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| JAN 22 2013 |
| JUDICIAL CENTRE OF CALGARY |

FORM 10
[RULE 3.25]

COURT FILE NUMBER **1301-00935**

COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE

CALGARY

PLAINTIFF(S)

Franz Auer

DEFENDANT(S)

Poseidon Concepts Corp., A. Scott Dawson, Matt
 MacKenzie, Lyle Michaluk and Harley L. Winger

DOCUMENT

Brought under the *Class Proceedings Act*
STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT
 INFORMATION OF PARTY FILING THIS
 DOCUMENT

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.
 Go to the end of this document to see what you
 can do and when you must do it.

Statement of facts relied on:

DEFINED TERMS

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
 - (a) "**ABC**" means the Alberta *Business Corporations Act*, RSA 2000, c B-9, as amended;
 - (b) "**AIF**" means Annual Information Form;
 - (c) "**AR**" means accounts receivable;
 - (d) "**ASA**" means the Alberta *Securities Act*, RSA 2000, c S-4, as amended;
 - (e) "**Class**" and "**Class Members**" mean all persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired PSN's Securities on or before December 27, 2012, other than: (1) the **Excluded Persons**; and (2) those persons resident or domiciled in the Province of Québec at the time they acquired PSN Securities, and who are not precluded from participating in a class action by virtue of Article 999 of the Québec Code of Civil Procedure, RSQ, c C-25;
 - (f) "**CPA**" means the Alberta *Class Proceedings Act*, SA 2003, c C-16.5, as amended;
 - (g) "**Dawson**" means the defendant, A. Scott Dawson;
 - (h) "**Defendants**" means PSN and the **Individual Defendants**;
 - (i) "**Excluded Persons**" means the **Defendants**, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the family of an **Individual Defendant**;
 - (j) "**IFRS**" means International Financial Reporting Standards;
 - (k) "**Individual Defendants**" means **Dawson, MacKenzie, Michaluk and Winger**, collectively;
 - (l) "**Impugned Documents**" (each being an **Impugned Document**) means, collectively, the Q3 2011 financial statements, filed November 8, 2011; the Q3 2011 MD&A, filed November 8, 2011; the 2011 financial statements, filed March 22, 2012; the 2011 MD&A, dated March 22, 2012; the AIF filed March 29, 2012; the Q1 2012 financial statements, filed May 9, 2012; the Q1 2012 MD&A filed May 9, 2012; the Q2 2012 financial statements filed August 8, 2012; the Q2 2012

MD&A, filed August 8, 2012; the Q3 2012 financial statements, filed November 14, 2012; the Q3 MD&A, filed November 14, 2012; and the **Prospectus**;

- (m) "**MacKenzie**" means the defendant, Matt MacKenzie;
- (n) "**MD&A**" means Management's Discussion and Analysis;
- (o) "**Michaluk**" means the defendant Lyle Michaluk;
- (p) "**New Open Range**" means, Open Range Energy Corp, the successor to **Open Range**;
- (q) "**Open Range**" means Open Range Energy Corp, the predecessor company of **PSN** and **New Open Range**;
- (r) "**Plaintiff**" means the plaintiff, Franz Auer;
- (s) "**Prospectus**" means the prospectus dated January 26, 2012;
- (t) "**PSN**" means the defendant, Poseidon Concepts Corp.;
- (u) "**Representation**" means the statement, express or implied, that **PSN**'s financial statements fairly presented its financial position, financial performance and cash flows;
- (v) "**Securities**" means **PSN**'s common shares, notes or other securities, as that term is defined in the **ASA**;
- (w) "**SEDAR**" means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;
- (x) "**Securities Legislation**" means, collectively, the **ASA**, the *Securities Act*, RSO 1900, c S.5, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (y) "**TSX**" means the Toronto Stock Exchange; and
- (z) "**Winger**" means the defendant, Harley L. Winger.

THE PARTIES

The Defendants

2. PSN is an oil and natural gas service and supply company formed pursuant to the ABCA.
3. PSN is a successor of Open Range. On November 1, 2011, Open Range completed a reorganization transaction. As a result of this reorganization, PSN became an independent entity carrying on the energy service and supply business. New Open Range is the successor to the Open Range business other than that which became PSN.
4. At all material times, PSN was a reporting issuer in all provinces of Canada. At all material times, PSN's shares were listed for trading on the TSX under the ticker symbol "PSN," and also traded on alternative stock exchanges in Canada. PSN Securities also trade in Frankfurt and over-the-counter in the United States.
5. At all material times Michaluk was the Chief Executive Officer ("CEO") and a director of PSN. Previously, he had been the Chief Financial Officer ("CFO") of Open Range. Michaluk is "a Chartered Accountant with over 15 years of diversified financial experience including corporate accounting, treasury management, auditing and tax planning." Michaluk stepped down as PSN's CEO on or about December 27, 2012, and assumed the role of the company's Interim CFO.
6. At all material times during the Class Period, MacKenzie was the CFO of PSN. MacKenzie stepped down as PSN's CFO on or about December 27, 2012.
7. Dawson was previously the CEO of Open Range, and continued as the CEO of New Open Range. At all material times during the Class Period, Dawson was Chairman of the board of directors of PSN, and a member of PSN's board of directors' Audit Committee. Dawson was appointed as PSN's Executive Chairman. On or about December 27, 2012, Dawson assumed the position of PSN's Interim President and CEO.
8. At all material times Winger was a director of PSN. Winger was a director of Open Range and also a director of New Open Range.

The Plaintiff

9. Auer is an individual residing in Sturgeon County, Alberta, who purchased PSN shares before December 27, 2012.

FACTUAL ALLEGATIONS

10. On January 26, 2012, PSN issued the Prospectus. The Individual Defendants signed the Prospectus. The Prospectus, with its overallotment, issued to the public a total of 6,347,000 common shares at a price of \$13.00 per share for gross proceeds of \$82,511,000.

11. The Prospectus incorporated various documents by reference, including PSN's Q3 2011 financial statements and MD&A, both of which are Impugned Documents. False statements made in documents incorporated into the Prospectus are false statements made in the Prospectus and render the Prospectus false and misleading.
12. As a reporting issuer in Alberta, PSN was required to issue and file with SEDAR:
 - (a) Within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with IFRS that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;
 - (b) Within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with IFRS, including comparative financial statements relating to the period covered by the preceding financial year;
 - (c) Contemporaneously with each of the above, an MD&A of each of the above financial statements; and
 - (d) Within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.
13. MD&A's are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future.
14. AIF's are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.
15. As a reporting issuer in Alberta, PSN files various reports for the benefit of the market and the Class. Prior to November 14, 2012, PSN represented that:
 - (a) Its internal controls over routine and non-complex accounting transactions were functioning adequately:

The Corporation evaluated the design of its internal controls over financial reporting as at [end of period]. During this evaluation the Corporation identified weaknesses due to the limited number of finance and accounting personnel at the Corporation dealing with complex and non-routine accounting transactions that may arise. Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all

other of its internal controls over financial reporting had been designed properly at [end of period];

(b) It had a policy for evaluation of its AR:

Allowance for Doubtful Trade Receivables

Poseidon evaluates its trade receivables through a continuous process of assessing its portfolio on an individual customer and overall basis. This process consists of a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other factors. Based on its review of these factors, it establishes or adjusts allowances for specific customers as well as general provisions if industry conditions warrant. This process involves a high degree of judgment and estimation and frequently involves significant dollar amounts. Accordingly, the Corporation's results of operations could be affected by adjustments to the allowance due to actual write-offs that differ from estimated amounts;

(c) Its financial statements were prepared in accordance with IFRS; and
(d) It had not taken an allowance for doubtful AR.

16. AR is not a "complex" or "non-routine accounting transaction".

17. Pursuant to IFRS, if PSN recorded an allowance for doubtful AR, it was required to disclose that it took that allowance and the amount of that allowance. PSN did not disclose such an allowance. PSN did not take an allowance.

18. On November 14, 2012, PSN revealed for the first time that its internal controls were ineffective and that it had materially overstated its AR. On that date, it reported financial and operating results for the three and nine months ending September 30, 2012 (Q3 2012), and PSN:

(a) Recorded a charge of \$9.5 million for uncollectible debt, reducing its AR asset and taking a charge to its net income;

(b) Reported significant increase in the size of its AR portfolio, to \$125.5 million (net of the \$9.5 million write-off) including \$36 million past due (outstanding for more than 120 days);

(c) Reported that "Based on the payment experience and financial condition of its customer base, Poseidon anticipates collection progress on the amounts due, but both the timing and magnitude of ultimate collections remain risks" (previously, in the Q2 2012 MD&A, PSN had falsely stated that it "does not anticipate any material collection issues on the amounts due");

(d) Introduced a credit policy to mitigate the problems with doubtful receivables:

The Corporation has established a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions. Credit limits are established for each customer, which represents the maximum exposure. The Corporation's credit limit review includes customer cash flow analysis, external debt ratings, and credit references when appropriate. Customers that fail to meet the Corporation's benchmark creditworthiness may transact with the Corporation only after providing a cash deposit to offset a portion of the credit amount; these customers will be subject to an added level of monitoring by the Corporation until sufficient payment history is established;

(e) Reported that it "concluded that its internal controls over financial reporting were not completely effective as at September 30, 2012"; and

(f) Disclosed that only 38% of its AR portfolio was due from investment grade parties.

19. As a result of these disclosures, PSN's share price plummeted and the Class Members lost hundreds of millions of dollars. On November 14, PSN common shares had closed at \$13.22. On November 15, after the Defendants belatedly partially revealed the truth, PSN shares fell 62.2% to \$5.00 on extraordinarily high volume, and did so as a result of the partial disclosure of the truth.

20. On or about November 16, 2012, Michelle-Louise Rye, an employee of PSN, provided further detail on PSN's AR:

As far as the receivables problem goes we have already taken steps to completely revise our internal controls to address this issue, since this was brought to our attention in late Q3 just prior to releasing our results we have been diligently trying to resolve outstanding accounts of customers. Regardless, we are focused on a long term strategy, not short term results.

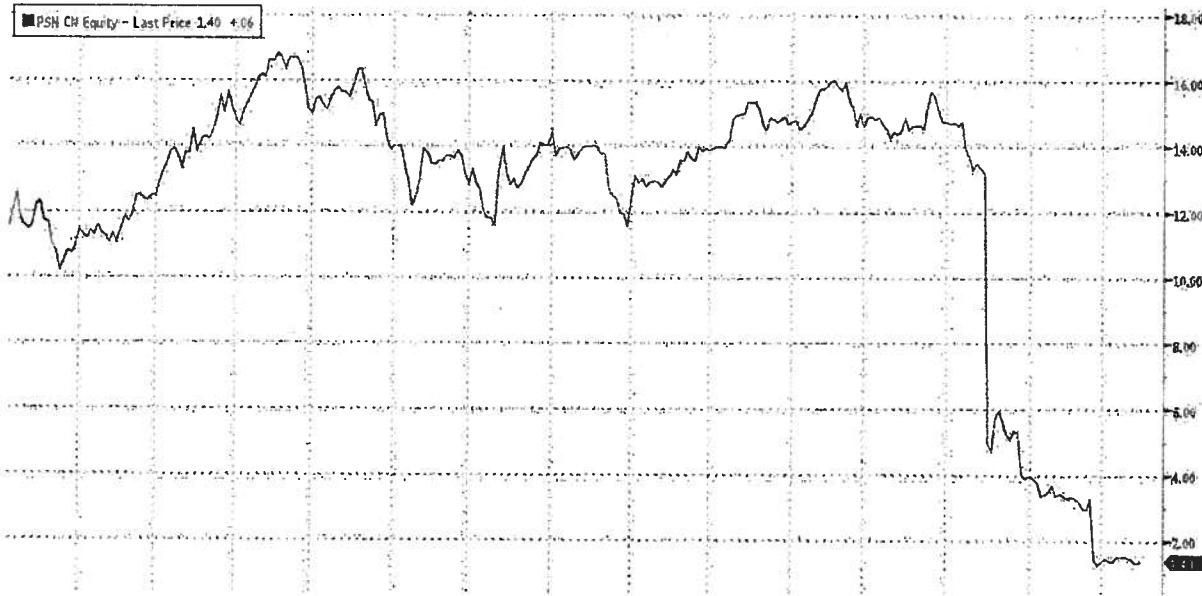
21. PSN authorized Michelle-Louise Rye to speak on its behalf. Michelle-Louise Rye communicated to the market and investors on behalf of PSN. Statements by Michelle-Louise Rye with regard to PSN are statements of PSN.

22. In a press release disseminated on December 27, 2012 Poseidon announced the formation of a Special Committee of the Board of Directors to "review and address various issues arising from the recent write-off of certain accounts receivable and the evolving business plan of the Company." The Special Committee's mandate includes the review and assessments of Poseidon's business processes and controls, so that it can "make recommendations to the Board of Directors of Poseidon regarding further

changes including managerial changes that will strengthen the operations and finance functions of the Company." Poseidon stated that:

The Company has been diligently addressing its accounts receivable in recent weeks and is actively pursuing collections, including commencing formal collection processes in appropriate circumstances. While a final number cannot yet be determined, the Company may need to make additional write downs of accounts receivable in future periods and such write downs may be significant. In accordance with previously stated policy, the Company will update guidance as appropriate however in the event that significant additional write downs of accounts receivable are necessary previously provided guidance will be negatively affected.

23. Poseidon further announced that the Directors would review the previously declared dividend payable January 15th, 2013, and the postponement of payment of undeclared dividends effective January 16, 2013.
24. As a result of these further disclosures, PSN's share price again plummeted, falling from more than \$3.25 per share to less than \$1.50 per share, and the Class Members lost in excess of an additional one hundred million dollars.



PSN Was Required to Take AR Allowances

25. Pursuant to its "Allowance for Doubtful Trade Receivables" policy and IFRS, PSN was required to record an allowance against its AR where "a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other factors" required it.

26. Through this allowance, PSN would ensure that it was not recording an asset for accounts that it would not collect. If it did not record this allowance, as its own policies and IFRS required, PSN's assets, and thus balance sheet, would be inflated, false and materially misleading. Additionally, if it did not record this allowance, its net income figure would be materially overstated, false and misleading.
27. PSN was required to take an AR allowance due to, among other things:
 - (a) The age of its AR;
 - (b) The size of its AR;
 - (c) The rate by which its AR increased;
 - (d) The amount of its AR that was past due;
 - (e) The rate by which its past due AR increased;
 - (f) The fact that only 38% of its total accounts receivable portfolio was due from investment grade parties;
 - (g) The ongoing "receivables problem"; and
 - (h) The fact that PSN was a successor to Open Range, that Dawson, Michaluk and Winger were involved in Open Range's allowance policy and the implementation of the same, and that *Open Range took AR allowances*.
28. The Defendants monitored the amount, timing and quality of the AR at all material times. For example, the Defendants were aware of the amount, timing and quality of PSN's AR in part because, pursuant to the terms of PSN's \$50 million credit facility, the availability of credit was "dependent in part on the amount, timing and quality of the Corporation's accounts receivable."
29. Under the terms of the facility, a "material impairment or aging of accounts receivable or a reduction of the credit worthiness of the debtor . . . could materially reduce . . . the bank credit available to the Corporation and possibly caus[e] a portion of such bank debt to be required to be repaid." Any issues with the facility could affect PSN's ability to fund ongoing operations.
30. Dawson and Michaluk were the CEO and CFO, respectively, of Open Range, predecessor to PSN. In that role, both had overseen the implementation of Open Range's allowance for doubtful trade receivables policy.
31. Winger was a director of Open Range. In that role, he approved of its financial statements.

32. Winger, Dawson and Michaluk were involved in the process by which Open Range took allowances against AR.
33. Open Range was required to, and had, recorded allowances against its AR, in the following amounts:

| Period | AR (net of allowance) | Allowance Recorded | Uncollectible Amounts Written Off |
|---------|-----------------------------|-----------------------|---|
| Q3 2008 | \$9.38 million | \$523,000 | Nil |
| Q4 2008 | \$18.46 million | \$785,000 | Nil |
| Q1 2009 | \$4.45 million | \$785,000 | Nil |
| Q2 2009 | \$1.76 million | \$1.05 million | Nil |
| Q3 2009 | \$2.99 million | \$1.05 million | Nil |
| Q4 2009 | \$10.50 million | \$949,000 | \$94,000 |
| Q1 2010 | \$9.20 million | \$949,000 | Nil |

34. New Open Range, the successor to Open Range (other than the business that became PSN), had AR, some or all of which was inherited from Open Range. The largest portion of that AR was due from "Oil and natural gas marketing companies." New Open Range, and the business that would become New Open Range, "historically [had] not experienced any collection issues with its oil and natural gas marketers." Open Range and New Open Range "transact[] with creditworthy customers."

False and Misleading Statements

35. In each of the Impugned Documents that is a financial statement, PSN recorded an AR asset:

| Period | Accounts Receivable at Period End |
|-------------|-----------------------------------|
| 2011 Annual | \$53.6 million |
| Q1 2012 | \$83 million |
| Q2 2012 | \$118.6 million |

| Period | Accounts Receivable at Period End |
|---------|-----------------------------------|
| Q3 2012 | \$125.5 million |

36. Each of the above figures was false insofar as they failed to include a required allowance for doubtful AR, and the AR was thus overstated and false, as was PSN's reported assets and shareholders' equity.
37. In each of the Impugned Documents that is a financial statement or MD&A, PSN reported net income:

| Period | Net Income |
|---------|------------------|
| Q4 2011 | \$18.7 million |
| Q1 2012 | \$ 29.64 million |
| Q2 2012 | \$ 31.18 million |
| Q3 2012 | \$ 7.83 million |

38. Each of the above figures was false insofar as they failed to include a required allowance for doubtful AR. Accordingly, PSN's net income was overstated and false.
39. In each of the MD&A Impugned Documents, other than the Q3 2012 MD&A, PSN stated that it had "identified weaknesses due to the limited number of finance and accounting personnel at the Corporation dealing with complex and non-routine accounting transactions that may arise. Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all other of its internal controls over financial reporting had been designed properly." This statement was false and misleading because, as it would later admit, "its internal controls over financial reporting were not completely effective," it had a "receivables problem" and had not yet "taken steps to completely revise [its] internal controls to address" the AR "problem."
40. In the 2011 MD&A, PSN represented that it (then and in the future):

...evaluates its trade receivables through a continuous process of assessing its portfolio on an individual customer and overall basis. This process consists of a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other

factors. Based on its review of these factors, it establishes or adjusts allowances for specific customers as well as general provisions if industry conditions warrant.

This statement was false and misleading because, as it would later admit, PSN lacked “a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions,” did not establish “Credit limits . . . for each customer,” had a “receivables problem” and had not yet “taken steps to completely revise [its] internal controls to address” the AR “problem,” and had taken no steps, prior to “in late Q3” 2012, to “diligently . . . resolve outstanding accounts of customers.” PSN did not “evaluate[] its trade receivables” sufficiently, as required or at all, and did not “thorough[ly] review [its] collection experience, current aging status of the customer accounts, [or] financial condition of the Corporation’s customers.”

41. Had PSN properly implemented and followed its claimed “Allowance for Doubtful Trade Receivables” policy and IFRS, it would have taken an allowance against its AR, would not have misstated its AR, and would not have misstated its net income or reported inflated assets.
42. In the AIF dated April 26, 2012, PSN falsely stated that it “assesses the credit worthiness of its customers and monitors accounts receivable on a regular, ongoing basis.” This statement was false and misleading because, as it would later admit, PSN lacked “a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions,” did not establish “Credit limits . . . for each customer,” had a “receivables problem” and had not yet “taken steps to completely revise [its] internal controls to address” the AR “problem,” and had taken no steps, prior to “in late Q3” 2012, to “diligently . . . resolve outstanding accounts of customers.”
43. In the Q2 2012 MD&A PSN falsely stated that “Management conducts frequent detailed reviews of the accounts receivable amounts outstanding as part of its ongoing credit risk assessment procedures.” This statement was false and misleading because, as it would later admit, PSN lacked “a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions,” did not establish “Credit limits . . . for each customer,” had a “receivables problem” and had not yet “taken steps to completely revise [its] internal controls to address” the AR “problem,” and had taken no steps, prior to “in late Q3” 2012, to “diligently . . . resolve outstanding accounts of customers.”
44. Although Poseidon partially disclosed the truth on November 14, 2012, the Q3 2012 MD&A contained misrepresentations as it: 1) reported inflated revenues, inflated earnings, and inflated net income for the three and nine months ended September 30, 2012; 2) stated that “the Corporation concluded that [as at September 30, 2012] the

internal controls over financial reporting were designed properly to provide reasonable assurance regarding the reliability of financial reporting by the Corporation and the preparation of its financial statements;" 3) did not disclose that additional "significant" AR write-offs were required; and 4) contained information for prior reporting periods that did not fairly represent Poseidon's financial status.

45. The truth of each of the statements particularized in this section are material facts and were required to be disclosed in the Prospectus, but were not. Accordingly, the Prospectus was materially false and misleading.
46. As a result of the forgoing, the Representation was false in that PSN's financial statements did not fairly present its financial position, financial performance and cash flows.

Winger, Dawson and Michaluk Sell Securities

47. Winger, Dawson and Michaluk sold securities of PSN prior to November 14, 2012:
 - (a) On November 14, 2011, Winger sold a total of 238,464 Poseidon shares indirectly held in the public market for gross proceeds of \$2.64 million;
 - (b) On November 14, 2011, Winger sold a total of 75,523 Poseidon shares directly held in the public market for gross proceeds of approximately \$860,000;
 - (c) On November 14, 2011, Dawson sold 1,000,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$11 million;
 - (d) On November 14, 2011, Michaluk sold 675,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$7.46 million;
 - (e) On February 9, 2012, Winger sold 30,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$480,000;
 - (f) On February 9, 2012, Winger sold 30,000 Poseidon shares directly held in the public market for gross proceeds of \$486,000; and
 - (g) On February 27, 2012, Dawson sold a total of 400,032 Poseidon shares directly held in the public market for gross proceeds of \$6.36 million.

CLAIMS

Statutory Liability for Misrepresentations in the Prospectus Pursuant to Section 203 of the ASA

48. As against PSN and the Individual Defendants, all of whom signed the Prospectus, and on behalf of those Class Members who purchased PSN shares offered by the Prospectus and during the distributions to which the Prospectus related, the Plaintiff asserts the cause of action found in s. 203 of the ASA and, if necessary, the equivalent provisions of the Securities Legislation other than the ASA.

Negligence Simpliciter

49. As against the Defendant PSN and the Individual Defendants, all of whom signed the Prospectus, and on behalf of those Class Members who purchased PSN shares offered by the Prospectus and during the distributions to which the Prospectus related, the Plaintiff asserts negligence *simpliciter*.
50. PSN and, by virtue of their position of authority and responsibility within PSN, each of the Individual Defendants, owed a duty to ensure that the Prospectus made full, true and plain disclosure of all material facts relating to the securities offered thereby, or was materially accurate and complete.
51. The reasonable standard of care expected in the circumstances required the Defendants to prevent the distributions to which the Prospectus related from occurring prior to the correction of the Representation and the other misrepresentations alleged above to have been contained in the Prospectus or in the documents incorporated therein by reference.
52. Accordingly, the Defendants have violated their duties to those Class Members who purchased pursuant to the Prospectus.
53. PSN and the Individual Defendants further breached their duty of care as they failed to maintain or to ensure the maintenance of adequate internal controls to ensure that PSN's disclosure documents fairly and fully presented the business and affairs of PSN on a timely basis.
54. Had the Defendants exercised reasonable care and diligence in connection with the distributions to which the Prospectus related, then securities regulators likely would not have issued a receipt for the Prospectus, and those distributions would not have occurred, or would have occurred at prices that reflected the true value of PSN's shares.

Unjust Enrichment as against Winger, Dawson and Michaluk

55. As a result of the Representation and the other misrepresentations particularized above, PSN's shares traded, and were sold by Winger, Dawson and Michaluk, at artificially inflated prices.
56. Winger and Dawson were enriched by their wrongful acts and omissions and the Class Members who purchased PSN shares from such Defendants suffered a corresponding deprivation.
57. There was no juristic reason for the resulting enrichment of Winger, Dawson and Michaluk.
58. The Class Members who purchased PSN shares from Winger, Dawson and Michaluk are entitled to the price they paid to such Defendants for such shares.

Statutory Liability for Misrepresentations Pursuant to Part 17.01 of the ASA

59. The Plaintiff pleads the claim found in Part 17.01 of the ASA, and, if required, the equivalent sections of the Securities Legislation other than the ASA, against all Defendants.
60. Each of the Impugned Documents is a core document within the meaning of the Securities Legislation.
61. As particularized above, each of the Impugned Documents contains one or more misrepresentations.
62. PSN is a responsible issuer within the meaning of the Securities Legislation. Dawson, Michaluk and Winger are directors of PSN and were at all material times. Michaluk and MacKenzie are officers of PSN and were at all material times.
63. Michaluk and MacKenzie, *inter alia*:
 - (a) Authorized, permitted or acquiesced in the release of the Impugned Documents;
 - (b) Falsely certified the accuracy of the Impugned Documents;
 - (c) Caused the Impugned Documents to be released through instructing PSN employees to release the Impugned Documents.

Negligent Misrepresentation

64. On behalf of all Class Members who acquired PSN's Securities in the secondary market, the Plaintiff pleads negligent misrepresentation for all of the Impugned Documents.

65. In support of these claims, the sole misrepresentation that the Plaintiff pleads is the Representation. The Representation was untrue for the reasons particularized elsewhere herein.
66. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase PSN securities. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon such documents in making the decision to purchase PSN securities.
67. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of PSN's publicly traded securities such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents.
68. The Defendants had a duty at common law to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed PSN's AR. The Defendants breached that duty by making the Representation as particularized above.
69. The Plaintiff and the other Class Members directly or indirectly relied upon the Representation in making a decision to purchase the securities of PSN, and suffered damages when the falsity of the Representation was revealed.
70. Alternatively, the Plaintiff and the other Class Members relied upon the Representation by the act of purchasing PSN securities in an efficient market that promptly incorporated into the price of those securities all publicly available material information regarding the securities of PSN. As a result, the repeated publication of the Representation in these Impugned Documents caused the price of PSN's shares to trade at inflated prices during the Class Period, thus directly resulting in damage to the Plaintiff and Class Members.

Vicarious Liability

71. In addition to their direct liability, PSN is vicariously liable for the acts and/or omissions of each of their respective officers, directors, partners and/or employees as set out above.

The Relationship between PSN's Disclosures and the Price of Its Securities

72. The issuance of the Impugned Documents directly affected the price of PSN's Securities. The Defendants were aware at all material times of the effect of PSN's disclosure documents upon the price of its securities. The Impugned Documents were filed, among other places, with SEDAR and the TSX, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

73. PSN routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of its Securities. PSN provided either copies of the Impugned Documents or links thereto on its website. PSN maintains a website in part to communicate with the Class and prospective investors.
74. PSN regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada. Each time PSN communicated that new material information about its financial results to the public it directly affected the price of PSN Securities.
75. PSN was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase PSN Securities in such reports were based, in whole or in part, upon that information.
76. PSN Securities were and are traded, among other places, on the TSX, which is an efficient and automated market. The price at which PSN Securities traded promptly incorporated material information from PSN's disclosure documents about PSN's business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by PSN, as well as by other means.

Relevant Legislation

77. The Plaintiff pleads and relies on the *Court of Queen's Bench Act, RSA 2000, c C-31*, the CPA and the Securities Legislation, all as amended.

Place of Trial

78. The Plaintiff proposes that this action be tried in the City of Calgary, in the Province of Alberta, as a proceeding under the CPA.

Remedy sought:

79. The Plaintiff claims:
 - (a) An Order pursuant to the CPA certifying this action as a class proceeding and appointing the Plaintiff as the representative of the class;
 - (b) A declaration that the Impugned Documents contained, either explicitly or implicitly, the Representation, and that, when made, the Representation was a misrepresentation, both at law and within the meaning of the Securities Legislation;

- (c) A declaration that the Impugned Documents contained one or more of the other misrepresentations alleged herein, and that, when made, those other misrepresentations constituted misrepresentations, both at law and within the meaning of the Securities Legislation;
- (d) A declaration that PSN is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors and employees;
- (e) On behalf of all of the Class Members who purchased PSN's common shares in the distribution to which the Prospectus related, and as against all of the Defendants, general damages in the sum of \$51,000,000;
- (f) On behalf of those Class Members who purchased their PSN Securities in the secondary market, general damages for the actual collective loss of equity arising from the two PSN share price collapses in late 2012, following disclosure of the events giving rise to the Defendants' liability in this matter, in an amount to be proven at trial but estimated to be \$200 million;
- (g) A declaration that Winger, Dawson and Michaluk were unjustly enriched, including from their collective sales of approximately \$30 million worth of PSN securities in 2011 and 2012;
- (h) A constructive trust, accounting or such other equitable remedy as may be available as against Winger, Dawson and Michaluk;
- (i) An order, pursuant to s. 30 of the *CPA* directing an aggregate monetary award;
- (j) An order, pursuant to s. 32 of the *CPA* allowing for the use of standard claim forms or other documentary evidence or such other procedure as is warranted under the circumstances;
- (k) An order that the damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
- (l) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (m) Prejudgment and post judgment interest;
- (n) Costs of this action plus, pursuant to s 33(6) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- (o) Such further and other relief as to this Honourable Court may seem just.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at CALGARY, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

Server Process Server
Title Process Server
Date 3/26/13 Time 3:30pm
P/S

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

**Michael Miller, Individually and on Behalf of All
Others Similarly Situated.**

Plaintiff(s)

Y

Poseldon Concepts Corp., A. Scott Dawson, Lyle D. Michaluk, Clifford L. Wiebe, Harley L. Winger, Dean R. Jensen, Neil Richardson, Matt C. Mackenzie, and Jim S. McKee.

Defendant(s)

Civil Action No.

JUDGE COTE

13 CV 1213

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Neil Richardson

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: The Rosen Law Firm, P.A.

The Rosen Law Firm, P.A.

Laurence Rosen, Esq.

275 Madison Ave., 34th Floor

New York, NY 10016

Tel. 212-686-1060

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J. KRAJICK

CLERK OF COURT

Date: 02/22/2013

Signature of Clerk or Deputy Clerk

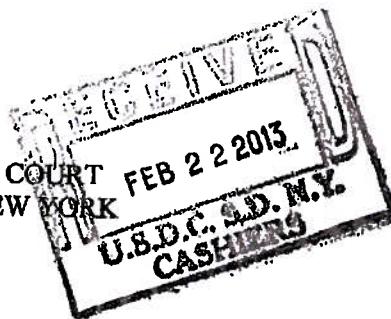
JUDGE COTE

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Counsel for Plaintiff

13 CV 1213

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



MICHAEL MILLER, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

v.

POSEIDON CONCEPTS CORP., A.
SCOTT DAWSON, LYLE D. MICHALUK,
CLIFFORD L. WIEBE, HARLEY L.
WINGER, DEAN R. JENSEN, NEIL
RICHARDSON, MATT C. MACKENZIE,
and JIM S. MCKEE,

Defendants.

Case No:
ECF CASE
CLASS ACTION
JURY TRIAL DEMANDED

COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS

1. Plaintiff Michael Miller, by his undersigned attorneys, for his complaint against defendants alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the defendants' public documents, conference calls and announcements made by defendants, wire and press releases published by and regarding Poseidon Concepts Corp. ("Poseidon" or the "Company"), securities analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

2. This is a federal securities class action brought on behalf of a class consisting of all persons and entities, other than defendants and their affiliates, who purchased the publicly traded common stock of Poseidon from May 9, 2012 to February 14, 2013, inclusive (the "Class Period") seeking to recover damages caused by Defendants' violations of federal securities laws.

3. During the Class Period, Defendants issued materially false and misleading statements and omitted to state material facts that rendered their affirmative statements misleading as they related to the Company's financial performance, business prospects, and true financial condition.

JURISDICTION AND VENUE

4. The claims asserted herein arise under and pursuant to 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 (17 C.F.R. § 240.10b-5).

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

6. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331(b) as a substantial part of the conduct complained of herein occurred in this District.

7. In connection with the acts, conduct and other wrongs alleged herein, Defendants either directly or indirectly used the means and instrumentalities of interstate commerce, including but not limited to the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

8. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased Poseidon stock at artificially inflated prices during the Class Period and has been damaged thereby.

9. Defendant Poseidon is a Canadian Corporation whose principal place of business is Calgary, Alberta, Canada.

10. Poseidon engages in the development and commercialization of fluid storage and solutions to the oil and gas industry across North America.

11. Throughout the Class Period, Poseidon's common stock was listed on the OTC Pink Sheets under ticker symbol "POOSF" and the Toronto Stock Exchange under ticker symbol "PSN."

12. Defendant A. Scott Dawson ("Dawson") is a founding member of the Company and at all relevant times herein served as Poseidon's Chairman of the Board of Directors and

member of its Audit Committee. Dawson was appointed Executive Chairman of the Company in November, 2012 and Interim President and Chief Executive Officer in December, 2012.

13. Defendant Lyle D. Michaluk (“Michaluk”) is a founding member of the Company. Since November 2011, Michaluk served as the Company’s Chief Executive Officer and Director until December, 2012. Michaluk was replaced by Dawson as the Company’s Chief Executive Officer and appointed Interim Chief Financial Officer of the Company in December 2012.

14. Defendant Clifford L. Wiebe (“Wiebe”) is a founding member of the Company. Since November 2011, Wiebe served as the Company’s President, Chief Operating Officer and Director until December 2012. Wiebe was replaced by Dawson as the Company’s President and appointed Chief Technology Officer of the Company in December 2012.

15. Defendant Harley L. Winger (“Winger”) is a founding member of the Company and at all relevant times herein served as a Company Director.

16. Defendant Dean R. Jensen (“Jensen”) is a founding member of the Company and at all relevant times herein served as a Company Director and Chairman of its Audit Committee.

17. Defendant Matt C. MacKenzie (“MacKenzie”) served as the Company’s Chief Financial Officer from November 2011 until his being replaced by Michaluk in December 2012.

18. Defendant Neil Richardson (“Richardson”) served as a Company Director at all relevant times herein.

19. Defendant Jim S. McKee (“McKee”) served as a Company Director from November 2012 until his sudden resignation in December 2012. During his brief tenure, he was a member of the Company’s Audit Committee.

20. Dawson, Michaluk, Wiebe, Winger, Jensen, MacKenzie, Richardson and McKee are collectively referred to herein as the “Individual Defendants.”

DEFENDANTS' MISCONDUCT

21. The Class Period begins on May 9, 2012, when Poseidon published a materially false and misleading press release announcing the financial and operating results for the first quarter of 2012; the period ended March 31, 2012. For the quarter, the Company reported revenue of \$52.129 million and a net income of \$29.639 million, or \$0.38 per basic share.

22. On August 8, 2012, Poseidon published a materially false and misleading press release announcing the financial and operating results for the second quarter of 2012; the period ended June 30, 2012. For the quarter, the Company reported revenue of \$54.875 million and a net income of \$31.183 million, or \$0.38 per basic share.

23. On November 14, 2012, Poseidon published a materially false and misleading press release announcing the financial and operating results for the third quarter of 2012; the period ended September 30, 2012. For the quarter, the Company reported revenue of \$41.116 million, or \$0.10 per basic share.

**THE TRUTH CONCEALED BY DEFENDANTS' MISCONDUCT IS REVEALED,
CAUSING INVESTORS' LOSSES**

24. The materially false and misleading financial and operating results for the third quarter of 2012 announced on November 14, 2012 were nevertheless below market expectations.

25. In response to the Company's disclosure on November 14, 2012, the Company's stock fell \$8.15 per share or approximately 62%, from its previous closing price, to close at \$4.95 per share on November 15, 2012.

26. On November 19, 2012, Poseidon issued a press release announcing a change in management with the appointment of Dawson as the Executive Chairman of the Company, whose role is to act as a liaison between the Board of Directors and management.

27. On December 27, 2012, Poseidon issued a press release announcing the formation of a Special Committee to evaluate and resolve various issues stemming from the Company's write-off of some of its accounts receivable and evolving business strategy.

28. On the same press release, the Company disclosed additional changes to its management and stated in relevant part:

...effective immediately Mr. A. Scott Dawson will assume the role of Interim President and Chief Executive Officer, Mr. Michaluk will assume the role of Interim Chief Financial Officer and Mr. Wiebe will assume the role of Chief Technology Officer. Messrs. James McKee, Lyle Michaluk and Cliff Wiebe have resigned from the Board of Directors.

29. On February 14, 2013, Poseidon issued a press release announcing the findings of the Special Committee and stated in relevant part:

Based on the recommendation of the Special Committee and the interim report of its advisors, the Board of Directors has determined, on a preliminary basis, that primarily related to long term take-or-pay arrangements:

- approximately \$95 million to \$106 million (subject to detailed quantification by the Company) of the Company's \$148.1 million in revenue for the 9 months ended September 30, 2012 should not have been recorded as revenue in the Company's financial statements; and
- as a result of recording the foregoing revenues, approximately \$94 million to \$102 million (subject to detailed quantification by the Company) of the Company's \$125.5 million accounts receivable as at September 30, 2012 should not have been recorded in the Company's financial statements as accounts receivable.

As a result of the foregoing, the first, second and third quarter 2012 financial statements (the "Financial Statements") will be restated and the Company advises investors that they should no longer rely on the Financial Statements as well as the corresponding Management's Discussion & Analysis. Further, the Company advises that all previous guidance with respect to the Company's business should no longer be relied upon.

30. In reaction to the Company's disclosure on February 14, 2013, the Company's stock fell \$0.61 per share or approximately 69%, from its previous closing price, to close at \$0.28 per share.

PLAINTIFF' CLASS ACTION ALLEGATIONS

31. Plaintiff bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all persons who purchased the common stock of Poseidon during the Class Period and who were damaged thereby. Excluded from the Class are Defendants, the present and former officers and directors of Poseidon and any subsidiary thereof, 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.

32. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Poseidon's stock was actively traded on the OTC Pink Sheets.

33. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believe that there are at least hundreds, if not thousands, of members in the proposed Class. Members of the Class may be identified from records maintained by Poseidon or its transfer agent and may be notified of the pendency of this action by mail, using a form of notice customarily used in securities class actions.

34. 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.

35. 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.

36. 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 misrepresented material facts about the business, and financial performance of Poseidon; and
- c. to what extent the members of the Class have sustained damages and the proper measure of damages.

37. 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 make it impossible for members of the Class to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

RELIANCE PRESUMPTION

38. At all relevant times, the market for Poseidon common stock was an efficient market for the following reasons, among others:

- a. Posedion's stock listed on the Toronto stock exchange traded on an efficient market and the common stock in this action tracked the movements of the Toronto stock;
- b. Poseidon regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
- c. Poseidon was followed by several securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms during the Class Period; and
- d. Unexpected material news about Poseidon was rapidly reflected in and incorporated into the Company's stock price during the Class Period.

FIRST CAUSE OF ACTION
Violation of Section 10(b) of The Exchange Act Against and Rule 10b-5
Promulgated Thereunder Against All Defendants

39. Plaintiff incorporates ¶¶1-38 as if fully set forth herein.
40. This cause of action is asserted against all Defendants.
41. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to, and throughout the Class Period, did: (1) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (2) cause Plaintiff and other members of the Class to purchase and/or sell Poseidon's securities at artificially inflated and distorted prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, individually and as a group, took the actions set forth herein.

42. 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 the business, operations and future prospects of Poseidon as specified herein.

43. 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 Poseidon'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 omitting to state material facts necessary in order to make the statements made about Poseidon and its business operations and financial condition 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 that operated as a fraud and deceit upon the purchasers of Poseidon securities during the Class Period.

44. Each of the defendants' primary liability, and controlling person liability, arises from the following: (a) defendants were high-level executives, directors, and/or agents at the Company during the Class Period and members of the Company's management team or had control thereof; (b) by virtue of their responsibilities and activities as senior officers and/or directors of the Company, were privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (c) defendants enjoyed significant personal contact and familiarity with the other members of the Company's management team, internal reports and other data and information about the Company's finances,

operations, and (d) defendants were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

45. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Poseidon's financial condition from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' false and misleading statements during the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by failing to take steps necessary to discover whether those statements were false or misleading.

46. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price for Poseidon's securities was artificially inflated during the Class Period.

47. In ignorance of the fact that market prices of Poseidon's publicly-traded securities were artificially inflated or distorted, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the Company's securities trade, and/or on 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 Poseidon's securities during the Class Period at artificially high prices and were damaged thereby.

48. At the time of said misrepresentations and 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 Poseidon's financial results and condition, which were not disclosed by defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired Poseidon securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices or distorted prices at which they did.

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

50. As a direct and proximate result of the 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.

51. This action was filed within two years of discovery of the fraud and within five years of Plaintiff's purchases of securities giving rise to the cause of action.

SECOND CAUSE OF ACTION
Violation of Section 20(a) of The Exchange Act
Against the Individual Defendants

52. Plaintiff incorporates ¶¶1-51 as if fully set forth herein.

53. This second cause of action is asserted against each of the Individual Defendants.

54. The Individual Defendants acted as controlling persons of Poseidon within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, agency, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of aspects of the Company's revenues and earnings and dissemination of information 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 statements that Plaintiff contend are false and misleading. The 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 to cause the statements to be corrected.

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

56. As set forth above, Poseidon violated Section 10(b) and Rule 10b-5 by their acts and Poseidon as alleged in this Complaint.

57. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act as they culpably participated in the fraud alleged herein. 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 common stock during the Class Period.

58. This action was filed within two years of discovery of the fraud and within five years of Plaintiff's purchases of securities giving rise to the cause of action.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

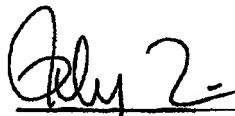
WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a. Determining that this action is a proper class action and certifying Plaintiff as class representatives under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Class Counsel;
- 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;
- d. Awarding Plaintiff such equitable/injunctive and further relief under Section 20A of the Exchange Act; and
- e. Awarding Plaintiff such other and further relief as the Court may deem just and proper.

Dated: February 22, 2013

Respectfully submitted,

THE ROSEN LAW FIRM, P.A.



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