> - 7th straight year of profitability
>
> ***Fourth Quarter Financial Results Summary:***
>
> For the fourth quarter, the Company reported net revenue of $48.8 million, a 21% increase over fourth quarter of 2021. Gross margins were 81% and net income was $7.5 million, a 53% increase from Q3 2022.

20. On March 14, 2023, the Company submitted its annual report for the fiscal year ended December 31, 2022 on a Form 10-K filed with the SEC, affirming the previously reported financial results (the "2022 10-K"). The report purported to warn, in relevant part:[1]

> ***We are dependent on reimbursement from third-party payers, most of whom are larger than we are and have substantially more employees and financial resources; changes in insurance reimbursement policies or application of them have resulted in decreased or delayed revenues.***
>
> A large percentage of our revenues come from third-party payer reimbursement. Most of the third-party payers are large insurance companies with substantially more resources than we have. Upon delivery of our products to our patients, we directly bill the patients' private insurance companies or government payers for reimbursement. If the third-party payers do not remit payment on a timely basis or if they change their policies to exclude or reduce coverage for our products, we would experience a decline in our revenue as well as cash flow. In addition, we may deliver products to patients and invoice based on past practices and billing experiences only to have third-party payers later deny coverage for such products.
>
> In some cases, our delivered product may not be covered pursuant to a policy statement of a third-party payer, despite a payment history with the third-party payer and benefits to the patients. ***A third-party payer may seek repayment of amounts previously paid for covered products.*** We maintain an allowance for provider discounts and amounts intended to cover legitimate requests for repayment. Failure to adequately identify and provide for amounts for resolution of repayment demands in our allowance for provider discounts could have a material adverse effect on our results of operations and cash flows. ***For government health care programs, if we identify a deficiency in prior claims or practices, we may be required to repay amounts previously reimbursed to us by government health care programs.***

[1] Unless otherwise stated, all emphasis in bold and italics hereinafter is added, and all footnotes are omitted.

We frequently receive, and expect to continue to receive, refund requests from insurance providers relating to specific patients and dates of service. Billing and reimbursement disputes are very common in our industry. These requests are sometimes related to a few patients, and other times include a significant number of refund claims in a single request which can accumulate to a significant amount. We review and evaluate these requests and determine if any refund is appropriate. During the adjudication process we review claims where we are rebilling or pursuing additional reimbursement from that insurance provider. We frequently have significant offsets against such refund requests which may result in amounts that are due to us in excess of the amounts of refunds requested by the insurance providers. Therefore, at the time of receipt of such refund requests, we are generally unable to determine if a refund request is valid. Although we cannot predict whether or when a request for repayment or our subsequent request for reimbursement will be resolved, it is not unusual for such matters to be unresolved for a long period of time. No assurances can be given with respect to our estimates for our allowance for provider discounts refund claim reimbursements and offsets or the ultimate outcome of the refund requests.

21. The 2022 10-K also purported to warn that governmental audits "***could***" affect financial results, stating in relevant part:

We face periodic reviews and billing audits from governmental and private payers, and these audits could have adverse results that may negatively impact our business.

As a result of our participation in the Medicaid program and our registration in the Medicare program, we are subject to various governmental reviews and audits to verify our compliance with these programs and applicable laws and regulations. We also are subject to audits under various government programs in which third-party firms engaged by CMS conduct extensive reviews of claims data and medical and other records to identify potential improper payments under the Medicare program. Private pay sources also reserve the right to conduct audits. If billing errors are identified in the sample of reviewed claims, the billing error can be extrapolated to all claims filed which could result in a larger overpayment than originally identified in the sample of reviewed claims. Our costs to respond to and defend reviews and audits may be significant and could have a material adverse effect on our business, financial condition, results of operations and cash flows. Moreover, an adverse review or audit could result in:

- required refunding or retroactive adjustment of amounts we have been paid by governmental or private payers;

- state or Federal agencies imposing fines, penalties and other sanctions on us;

- loss of our right to participate in the Medicare program, state programs, or one or more private payer networks; or

- damage to our business and reputation in various markets.

Any one of these results could have a material adverse effect on our business, financial condition, results of operations and cash flows.

22. On April 27, 2023, Zynex issued a press release announcing financial results for the first quarter of 2023, stating as follows in relevant part:

First Quarter 2023 Highlights:

- Revenue increased 36% year-over-year to $42.2 million
- Net income of $1.6 million; Diluted EPS $0.04
- Orders increased 61% year-over-year; highest number of orders in
- Company history for the 4th consecutive quarter

First Quarter 2023 Financial Results Summary:

For the first quarter, the Company reported net revenue of $42.2 million, a 36% increase over first quarter of 2022. Gross margins were 78% and net income was $1.6 million, a 14% increase year-over-year.

23. On July 27, 2023, Zynex issued a press release announcing financial results for the second quarter of 2023. The press release reported touted the Company's strong financial results, stating as follows in relevant part:

Key Second Quarter and Subsequent 2023 Highlights and Business Update

- Q2 2023 revenue increased 22% year-over-year to $45.0 million.
- Net income of $3.4 million; Diluted EPS $0.09.
- Orders increased 51% year-over-year; highest number of orders in Company history for the 5th consecutive quarter.

- FDA granted 510(k) market clearance for the Company's CM-1600 blood and fluid volume monitoring device.
- Approved a $10.0 million share repurchase program of the Company's common stock.

* * *

Second Quarter 2023 Financial Results

Net revenue was $45.0 million for the three months ended June 30, 2023, an increase of 22% from $36.8 million in the prior year quarter. The growth in net revenue is primarily related to a 51% growth in device orders, which resulted from an increased customer base.

24. On October 26, 2023, Zynex issued a press release announcing finanical results for the third quarter of 2023. The press release reported touted the Company's strong finanical results, stating as follows in relevant part:

Key Third Quarter and 2023 Highlights and Business Update

- Q3 2023 revenue increased 20% year-over-year to $49.9 million.
- Net income of $3.6 million; Diluted EPS $0.10.
- Orders increased 39% year-over-year; highest number of orders in Company history for the 6th consecutive quarter.
- Cash from operations of $8.9 million in the third quarter; highest in Company history.
- Added three new therapy products centered around pain management: Zynex Pro Thoracic Lumbar Sacral Orthosis ("TLSO"), Zynex Pro Wrist, and Zynex Cryoheat.

Management Commentary

"The third quarter was highlighted by increasing revenue and cash flow momentum driven by our sixth straight quarter of record-high order numbers," said Thomas Sandgaard, President and CEO of Zynex. "As we continue to develop the next generation of patient monitoring equipment, our pain management division delivered a 39% improvement in orders year-over-year and celebrated our 1 millionth patient treated since founding the company. Our continued profitability and record positive cash flow allowed us to announce an additional $10 million share repurchase plan.

* * *

Third Quarter 2023 Financial Results

Net revenue was $49.9 million for the three months ended September 30, 2023, an increase of 20% from $41.5 million in the prior year quarter. The growth in net revenue is primarily related to a 39% growth in device orders, which resulted from an increased customer base.

25. On February 29, 2024, Zynex, issued a press release announcing financial results for the fourth quarter and full year ended December 31, 2023. The press release reported touted the Company's strong finanical results, stating as follows in relevant part:

Key Fourth Quarter and FY 2023 Highlights and Business Update

- FY 2023 revenue increased 17% year-over-year to $184.3 million; Q4 2023 revenue decreased 3% year-over-year to $47.3 million due to a $6.2 million non-recurring write-off of slow collecting receivables from a prior period which are booked as a charge against revenue.
- FY 2023 net income of $9.7 million; Diluted EPS $0.27; Q4 2023 net income of $1.2 million; Diluted EPS $0.04.
- FY 2023 orders increased 43% year-over-year; Q4 orders increased 29% year-over-year, the highest number of orders in Company history for the seventh consecutive quarter.
- Company record FY 2023 cash flow from operations of $17.8 million, a 29% year-over-year increase.
- Repurchased $38.4 million of the Company's common stock in 2023.

Management Commentary

"2023 was a year of continued execution for Zynex, underscored by record revenues and order numbers, and exciting new products and technological innovation," said Thomas Sandgaard, President and CEO of Zynex. "A strong cadence of increasing sales and profitable growth for our pain management division delivered a 43% improvement in orders year-over-year."

* * *

"Looking ahead into 2024, we continue to focus on new products and building on our holistic, non-invasive approach to pain management. We expect 2024 net revenue to increase approximately 22% compared to 2023. Part of our revenue growth will come from more aggressively promoting our bracing line of products as well as traction, cold/post-op and compression

products. We are in a unique position to deliver solid revenue growth and profitability that allows us to invest in the business and return cash to shareholders at the same time," concluded Sandgaard.

Fourth Quarter 2023 Financial Results

Net revenue was $47.3 million for the three months ended December 31, 2023, compared to $48.8 million in the prior year quarter. Net revenue was affected by a $6.2 million non-recurring write-off of slow collecting receivables from a prior period which are booked as a charge against revenue.

* * *

FY 2023 Financial Results

Net revenue was $184.3 million for the year ended December 31, 2023, an increase of 17% from $158.2 million in the prior year. The growth in net revenue is primarily related to a 43% growth in device orders, which led to an increased customer base and drove higher sales of consumable supplies.

26. On March 12, 2024, the Company submitted its annual report for the fiscal year ended December 31, 2023 on a Form 10-K filed with the SEC, affirming the previously reported financial results (the "2023 10-K"). The report purported to warn, in relevant part:

We are dependent on reimbursement from third-party payers, most of whom are larger than we are and have substantially more employees and financial resources; changes in insurance reimbursement policies or application of them have resulted in decreased or delayed revenues.

A large percentage of our revenues come from third-party payer reimbursement. Most of the third-party payers are large insurance companies with substantially more resources than we have. Upon delivery of our products to our patients, we directly bill the patients' private insurance companies or government payers for reimbursement. If the third-party payers do not remit payment on a timely basis or if they change their policies to exclude or reduce coverage for our products, we would experience a decline in our revenue as well as cash flow. In addition, we may deliver products to patients and invoice based on past practices and billing

experiences only to have third-party payers later deny coverage for such products.

In some cases, our delivered product may not be covered pursuant to a policy statement of a third-party payer, despite a payment history with the third-party payer and benefits to the patients. ***A third-party payer may seek repayment of amounts previously paid for covered products.*** We maintain an allowance for provider discounts and amounts intended to cover legitimate requests for repayment. Failure to adequately identify and provide for amounts for resolution of repayment demands in our allowance for provider discounts could have a material adverse effect on our results of operations and cash flows. ***For government healthcare programs, if we identify a deficiency in prior claims or practices, we may be required to repay amounts previously reimbursed to us by government healthcare programs.***

We frequently receive, and expect to continue to receive, refund requests from insurance providers relating to specific patients and dates of service. Billing and reimbursement disputes are very common in our industry. These requests are sometimes related to a few patients and other times include a significant number of refund claims in a single request which can accumulate to a significant amount. We review and evaluate these requests and determine if any refund is appropriate. During the adjudication process, we review claims where we are rebilling or pursuing additional reimbursement from that insurance provider. We frequently have significant offsets against such refund requests which may result in amounts that are due to us in excess of the amounts of refunds requested by the insurance providers. Therefore, at the time of receipt of such refund requests, we are generally unable to determine if a refund request is valid. Although we cannot predict whether or when a request for repayment or our subsequent request for reimbursement will be resolved, it is not unusual for such matters to be unresolved for an extended period of time. No assurances can be given with respect to our estimates for our allowance for provider discounts refund claim reimbursements and offsets or the ultimate outcome of the refund requests.

27. The 2023 10-K also purported to warn that governmental audits "***could***" affect financial results, stating in relevant part:

We face periodic reviews and billing audits from governmental and private payers, and these audits could have adverse results that may negatively impact our business.

As a result of our participation in the Medicaid program and our registration in the Medicare program, we are subject to various governmental reviews and audits to verify our compliance with these programs and applicable laws and regulations. We also are subject to audits under various government programs in which third-party firms engaged by CMS conduct extensive reviews of claims data and medical and other records to identify potential improper payments under the Medicare program. Private pay sources also reserve the right to conduct audits. If billing errors are identified in the sample of reviewed claims, the billing error can be extrapolated to all claims filed which could result in a larger overpayment than originally identified in the sample of reviewed claims. Our costs to respond to and defend reviews and audits may be significant and could have a material adverse effect on our business, financial condition, results of operations, and cash flows. Moreover, an adverse review or audit could result in:

● required refunding or retroactive adjustment of amounts we have been paid by governmental or private payers;

● state or Federal agencies imposing fines, penalties, and other sanctions on us;

● loss of our right to participate in the Medicare program, state programs, or one or more private payer networks; or

● damage to our business and reputation in various markets.

Any one of these results could have a material adverse effect on our business, financial condition, results of operations, and cash flows.

28. On April 30 2024, Zynex issued a press release announcing financial results for the first quarter of 2024, stating as follows in relevant part:

Key First Quarter Highlights and Business Update

- Q1 2024 revenue increased 10% year-over-year to $46.5 million; Q1 2024 revenue underperformed guidance of $47.5 million due to payments from a number of insurers being delayed due to a cyber incident, which impacted industry-wide payers. Zynex expects the revenue for the full year to remain as originally forecasted and recognize delayed revenue over the remainder of the year.
- Q1 2024 net income of $10,000; Diluted EPS $0.00.
- Q1 2024 orders increased 23% year-over-year, the highest number of orders in Company history for the eighth consecutive quarter.

- Q1 2024 cash flow from operations of $2.1 million, a 7% year-over-year increase.
- Repurchased $13.4 million of the Company's common stock in Q1 2024.

Management Commentary

"During the first quarter of 2024, we continued our focus on order growth, FDA approvals of next-generation devices, and new therapy products," said Thomas Sandgaard, President, and CEO of Zynex. "Approximately $1.0 million in revenue for the quarter was impacted by payments from a large number of insurers being delayed due to a cyber incident which impacted payers industry-wide. We expect to recognize that revenue over the remainder of the year and reaffirm 2024 guidance of at least $227 million. In the first quarter, increasing sales and profitable growth for our pain management division delivered a 23% improvement in orders year-over-year. We continued our share repurchase plan and repurchased $13.4 million of our common stock in Q1 2024 and $78.5 million over the last twenty-four months.

* * *

"We expect 2024 net revenue to increase approximately 23% compared to 2023. Innovative new products and aggressive promotion from an expanding direct salesforce are diversifying revenue streams and ensuring sustained growth. We look forward to additional updates in the months to come as we work to build long-term value for our shareholders," concluded Sandgaard.

First Quarter 2024 Financial Results

Net revenue was $46.5 million for the three months ended March 31, 2024, compared to $42.2 million in the prior year quarter. Net revenue was affected by payments from a number of insurers being delayed due to a cyber incident which impacted healthcare payers industry-wide.

29. The above statements identified in ¶¶ 19-28 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Zynex shipped products, including electrodes, in excess of need; (2) that, as a result of this practice, the Company inflated its revenue; (3) that the Company's practice of filing

false claims drew scrutiny from insurers, including Tricare; (4) that, as a result, it was reasonably likely that Zynex would face adverse consequences, including removal from insurer networks and penalties from the federal government; and (5) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

30. The truth began to emerge on June 4, 2024, when medical journal STAT published a special investigative report on Zynex entitled "How a device maker inundated pain patients with unwanted batteries and surprise bills." The report Zynex engaged in an "oversupplying scheme" by sending inordinate amounts of monthly supplies like electrode pads and batteries in order to "bill insurers for thousands of dollars more than it otherwise could." The report further revealed that, as a result of this practice, insurers were "kicking the company out of network." Specifically, the reported stated the following, in relevant part:

> **How A Device Maker Inundated Pain Patients With Unwanted Batteries And Surprise Bills**
>
> By Lizzy Lawrence, STAT News
>
> Zynex Medical, with headquarters in Englewood, Colo., has manufactured small machines that deliver different series of electrical pulses to the injured areas via wires and electrode pads.
>
> Michelle Bean is drowning in batteries she doesn't need. For two years, the batteries and electrode pads arrived each month at her home in West Boylston. In theory, they're supposed to power a pain management device she ordered from a company called Zynex Medical in 2020. In reality, they take up an annoying amount of space.
>
> They became a minor nuisance in her life. Before she bought the unit, Zynex assured her the supplies would be covered by Tufts Health Plan, her insurance company. But a year ago, Zynex informed her that the Tufts

plan had never paid, and instead, those packages were going to cost her almost $1,000.

“I just feel like the whole thing was a way to make money and prey on people,” Bean said. “What about the elderly, or people that are on a fixed income? It just makes me really angry.” She’d used the device only a few times, which was somewhat helpful for her sciatica.

The batteries are ostensibly needed to keep the device running indefinitely. But the regular shipments also allow Zynex to bill insurers for thousands of dollars more than it otherwise could.

The model has worked well enough for Zynex, with almost 70 percent of its $184 million revenue in 2023 coming from such supplies.

The problem is that insurers are growing wise to the program and kicking the company out of network. That leaves patients on the hook for medical supplies they never asked for or used.

Bean hasn’t paid; she threatened legal action and hasn’t heard from the company since.

STAT interviewed five other patients in the same predicament as Bean, and reviewed dozens of similar complaints in online forums. Zynex’s strategy of sending unsolicited supplies to patients has also led to an unpleasant work environment. Zynex did not respond to STAT’s multiple requests for comment, over the phone and email, as well as a detailed list of questions.

Four former employees told STAT the battery issue was systemic, frequently costing the company business and requiring its 500 sales reps to scour for uninitiated clinicians.

The story of Zynex shows how easy it is for patients to become trapped in a medical device company’s oversupplying scheme. The practice is rampant in health care, but rarely impacts insurers’ bottom lines enough to put companies like Zynex under regulatory or legal scrutiny. As a result, patients are left to fend for themselves.

“These are all perpetuated in the same manner,” said Eric Rubenstein, a health care fraud expert who worked on cases for the Department of Health and Human Services. “The circus never changes. It’s the clowns that recycle themselves.” Profits and pulses Zynex Medical is the brainchild of Danish entrepreneur Thomas Sandgaard, who launched the company in 1996. Sandgaard told the Denver Business Journal in 2012

that he was drawn to inventions from an early age. He failed to get funding for a 1987 venture meant to help people send faxes. So he turned to medical devices.

* * *

Sometimes, the government challenges these companies. Zynex's now-defunct competitor Empi had to pay the US Department of Justice $7.62 million in 2018 for billing Tricare, the military's health insurance, for electrode pads its beneficiaries did not need.

But so far, no major health insurers have pursued legal action against Zynex. It has faced smaller challenges: Travelers Insurance filed a sealed lawsuit in a California court against the company this past summer, and in 2014, a former Zynex billing employee sued the company for allegedly fraudulently billing Medicare for its monthly shipments. That employee dropped the case in 2015.

31. On this news, Zynex's stock price fell $0.50 per share, or 5%, to close at $9.35 per share on June 4, 2024, on unusually heavy trading volume.

32. On July 25, 2024, Zynex issued a press release announcing financial results for the second quarter of 2024, stating as follows in relevant part:

Key Second Quarter Highlights and Business Update

- Q2 2024 orders increased 20% year-over-year, the highest number of orders in Company history for the ninth consecutive quarter.
- Q2 2024 revenue increased 11% year-over-year to $49.9 million; Q2 2024 revenue was lower than previous guidance of $52.0 million primarily related to a reduction in sales representatives and forgoing current sales to focus on profitable growth and rep productivity, and a changing product mix.
- Q2 2024 net income of $1.2 million; Diluted EPS $0.04.
- Year-to-Date cash flow from operations of $3.2 million, a 20% year-over-year increase.
- Repurchased $2.2 million of the Company's common stock in Q2 2024.

Management Commentary

"The second quarter of 2024 was highlighted by a strong cadence of order growth and revenue as we work toward FDA approvals of next-generation devices and launch of new pain management products," said Thomas Sandgaard, President and CEO of Zynex.

* * *

"In the second quarter, increasing sales and profitable growth for our pain management division delivered a 20% improvement in orders year-over-year. Revenue during the quarter was impacted by a continued change in product mix, with sales of our private labeled pain management products growing more than anticipated. While this growth diversifies revenue, these product sales are one-time and lack the trailing revenue model present in our electrotherapy products. In addition, as we emphasize profitable growth, we continued our focus on sales rep productivity and separated more underperforming reps than initially anticipated, which decreases near-term revenue but leaves us in a stronger position moving forward.

* * *

Second Quarter 2024 Financial Results

Net revenue was $49.9 million for the three months ended June 30, 2024, compared to $45.0 million in the prior year quarter, an increase of 11%. The increase in net revenue was primarily related to a 20% growth in device orders which resulted from a larger customer base and led to increased sales of consumable supplies, offset by a reduction in sales representatives and forgoing current sales to focus on profitable growth and rep productivity.

33. On October 24, 2024, Zynex issued a press release announcing financial results for the third quarter of 2024, stating as follows in relevant part:

Key Third Quarter Highlights and Business Update

- Q3 2024 orders increased 13% year-over-year.
- Q3 2024 net revenue of $50.0 million.
- Q3 2024 net income of $2.4 million; Diluted EPS $0.07.
- Q3 2024 cash flow from operations of $7.1 million.
- Received FDA Clearance for new TensWave device

Management Commentary

"In the third quarter of 2024 we continued our steady growth in orders as we positioned the company for long-term profitable growth," said Thomas

Sandgaard, President and CEO of Zynex. “Positive cash flow remains strong and both revenue and earnings were within guidance for the third quarter.

“Our Pain Management division delivered a 13% improvement in orders year-over-year. We continue to see success evolving our pain management division to achieve our strategic goal of diversifying revenue streams through increased orders in orthopedic products. Revenue per sales rep increased 25% year-over-year to approximately $530,000 in the third quarter of 2024. We are working to expedite the onboarding of new sales reps while maintaining a high standard for productivity.

* * *

“Looking ahead, we will continue to diversify our pain management revenue stream with the introduction of new therapy products. Aggressive promotion of products from our salesforce will ensure sustained profitable growth. In 2025, we should return to our normal top-line growth in our pain management division of approximately 20%. Taken together, we believe our strategy is positioning us to become the world’s premier provider of holistic, non-invasive approaches to pain management,” concluded Sandgaard.

Third Quarter 2024 Financial Results

Net revenue was $50.0 million for the three months ended September 30, 2024, compared to $49.9 million in the prior year quarter.

34. The above statements identified in ¶¶ 32-33 were materially false and/or misleading, and failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company’s practice of filing false claims drew scrutiny from insurers, including Tricare; (2) that, as a result, it was reasonably likely that Zynex would face adverse consequences, including removal from insurer networks and penalties from the federal government; and (3) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

Disclosures at the End of the Class Period

35. On March 11, 2025, after the market closed, Zynex reported its fourth quarter and full year 2024 financial results, revealing a significant revenue "shortfall" in the quarter "due to slower than normal payments from certain payers." Zynex further revealed "***Tricare has temporarily suspended payments as they review prior claims.***" The press release further revealed "TriCare currently represents approximately 20-25% of [Zynex's] annual revenue." Specifically, the press release reported the following, in relevant part:

> **Key Highlights and Business Update**
>
> - FY 2024 orders increased 16% year-over-year
> - FY 2024 net revenue increased 4% to $192.4 million
> - FY 2024 net income of $3.0 million; Diluted EPS $0.09
> - FY 2024 cash flow from operations of $12.7 million
> - Received FDA Clearance for new TensWave device
>
> **Management Commentary**
>
> "In the fourth quarter of 2024 we continued our steady growth in orders and delivered another year of revenue growth and profitability," said Thomas Sandgaard, President and CEO of Zynex. "We generated $12.7 million of positive cash flow from operations and $10.9 million of Adjusted EBITDA in 2024.
>
> ***"Our fourth quarter revenue was less than expected. The shortfall was due to slower than normal payments from certain payers and we were recently notified that Tricare has temporarily suspended payments as they review prior claims.*** We continue to be in-network and have maintained good relations with Tricare. We have a meeting with Tricare in April and believe we have good evidence to get payments reinstated. TriCare currently represents approximately 20-25% of our annual revenue. As directed by Tricare, we continue to support both existing patients and new patients as we receive their prescriptions.

> "Due to the temporary payment suspension and lack of clarity on the timing of a resolution, we are restructuring our staff to align with current revenue. We are decreasing our overall staff by approximately 15%, which primarily affects employees in our corporate departments. This staff reduction along with other expense reductions made during the second half of 2024 and the first quarter of 2025 will result in savings of approximately $35 million annually. Although these processes are never easy, it is critical for us to be prudent and conservative in adapting to external changes and execute these expense adjustments immediately. We are confident that long-term, our pain management business is still solid with significant growth potential.

36. On this news, Zynex's stock price fell $3.59 per share, or 51.3%, to close at $3.41 per share on March 12, 2025, on unusually heavy trading volume.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Zynex securities between March 13, 2023 to March 11, 2025, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

38. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Zynex's shares actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of Zynex shares were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by Zynex or

its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

39. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

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

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

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

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Zynex; and

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

42. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of

the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

UNDISCLOSED ADVERSE FACTS

43. The market for Zynex's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, Zynex's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Zynex's securities relying upon the integrity of the market price of the Company's securities and market information relating to Zynex, and have been damaged thereby.

44. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Zynex's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about Zynex's business, operations, and prospects as alleged herein.

45. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Zynex's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect

of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

LOSS CAUSATION

46. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

47. During the Class Period, Plaintiff and the Class purchased Zynex's securities at artificially inflated prices and were damaged thereby. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

SCIENTER ALLEGATIONS

48. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of

information reflecting the true facts regarding Zynex, their control over, and/or receipt and/or modification of Zynex's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Zynex, participated in the fraudulent scheme alleged herein.

APPLICABILITY OF PRESUMPTION OF RELIANCE

(FRAUD-ON-THE-MARKET DOCTRINE)

49. The market for Zynex's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, Zynex's securities traded at artificially inflated prices during the Class Period. On May 3, 2023, the Company's share price closed at a Class Period high of $14.56 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of Zynex's securities and market information relating to Zynex, and have been damaged thereby.

50. During the Class Period, the artificial inflation of Zynex's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Zynex's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Zynex and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares.

Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

51. At all relevant times, the market for Zynex's securities was an efficient market for the following reasons, among others:

(a) Zynex shares met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, Zynex filed periodic public reports with the SEC and/or the NASDAQ;

(c) Zynex regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) Zynex was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

52. As a result of the foregoing, the market for Zynex's securities promptly digested current information regarding Zynex from all publicly available sources and reflected such information in Zynex's share price. Under these circumstances, all purchasers of Zynex's securities during the Class Period suffered similar injury through

their purchase of Zynex's securities at artificially inflated prices and a presumption of reliance applies.

53. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business operations and financial prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

NO SAFE HARBOR

54. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent

that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Zynex who knew that the statement was false when made.

FIRST CLAIM

Violation of Section 10(b) of The Exchange Act and

Rule 10b-5 Promulgated Thereunder

Against All Defendants

55. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

56. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Zynex's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

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

securities in an effort to maintain artificially high market prices for Zynex's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

58. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Zynex's financial well-being and prospects, as specified herein.

59. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Zynex's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Zynex and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

60. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by

virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

61. Defendants had actual knowledge of the misrepresentations and/or 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 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Zynex's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

62. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of Zynex's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Zynex's securities during the Class Period at artificially high prices and were damaged thereby.

63. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Zynex was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Zynex securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

64. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

65. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

SECOND CLAIM

Violation of Section 20(a) of The Exchange Act

Against the Individual Defendants

66. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

67. Individual Defendants acted as controlling persons of Zynex within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, 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 statements which Plaintiff contends are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, 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.

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

69. As set forth above, Zynex and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

PRAYER FOR RELIEF

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;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.