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.

THOMAS SANDGAARD, ANNA LUCSOK, DANIEL MOORHEAD, BARRY D. MICHAELS, MICHAEL CRESS, and JOSHUA DISBROW,

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; (c) review and analysis of filings in the Zynex bankruptcy proceedings; (d) review and analysis of cases filed by insurers against Zynex and its officers; (e) the allegations of a federal indictment naming as defendants former CEO Thomas Sandgaard ("Sandgaard") and

former COO Anna Lucsok ("Lucsok"), which was unsealed on or about January 21, 2026; and (f) review of other publicly available information concerning Zynex.

NATURE OF THE ACTION

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Zynex securities between February 25, 2021 to December 15, 2025, inclusive (the "Class Period"). Plaintiff pursues claims against the Defendants (defined below) under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Founded by Defendant Sandgaard in 1996, Zynex is a medical device manufacturer that produces and markets electrotherapy devices for use in pain management, physical rehabilitation, neurological diagnosis, and cardiac monitoring. The Company's products are small, battery powered electronic devices which deliver electric pulses via wires and electrode pads. These devices are offered through the Company's three subsidiaries: Zynex Medical™, Zynex Monitoring Solutions™, and Zynex NeuroDiagnostics™.

3. Throughout the Class Period, Zynex and its officers touted robust revenues and earnings which, in truth, did not derive from the excellence of the products or the skill of management, but rather through rampant overbilling, over shipping, and multiple other devices aimed at flooding patients with devices they did not want, did not need, and (in many cases) had never ordered or never had prescribed for them by a physician. Federal authorities recently stated in connection with a criminal indictment involving two top Zynex officers that these key defendants caused Zynex to "collect more than $873 million for its products, including more than $600 million for supplies. The vast majority of the supplies' billings were unnecessary and improperly billed. The indictment alleges that supplies were shipped in excessive volumes, sometimes as large as 32, 64, or 128 electrode pairs per patient each month. [Defendants and

former Zynex officers] Sandgaard and Lucsok used these fraudulent billings, and the revenues derived from them, to fraudulently inflate the company's financial reporting and drive up the stock price of Zynex."

4. Company filings and conference calls painted a different picture rife with fraudulent, rosy statements. For example, at the beginning of the Class Period alleged herein, Defendant Sandgaard on a February 25, 2021 conference call attributed greatly increased revenues to "good order flow…" He added that the financial results: "speak[] volumes to the relationships that our salesforce has with many prescribers and the need for them to prescribe non-opioid, non-addictive prescription strength solutions for the patients in pain." Similar statements were made by Zynex and its executives over the next four years. *See e.g.*, Conference Call, July 28, 2022 (COO Lucsok boasted of "a consistent increase in order growth and revenue over the past several quarters in large part due to productivity of our sales force."); Conference Call, March 13, 2023 (CEO Sandgaard touted: "increased sales rep productivity while also maintaining a healthy bottom line to support significant business development in our monitoring division. We received the highest number of prescriptions in the company's history in the fourth quarter, beating a milestone we had previously hit in the preceding second and third quarters of 2022."); Conference Call, April 30, 2024 (COO Lucsok attributed success to sales reps who were able meet "strict targets" and "the strong pipeline to prescribers to see patients in pain and in need of rehab"); Conference Call, October 24, 2024 (CEO Sandgaard boasted that the Company's success was due to "better pain management and monitoring solutions for patients and doctors as well as hospitals."). In truth and in fact, the Company's growth was due to illicit and unauthorized overbilling and over shipping.

5. Some insurers detected the fraudulent activity, but could not discern its full extent. For example, a lawsuit by Travelers Casualty Insurance Company of America and its affiliates (collectively, "Travelers") was filed under seal ***on August 23, 2023*** (and unsealed on December 16, 2024) alleging violations of the California Insurance Frauds Prevention Act ("IFPA") for alleged false billing practices for claims submitted to Travelers in California. The matter is styled *People of the State of California, et al. v. Zynex, et al.*, Case No. 23STCV20301 (Super Ct. LA Cnty.) ("the Travelers Action"). The complaint filed in the Travelers Action makes troubling allegations against Zynex, Sandgaard, Lucsok, and Zynex regional sales manager, Steve Fox ("Fox") and attaches more than ***140 pages*** of alleged fraudulent claims. According to the complaint, "Zynex shipped and billed Travelers for unnecessary supplies without any regard for patients' medical needs."

6. It may be inferred, given the serious and highly detailed allegations, and a later settlement with Travelers, that Zynex, its Board members and its top officers were aware of the key improper activities. Yet they said nothing about this and continued to approve and issue misleading and omissive statements, or take other actions intended to communicate to the market that Zynex was a fully legitimate company, with a bright future.

7. Revelations continued, yet the Company and its officers brushed them off or simply ignored them. This led the market to conclude the allegations were not well-grounded or merely anecdotal. For example, 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."

8. 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, and Zynex's largest customer, accounting for 20-25% of revenue.

9. 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. Investors realized that such a drastic action by Tricare could only reflect Tricare having detected serious wrongdoing. Still, Zynex had not yet frankly spoken to the compliance issues that plainly had been raised.

10. Then, on July 31, 2025, the full extent of Defendants' misdeeds were revealed when the Company acknowledged that it had not been in compliance with industry regulations. On the July 31, 2025 earnings call for the second quarter ended June 30, 2025, COO Lucsok stated: [1]

> [W]e revamped our sales compensation model to drive a performance-focused culture that meets the company's objectives for good patient care and experience ***and regulatory compliance***. High-performing sales employees are now rewarded with increased base pay, while mid-tier performers are incentivized to improve the clearly defined targets. (Emphasis added).

11. In other words, there were regulatory compliance problems, but now management was supposedly attentive to them and was working to remediate them.

12. Also that day, the Company remarked on the "transformational" leadership change during the quarter with the appointment of new Chief Executive Officer ("CEO") Steven Dyson

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

("Dyson") to replace Sandgaard, and the announced departure of the Company's Chief Financial Officer ("CFO") Daniel Moorhead ("Moorhead"). The Company also temporarily suspended revenue and profitability guidance.

13. The market did not receive these admissions well. On August 1, 2025, the stock fell from the previous day's $2.23 per share to $1.26 per share, a 45% decline in heavy trading volume.

14. Similar admissions followed from new CEO Dyson during the Company's November 18, 2025 conference call for the third quarter ended September 30, 2025:

> It's been 3 months since Vikram, and I joined the company. And since joining, we have been tirelessly focused on addressing ***the business and compliance challenges at Zynex*** while creating a new future for the company.
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> [A]s it relates to government investigations, we are proactively engaging with government agencies and investigators in a collaborative way to deliver ***a new future for Zynex that is focused on compliance and integrity.*** These discussions have been positive, and we are making progress on our commitments.
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> While we do not have certainty on any potential TRICARE reinstatement or resolution of ongoing investigations or the timing thereof, it will be critical as we move forward to reach resolution based on the company's commitment to the future. In support of our ***renewed commitment to compliance and integrity***, starting October 1, we implemented ***a new resupply order fulfillment policy. Under this new policy, we do not process resupply orders unless a patient first confirms their need.***

15. On December 15, 2025, Zynex filed a petition for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of Texas.

16. On or about January 21, 2026, as noted, a federal grand jury in Rhode Island returned an indictment that was unsealed that day, charging former CEO Sandgaard and former COO Lucsok with one count of conspiracy to commit health care fraud, mail fraud, and securities fraud; nine counts of health care fraud, two counts of mail fraud and three counts of aggravated identity theft. The press release announcing the indictment stated, in part:

> In total, Sandgaard and Lucsok caused Zynex to collect more than $873 million for its products, including more than $600 million for supplies. The vast majority of the supplies' billings were unnecessary and improperly billed. The indictment alleges that supplies were shipped in excessive volumes, sometimes as large as 32, 64, or 128 electrode pairs per patient each month. Sandgaard and Lucsok used these fraudulent billings, and the revenues derived from them, to fraudulently inflate the company's financial reporting and drive up the stock price of Zynex.
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> Sandgaard and Lucsok caused Zynex to submit millions of dollars in fraudulent billings for medical devices and supplies that were not medically necessary, not covered by these insurance programs and not agreed to by the patients. They continued these practices despite being notified many times that their billing practices were fraudulent, and even when patients told Zynex to stop sending those supplies because they already had too many. They also continued these practices despite objections from their own employees, and patient complaints to Zynex and the Better Business Bureau . . .

17. According to the indictment, *U.S. v. Sandgaard and Lucsok*, Cr. No. 1:26-cr-5-JJM-PAS (D.R.I.) (Dkt. # 3) (Attached as Exhibit A hereto) Sandgaard and Lucsok "used the[] fraudulent billings, and the revenues derived therefrom, to fraudulently inflate the company's financial reporting and drive up the stock price of Zynex. As part of this scheme, Sandgaard and Lucsok caused Zynex to issue false and misleading statements about its financial performance, operational practices, risks, and compliance with insurers' reimbursement policies and concealed the ongoing material fraud upon patients and insurers. These statements concealed, among other things, the systemic 'oversupplying scheme' whereby defendants caused Zynex to ship excessive quantities of supplies, such as electrode pads and batteries, to patients, and billed insurers for hundreds of millions of dollars more than was permitted or medically necessary." Notably, the indictment states that Sandgaard and Lucsok concealed that "they knew that Zynex had received many communications from Payors asserting that Zynex's billing practices were improper and fraudulent, and that numerous Payors were demanding refunds and/or suspending payments." Major customer Tricare has even flagged Zynex practices as fraudulent as early as 2022.

Moreover, upon learning that Tricare had suspended payments to Zynex based on credible allegations of fraud in early January 2025, Sandgaard and Lucsok "failed to promptly disclose this material information to the public, despite explicit advice from their own internal expert that this event was likely to be material to investors." The purpose of the scheme, according to the indictment, was to allow Sandaard and Lucsok to "personally enrich themselves in the form of large salaries and bonuses, stock, stock options and payments for stock repurchases, among other ways."

18. Throughout the Class Period, Defendants made materially false and/or misleading statements, failed to disclose material adverse facts about the Company's business, operations, and prospects, and (as to the "Audit Committee Defendants"—defined herein) engaged in deceptive behavior. Specifically, Defendants failed to disclose to investors: (a) that Zynex shipped products, including electrodes, in excess of need; (b) that, as a result of this practice, the Company inflated its revenue; (c) that the Company's practice of filing false claims drew scrutiny from insurers, including Tricare; (d) that on August 21, 2023, Travelers commenced an action against Zynex, Sandgaard, Lucsok and Fox in the Superior Court of California alleging that Zynex and the defendants had embarked on a fraudulent overbilling scheme and seeking more than $23 million in damages and civil penalties relating to hundreds of fraudulent claims between 2018 and 2023; (e) that management had prioritized aggressive sales strategies to drive orders over compliance with industry laws, rules and regulations; (f) that the Company was not committed to maintaining a strong internal control environment; (g) that the Company's order growth was a result of illegal overbilling; (h) 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 (i) 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. The Audit Committee Defendants, acting knowingly or with reckless disregard of the underlying fraud, helped the insiders bolster the Company's stock price through stock repurchase plans, and even by buying back millions of dollars worth of stock directly from Sandgaard, indicating their supposed belief that the stock was undervalued.

19. 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

20. 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).

21. 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).

22. 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.

23. 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 AND RELEVANT NON-PARTY

24. Plaintiff as set forth in the accompanying certification, incorporated by reference herein, purchased Zynex securities during the Class Period, and suffered significant losses as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

25. Defendant Sandgaard ("Sandgaard") is the founder and was the Company's CEO at all relevant times.

26. Defendant Moorhead ("Moorhead") was the Company's CFO at all relevant times.

27. Defendant Anna Lucsok ("Lucsok") was the Company's COO at all relevant times.

28. Defendant Barry D. Michaels ("Michaels") is a director and was at all relevant times a member and Chairman of the Company's Audit Committee, during which time the Board approved the Company's share repurchases during the Class Period.

29. Defendant Michael Cress ("Cress") is a director and was at all relevant times a member of the Company's Audit Committee, during which time the Board approved the Company's share repurchases during the Class Period.

30. Defendant Joshua R. Disbrow ("Disbrow") is a director and was at all relevant times a member of the Company's Audit Committee, during which time the Board approved the Company's share repurchases during the Class Period.

31. Defendants Michaels, Cress and Disbrow are referred to herein as the "Audit Committee Defendants."

32. The Audit Committee Defendants undertook a specific responsibility: "To review, with outside legal counsel, legal and regulatory matters, including legal cases against or regulatory investigations of the Company and its subsidiaries, that could have a significant impact on the Company's financial statements."

33. Defendants Sandgaard, Lucsok and Moorhead, 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. Each of Defendant Sandgaard, Lucsok, Moorhead, Michaels, Cress and Disbrow (collectively, "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. *See* Zynex Audit Committee Charter, Exhibit B hereto, Duties and Responsibilities, Bullet points 13-16 and 20. Because of their positions and access to material non-public information available to them, each of the 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. Defendants Sandgaard, Lucsok, and Moorhead are liable for the false statements made on behalf of Zynex and/or their own names as pleaded herein. Defendants Michaels, Cress and Disbrow have "scheme liability" for their knowing or reckless participation in certain deceptive and manipulative conduct specified herein.

34. Non-party Zynex is incorporated under the laws of Nevada with its principal executive offices located in Englewood, Colorado. Zynex's common stock traded on the NASDAQ exchange under the symbol "ZYXI" prior to its suspension on December 24, 2025 and

delisting on January 13, 2026. The allegations below pertain to the potential liability of the non-debtor Defendants named herein and no active claims are asserted against Zynex in view of the automatic stay. However, for purposes of alleging control person liability only, this Complaint alleges that Zynex committed securities fraud, and that certain defendants controlled Zynex.

SUBSTANTIVE ALLEGATIONS

Background

35. 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. These products include the NexWave, NeuroMove, InWave, E-Wave and M-Wave.

36. The Company generates substantially all of its revenue from its electrotherapy products which are sold or billed to patients and insurers through a direct sales force in the U.S. Zynex collects payments from commercial health insurance carriers or government payers who pay on behalf of their insureds. The Company also collects payments for its products through workers' compensation claims, auto claims, attorneys representing injured patients, hospitals, clinics and private-pay individuals. A large part of Zynex's revenue is recurring and results primarily from the sale of surface electrodes and batteries sent to existing patients using the Company's devices.

The Fraudulent Scheme

37. The federal indictment states that the scheme *dates back to 2017.*

38. The 138-page complaint filed by Allstate Insurance Companies and its affiliates (collectively, "Allstate") on September 4, 2025, against Sandgaard, Moorhead, Lucsok and Zynex in the U.S. District Court for the Eastern District of New York alleging fraudulent overbilling with

respect to these electrotherapy products describes a wrongful course of conduct by Zynex and certain executives dating back to at least 2021 designed to inflate revenues. The action, styled *Allstate Insurance Co., et al. v. Sandgaard, et al.*, C.A. No. 1:25-cv-04915-DLI-CHK (E.D.N.Y.),[2] alleges that Zynex, Zynex Medical, Inc. and the individually named defendants, including Sandgaard and Morehead:

- Submitted false and fraudulent records and bills for the sale and distribution of durable medical equipment ("DME") seeking to collect payment from insurance claims;

- Caused DME and replenishment supplies to be sent to patients when items were not medically necessary and had not been requested by the patients nor prescribed by their health providers; and

- Deliberately targeted the insurance benefits available to motor vehicle accident victims nationally to ensure a steady stream of revenue;

39. According to Allstate, these alleged fraudulent practices involved, among other things, billing for DME products based upon false representations that the DME was prescribed by a licensed and/or qualified healthcare professional. In particular, Allstate claims that Sandgaard, Morehead and others "directed Zynex employees known as 'Territory Managers' to complete prescription forms for Allstate claimants, circumventing the medical necessity determination of a healthcare provider." ¶ 131.

40. As an example, the Allstate Complaint details the circumstances of a claim by Allstate claimant, A.F. (Claim No. 057008222) from November 2022. ¶¶ 200-203. Allstate identifies discrepancies between the purported signature of a treating provider on an order form and his "authentic signature as documented in his own medical notes" from a visit with the patient. ¶ 203. According to Allstate, "[t]his stark discrepancy points directly to signature forgery as a

[2] References to allegations in the Allstate action correspond to paragraphs in the Amended Complaint and Demand for Jury Trial filed on October 8, 2025 (Dkt. No. 13).

means to legitimize an unprescribed device." ¶ 203. During that time, Allstate alleges that Zynex territory managers or sales managers "actively interfered with patient care decisions and the ordering of DME and associated supplies" (¶ 200) to facilitate their overbilling scheme. In the case of A.F., the substantial billing for the DME device was not supported by any "medical foundation" and "forcefully indicates that Zynex personnel, not licensed medical professionals, [were] illicitly making decisions, a practice that is both unethical and illegal in every jurisdiction where [Zynex] conduct[s] business." ¶ 202.

41. Similar examples of unauthorized DME ordering and billing during this time are just as concerning. ¶ 204-220. According to Allstate, order forms lacked signatures from actual medical providers, were devoid of diagnostic codes, quantities to be dispensed or frequency of use information filled in. ¶ 207. The lack of medical foundation for DME and supplies for those bills "strongly implies that Zynex Medical personnel …, not licensed medical professionals, were making the medical determination to provide claimants with the corporate Defendants' DME and supplies and filling out the order forms to justify bills to Allstate." ¶ 219. Allstate contends that the examples provided were not "isolated incident[s]," reflecting mere "inconsistencies" in medical records or billing "oversights." *Id.* Rather, Allstate alleges they "reveal a pattern of conduct that demonstrates an intent to defraud." ¶ 220.

42. Other wrongful conduct dating back to at least 2022, includes the systematic use of "fraudulent and inappropriate" code descriptors through the Healthcare Common Procedure Coding System (HCPCS). ¶¶ 226-245. Zynex frequently used "miscellaneous" codes in contravention of official coding guidelines (¶ 238) to inflate its billing. Allstate also describes billing for medically unnecessary conductive garments where patients had already been provided with standard electrodes "in order to inflate bills by charging for both without any medical

justification." ¶¶ 303; 307-318. An example in the case of claimant P.H. (Claim No. 0643491319) arising in late 2021 resulted in billing to Allstate for "32 packages of unnecessary standard electrodes in both February and March of 2022, despite having already billed for the conductive garment." ¶ 312.

43. The allegations in the Travelers Action against Zynex, Sandgaard, Lucsok and Fox further echo the wrongful overbilling practices alleged by Allstate. Travelers contended that the Company shipped and billed Travelers for unnecessary supplies without any regard for patients' medical needs:

> Zynex shipped and billed Travelers for unnecessary supplies without any regard for patients' medical needs. Defendants established and implemented an internal policy to automatically ship supplies to patients every month without contacting the patients prior to sending them to determine whether they are necessary. In fact, Defendants were well aware that patients did not need the boxes of supplies they received because Zynex sales representatives, regional managers and billing employees received repeated complaints from patients, physicians and physical therapists relating to monthly supplies they never requested, needed, or used. Many patients complained that they received an obscene amount of supplies and attempted to stop the shipments by repeatedly calling Zynex's customer service, to no avail. Some patients who attempted to stop the shipments were told by the customer service to keep the supplies so that Zynex could continue to bill insurance carriers. [¶ 26].[3]
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> The sales team at Zynex had weekly meetings during which sales representatives relayed to the leadership that the supplies were the "main complaint." Sandgaard, Fox and Lucsok, each a member of Zynex's leadership team, were well aware of these complaints. Fox, as Vice President of Sales, and Lucsok, as COO, were privy to many communications with sales representatives and regional managers discussing complaints from patients and providers—which kept multiplying. Similarly, Sandgaard was made aware of these complaints and, in response, instructed sales representative to disregard them and find new physicians who would prescribe the NexWave and supplies, so that they could carry on with the automatic monthly shipments and fraudulent billing. [¶ 27].

[3] References to allegations in the Travelers Action are to the corresponding paragraphs of the Complaint for Violation of Insurance Frauds Prevention Act (Insurance Code Section 1871.7) filed on August 23, 2023 in the action.

44. Flagrant overbilling violations were described by Travelers with respect to Zynex's NexWave product:

> Defendants conspired to submit claims to Travelers for the rental of the NexWave that had already been billed as a purchase. In some cases, Zynex billed the NexWave as a purchase multiple times for the same patient. In other cases, Zynex would alternate billing the NexWave as a rental, and then as a purchase, or vice versa. [¶ 31].
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> By way of example, with respect to claim No. FBA2774, Zynex billed Travelers on the same day, November 16, 2018, twice as a purchase under two different HCPCS codes with supplies, and three times as a rental under two different HCPCS codes with supplies as well. Again, on July 16, 2019, Zynex billed Travelers for the NexWave once as a rental and once as a purchase. In addition to the two bills for the purchase of the NexWave, Zynex billed Travelers for rental for thirty (30) consecutive months, far exceeding the thirteen (13) month statutory cap for DME rentals imposed by Code of Federal Regulations ("CFR") section 414.229(f)(1). In addition, pursuant to CFR § 414.229(f)(2), Zynex was required to transfer title to the NexWave after the 13th month, and cease billing for rental. Instead, Zynex decided to fraudulently bill Travelers for the rental of the NexWave by this patient who had already obtained title to the device by virtue of the three (3) bills Zynex submitted to Travelers for the purchase or 13 months rental. On this claim, Zynex billed Travelers a total of $3,990.00 for the purchase and $23,940.00 for the rental of the same device. [¶32].

45. At the same time Zynex and Defendants Sandgaard and Moorhead were causing or allowing these wrongful overbilling practices, they were touting record revenues and record orders for Zynex products to the Company's investors. Meanwhile, Defendants Cress, Disbrow and Michaels, who were members of the Board and Audit Committee, were approving share repurchase programs to prop up the Company's stock and defraud the market. Even after Tricare suspended payments to Zynex due to rampant fraud, the Audit Committee Defendants refused to relieve Sandgaard of his duties as a director and Board Chairman, only doing so once his indictment was announced.

46. Thus, the Zynex Audit Committee Defendants not only failed to prevent the fraud, but they also helped fuel it and conceal it. Indeed, there is a strong inference that these directors

knew of serious, credible accusations of rampant fraud and overbilling from companies such as Travelers, at least as early as August 2023, when the prominent insurer's sealed complaint was filed in California. Instead of stepping in to halt the fraud and alert Zynex investors, they deceived them further with *conduct* designed to reassure them, including repurchase programs adopted in September 2023, November 2023, and March 2024. They topped this off with a repurchase of 1,700,000 shares *directly from Defendant Sandgaard* on March 13, 2025 at an inflated price. And yet, when approving that repurchase, they may be inferred to have known of the revelations set forth in the Travelers Action, the June 2024 *STAT* article, and of the extent of the Tricare crisis. The message from the Board—a false message—that the allegations were unfounded, perpetuated the wrongdoing. As such, these directors are liable (at least from August 2023 to the end of the Class Period) for 10b-5 "scheme" liability, which does not require them to have directly made any false statements.

MATERIALLY FALSE AND MISLEADING STATEMENTS ISSUED DURING THE CLASS PERIOD

47. The Class Period begins on February 25, 2021. Zynex that day announced the following results:

2020 Full Year

- Revenue increased 76% year over year to $80.1 million
- Orders increased 96%
- Net income of $9.1 million; Diluted EPS $0.26
- Adjusted EBITDA $13.7 million
- 2020 Revenue and Adjusted EBITDA are the highest in Company history

2020 Fourth Quarter

- Revenue increased 81% year over year to $25.6 million
- Orders increased 117%
- Net income of $1.8 million; Diluted EPS $0.05
- Adjusted EBITDA $3.4 million

48. CEO Sandgaard stated:

I am excited to announce our eighteenth consecutive quarter of positive net income. In the fourth quarter, we posted revenue of $25.6 million, which is the highest quarterly revenue in the history of the Company and net income of $1.8 million. Orders grew 117% compared to the fourth quarter of 2019.

We are pleased with our accomplishments in 2020 despite the pandemic and reiterate the potential of our business as we move into 2021. Our continued order growth during this pandemic shows the strength of relationships our sales force has with many prescribers and the need for them to prescribe non-opioid, non-addictive prescription strength solutions for their patients in pain.

In the fourth quarter, we continued to focus on the execution of our growth strategy and the related growth of our sales force as we eclipsed 500 sales reps and expect to have over 600 by the end of 2021.We expect the new sales reps primarily added in the second half of 2020 to add significantly to our order growth in the first half of 2021 and therefore positively impact revenue growth in the second half of 2021 and forward.

We continue to advocate for pain patients, and for physicians to prescribe our NexWave technology as the first line of defense in treating chronic and acute pain without side effects. We are dedicated to promoting our technology in an effort to remove patient addiction and other side effects from prescription opioids.

49. On April 29, 2021, Zynex announced the following:

2021 First Quarter

- Revenue increased 58% year over year to $24.1 million
- Orders increased 140%
- Net loss of $0.7 million; GAAP loss per share $0.02
- Adjusted EBITDA loss $0.4 million

50. CEO Sandgaard stated:

I am excited about our order growth in the first quarter of 140% which will continue to drive increasing revenue throughout 2021 and 2022. In the first quarter, we posted revenue of $24.1 million. First quarter revenue is historically affected by health insurance deductibles not being met in the beginning of the year. The combination of seasonality of deductibles along with the sales force investments we made during 2020 produced a small loss in Q1 which was expected. Profitability is expected to ramp quickly beginning in second quarter with projected Adjusted EBITDA of over $3 million.

In the first quarter, we focused on productivity of our existing sales reps and trimmed our sales force slightly below 500. We still expect to have over 600 sales reps by the end of 2021 with most of those additions coming in the second half of the year.

We continue to advocate for pain patients, and for physicians to prescribe our NexWave technology as the first line of defense in treating chronic and acute pain without side effects. We are dedicated to promoting our technology in an effort to remove patient addiction and other side effects from prescription opioids.

51. On July 15, 2021, Zynex issued a press release, quoting CEO Sandgaard as follows:

Our order growth in Q2 remained strong at 247% year over year and 186% for the first half of 2021. Our new reps continue to get more productive as selling returns to a more normal cadence as we emerge from COVID-19.

The company is confirming its previous revenue estimate for the second quarter of 2021 of between $31.0 and $32.5 million. Second quarter Adjusted EBITDA is now expected to come in between $4.2 and $5.2 million compared to the previous estimate of between $3.0 and $4.0 million.

The company's current full year 2021 revenue estimate is currently between $135.0 and $150.0 million. The revenue estimate is approximately 68% to 87% above last year's full year revenue of $80.1 million. The 2021 full year estimated Adjusted EBITDA is currently estimated between $15.0 to $25.0 million compared to 2020's full year Adjusted EBITDA of $13.7 million.

52. On July 29, 2021, Zynex released the following results:

2021 Second Quarter

- Revenue increased 61% year over year to $31.0 million
- Orders increased 247%
- Net income of $2.8 million; Diluted EPS $0.08
- Adjusted EBITDA $4.8 million

53. CEO Sandgaard stated:

I am excited about our order growth in the second quarter of 247% which will continue to drive increasing revenue in 2021 and 2022. In the second quarter, we posted revenue of $31.0 million, which is the highest quarterly revenue in the history of the Company and net income of $2.8 million. We continue to focus on sales rep productivity and average reps during the period decreased to approximately 450 due to trimming non-productive reps and slowed hiring due to a very competitive job market. We have increased the rate of hiring in Q3 and expect to be well over 500 reps by the end of the year.

We continue to advocate for pain patients, and for physicians to prescribe our NexWave technology as the first line of defense in treating chronic and acute pain without side effects. We are dedicated to promoting our technology in an effort to remove patient addiction and other side effects from prescription opioids.

54. On November 2, 2021, Zynex announced the following results:

2021 Third Quarter

- Revenue increased 74% year over year to $34.8 million
- Orders increased 70%
- Record net income of $6.1 million; Diluted EPS $0.17
- Adjusted EBITDA $9.3 million

55. CEO Sandgaard stated:

I am excited about our order growth in the third quarter of 70% which we expect will continue to drive increasing revenue in 2021 and 2022. In the third quarter, we posted revenue of $34.8 million and net income of $6.1 million, both amounts are the highest in the history of the Company. We are pleased with our continued revenue growth and the related profitability as we continue to leverage the investments we've made in our sales organization over the past couple of years. There is a sizeable pain management market in the U.S. and worldwide that can benefit from our products and we are just scratching the surface of the addressable market.

In our Monitoring Solutions Division, our team just returned from the American Society of Anesthesiologists annual conference where we received positive feedback from clinicians and institutions on our CM-1500 Blood and Fluid Monitor. We expect to submit our next generation CM-1600 for FDA clearance within the next ninety days as our engineering team is making great progress.

We continue to advocate for pain patients, and for physicians to prescribe our NexWave technology as the first line of defense in treating chronic and acute pain without side effects. We are dedicated to promoting our technology in an effort to remove patient addiction and other side effects from prescription opioids.

56. On February 24, 2022, Zynex reported financial results for the fourth quarter and full year ended December 31, 2021, stating in relevant part:

2021 Full Year

- Revenue increased 63% year over year to $130.3 million
- Orders increased 89%

- Net income increased 88% to $17.1 million; Diluted EPS of $0.44
- Adjusted EBITDA increased 95% to $26.7 million
- 6th straight year of profitability
- $42.6 million cash balance

2021 Fourth Quarter

- Revenue increased 58% year over year to $40.4 million
- Orders increased 18%
- Net income increased 398% to $8.9 million; Diluted EPS $0.23
- Adjusted EBITDA increased 276% to $13.0 million

Fourth Quarter Financial Results Summary:

For the fourth quarter, the Company reported net revenue of $40.4 million, a 58% increase over fourth quarter of 2020. Gross margins were 82%, better than previous guidance ranging between 75% and 80%. Net income was $8.9 million, a 398% increase from Q4 2020.

As of December 31, 2021, the Company had working capital of $59.8 million, compared to $52.9 at the close of last fiscal year. Cash on hand was $42.6 million at the end of the fourth quarter, up over $7.2 million, or 20%, from Q3.

President and CEO Commentary:

"We are thrilled to announce ***another consecutive quarter of record growth***. ***We recognized the highest quarterly revenues in the Company's history, and are poised for further expansion supported by Zynex's financial health***," said Thomas Sandgaard, President and CEO. "Adjusted EBITDA margins continue to increase and represent our vigilance for growing top line revenue and managing operational efficiencies. Labor market dynamics have made attracting qualified sales reps and employees for our corporate headquarters in Colorado difficult. Therefore, we expect order growth to be fairly modest until the job market eventually normalizes and we are able to add additional reps to our sales force."

First Quarter and Full Year 2022 Guidance

Full year 2022 revenue is estimated in the range of $150-$170 million and Adjusted EBITDA between $25 and $35 million. The revenue range is based on the current labor shortage and growing the sales force at a slower cadence than previously anticipated. Adjusted EBITDA is impacted by increased operating expenses to support the Monitoring Division (ZMS) as the Kestrel products are prepared for FDA submission and the fluid monitor is readied for the market. These initiatives are currently estimated at an approximately $5M OPEX increase over 2021. Profitability is expected to grow as sales reps become more efficient, further highlighting the expected EBITDA growth in 2022.

First quarter 2022 revenue is estimated to range between $29 and $32 million, an increase of approximately 26% from 1Q21. Primarily affected by the resetting of

> health insurance deductibles in the beginning of a calendar year, seasonably lower revenues in the first quarter are a historical trend for Zynex and an industry norm. First quarter 2022 Adjusted EBITDA is estimated to range between $3.0 and $4.5 million, an increase of approximately 1072% from 1Q21.
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> Sales and profit will ramp through the remainder of 2022 and bolster expected growth for the full year.

57. On March 22, 2022, the Company submitted its annual report for the fiscal year ended December 31, 2021 on a Form 10-K filed with the SEC, affirming the previously reported financial results (the "2021 10K").

58. The 2021 10K vaguely warned:

> ***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.*** [Emphasis in original].
>
> 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.

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.

59. On April 8, 2022, the Company issued a press release reporting preliminary first quarter 2022 results and providing a business update:

Zynex Reports Preliminary First Quarter 2022 Results and Provides Business Update

ENGLEWOOD, Colo., April 8, 2022 /PRNewswire/ -- Zynex, Inc. (NASDAQ: ZYXI), an innovative medical technology company specializing in the manufacture and sale of non-invasive medical devices for pain management, rehabilitation, and patient monitoring, today announced preliminary results for first quarter 2022, affirming guidance for revenue, EBITDA and order growth.

"We are reporting preliminary and unaudited revenue for the first quarter of $30.5 to $31.5 million and adjusted EBITDA between $3.0 and $4.0 million," said Thomas Sandgaard, CEO of Zynex. ***"Our Q1 2022 revenue estimate is approximately 26% higher than Q1 2021 and adjusted EBITDA is estimated to increase approximately 900% year over year."***

The Company reiterates its full year 2022 guidance of $150 to $170 million in revenue and adjusted EBITDA between $25 and $35 million.

"The pain management division saw Q1 order growth of 3% year over year with 15% fewer sales reps. This relatively modest growth is a direct result of constraints in our ability to recruit new sales reps in the continually tightened labor force. We trimmed our sales force during the second half of 2021 and focused heavily on improving productivity to offset a deceleration in sales rep onboarding. ***The***

increased emphasis on sales productivity is evident; March 2022 reflected the highest number of orders in the Company's history. Cash collections remain strong, including collections from commercial health insurance providers, as well as UHC. Knee braces were recently added to the product portfolio and are already adding significant volume to our orders."

60. On April 28, 2022, the Company filed its Form 10-Q for the for the first quarter of 2022 ("1Q/22 10Q"):

> Net revenue was $31.1 million and $24.1 million for the three months ended March 31, 2022 and 2021, respectively. Net revenue increased 29% for the three-month period ended March 31, 2022. The Company had net income of $1.3 million during the three months ended March 31, 2022 as compared with a net loss of $0.7 million during the three months ended March 31, 2021. Cash flows provided by operating activities increased $7.1 million to $1.8 million during the three months ended March 31, 2022 as compared with cash flows used in operating activities of $5.3 million during the three months ended March 31, 2021. Working capital was $59.8 million at March 31, 2022 and at December 31, 2021.
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> ***
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> Net revenues are comprised of device and supply sales, constrained by estimated third-party payer reimbursement deductions. The reserve for billing allowance adjustments and allowance for uncollectible accounts are adjusted on an ongoing basis in conjunction with the processing of third-party payer insurance claims and other customer collection history. Product device revenue is primarily comprised of sales and rentals of our electrotherapy products and also includes complementary products such as our cervical traction, lumbar support and hot/cold therapy products.
>
> Supplies revenue is primarily comprised of sales of our consumable supplies to patients using our electrotherapy products, consisting primarily of surface electrodes and batteries. Revenue related to both devices and supplies is reported net, after adjustments for estimated third-party payer reimbursement deductions and estimated allowance for uncollectible accounts. The deductions are known throughout the healthcare industry as billing adjustments whereby the healthcare insurers unilaterally reduce the amount they reimburse for our products as compared to the sales prices charged by us. The deductions from gross revenue also take into account the estimated denials, net of resubmitted billings of claims for products placed with patients which may affect collectability. See our Significant Accounting Policies in Note 1 to the Consolidated Financial Statements for a more complete explanation of our revenue recognition policies.
>
> ***We occasionally 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. We review and evaluate these requests and determine if any refund is appropriate***. We also review claims that have been resubmitted or where we are 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***.
>
> Net revenue increased $7.0 million or 29% to $31.1 million for the three months ended March 31, 2022, from $24.1 million for the same period in 2021. ***The growth in net revenue is primarily related to the continued growth in device orders. In 2021, we saw annual order growth of 89% and additional order growth for the three months ended March 31, 2022 of 3%. Increased order growth has led to an increased customer base and drove higher sales of consumable supplies***.

61. On June 13, 2022, Zynex unexpectedly announced that it had dismissed its auditor Plante & Moran, PLLC ("Plante Moran"), effectively immediately, and engaged Marcum LLP ("Marcum") to serve as the Company's new independent registered public accounting firm. According to the Form 8-K "there was no disagreement between the Company and Plante Moran on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure which, if not resolved to Plante Moran's satisfaction, would have caused Plante Moran to make reference to the subject matter of the disagreement in connection with its reports for such fiscal years; and there were no reportable events as defined in Item 304(a)(1)(v) of Regulation S-K."

62. On July 28, 2022, the Company announced its second quarter earnings for 2022. The press release stated, in relevant part:

> **Zynex Announces 2022 Second Quarter Earnings**
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> ENGLEWOOD, Colo., July 28, 2022 /PRNewswire/ -- Zynex, Inc. (NASDAQ: ZYXI) an innovative medical technology company specializing in the manufacture and sale of non-invasive medical devices for pain management, rehabilitation, and

patient monitoring, today reported financial results for the second quarter ended June 30, 2022.

Second Quarter 2022 Highlights:

- Revenue increased 18% year over year to $36.8 million
- Net income increased 19% to $3.3 million; Diluted EPS of $0.08
- Adjusted EBITDA increased 16% to $5.5 million
- Completed initial $10 million share buyback and announced an additional program of $10 million
- Recorded highest number of orders in Company history

Second Quarter 2022 Financial Results Summary:
For the second quarter, the Company reported net revenue of $36.8 million, an 18% increase over second quarter of 2021. Gross margins were 80% and net income was $3.3 million, a 19% increase from Q2 2021.
As of June 30, 2022, the Company had working capital of $51.8 million. Cash on hand was $26.9 million at the end of the second quarter.

President and CEO Commentary:
"In Q2, we posted another quarter of top line growth and increased profitability. Our reps are becoming highly efficient and revenue projections reflect our confidence in the sales force to produce exceptional results. ***The record orders we posted in second quarter will put us in a position to realize strong results in the second half of 2022***," said Thomas Sandgaard, President and CEO. "Additionally, we completed an initial $10 million share buyback program and announced another $10 million program to signal our ability to drive shareholder value."

Third Quarter and Full Year 2022 Guidance:
Zynex is reaffirming its full year 2022 revenue estimates in the range of $150-$170 million and Adjusted EBITDA between $25-$35 million.

The estimated range for third quarter 2022 revenue is between $40-$43 million, an increase of approximately 20% from Q3 2021. Adjusted EBITDA for the third quarter 2022 is estimated to range between $7-$9 million.

63. The Company filed a Form 10Q on that day (the "3Q/22 10Q") reflecting its strong results for the third quarter of 2022 and downplaying its "occasional" receipt of refund requests from insurance providers and "[b]illing and reimbursement disputes" which are "very common in our industry." The 3Q/22 10Q stated, in relevant part:

> Net revenues are comprised of device and supply sales, constrained by estimated third-party payer reimbursement deductions. The reserve for billing allowance

adjustments and allowance for uncollectible accounts are adjusted on an ongoing basis in conjunction with the processing of third-party payer insurance claims and other customer collection history. Product device revenue is primarily comprised of sales and rentals of our electrotherapy products and also includes complementary products such as our cervical traction, lumbar support and hot/cold therapy products.

Supplies revenue is primarily comprised of sales of our consumable supplies to patients using our electrotherapy products, consisting primarily of surface electrodes and batteries. Revenue related to both devices and supplies is reported net, after adjustments for estimated third-party payer reimbursement deductions and estimated allowance for uncollectible accounts. The deductions are known throughout the healthcare industry as billing adjustments whereby the healthcare insurers unilaterally reduce the amount they reimburse for our products as compared to the sales prices charged by us. The deductions from gross revenue also take into account the estimated denials, net of resubmitted billings of claims for products placed with patients which may affect collectability. See our Significant Accounting Policies in Note 2 to the condensed financial statements for a more complete explanation of our revenue recognition policies.

We occasionally 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. We review and evaluate these requests and determine if any refund is appropriate. We also review claims that have been resubmitted or where we are 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***.

Net revenue increased $5.7 million or 18% to $36.7 million for the three months ended June 30, 2022, from $31.0 million for the same period in 2021. Net revenue increased $12.7 million or 23% to $67.8 million for the six months ended June 30, 2022, from $55.1 million for the same period in 2021. For both the three and six-month periods ended June 30, 2022, ***the growth in net revenue from the same periods in 2021 is primarily related to a 10% and 6% growth in device orders, respectively, which resulted from an increased customer base and led to higher sales of consumable supplies***.

64. On October 11, 2022, the Company reported preliminary third quarter 2022 results touting record growth and the "highest number of monthly orders in the Company's history yet

again." The Company also reported third quarter orders that were the "highest in company history." The press release stated, in relevant part:

> **Zynex Reports Preliminary Third Quarter 2022 Results**
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> ENGLEWOOD, Colo., Oct. 11, 2022 /PRNewswire/ -- Zynex, Inc. (NASDAQ: ZYXI), an innovative medical technology company specializing in the manufacture and sale of non-invasive medical devices for pain management, rehabilitation, and patient monitoring, today announced preliminary results for third quarter 2022 and reiterated full year guidance.
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> ***"Our record order growth continued in the third quarter of 2022, as August, and subsequently September, saw the highest number of monthly orders in the Company's history yet again. Third quarter orders were also the highest in company history growing 34% compared to Q3 2021 and 12% sequentially over Q2 2022.*** Additionally, ***cash collections remained strong during the quarter***, enabling us to complete the second $10 million stock buy back program of 2022," said Thomas Sandgaard, CEO of Zynex. "We are confirming our previous estimates for third quarter revenue between $40.0 to $43.0 million and adjusted EBITDA between $7.0 and $9.0 million."
>
> "***We are thrilled with the performance of the business quarter after quarter, and pleased that we can remain profitable despite macro headwinds that continue to impact many of our peers in the sector," said Sandgaard. "This accomplishment is due to the hard work of our team and the continued productivity we've seen in our sales force, and we look forward to continued growth in the coming quarters."***
>
> The Company reiterates its full year 2022 guidance of $150 to $170 million in revenue and adjusted EBITDA between $25 and $35 million.

65. The Company filed its Form 10-Q for the third quarter of 2022 ("3Q/22 10Q") on October 27, 2022 which echoed the strong preliminary results. The 3Q/22 10Q stated, in relevant part:

> Net revenues are comprised of device and supply sales, constrained by estimated third-party payer reimbursement deductions. The reserve for billing allowance adjustments and allowance for uncollectible accounts are adjusted on an ongoing basis in conjunction with the processing of third-party payer insurance claims and other customer collection history. Product device revenue is primarily comprised of sales and rentals of our electrotherapy products and also includes complementary products such as our cervical traction, lumbar support and hot/cold therapy products.

Supplies revenue is primarily comprised of sales of our consumable supplies to patients using our electrotherapy products, consisting primarily of surface electrodes and batteries. Revenue related to both devices and supplies is reported net, after adjustments for estimated third-party payer reimbursement deductions and estimated allowance for uncollectible accounts. The deductions are known throughout the healthcare industry as billing adjustments whereby the healthcare insurers unilaterally reduce the amount they reimburse for our products as compared to the sales prices charged by us. The deductions from gross revenue also take into account the estimated denials, net of resubmitted billings of claims for products placed with patients which may affect collectability. See our Significant Accounting Policies in Note 2 to the condensed financial statements for a more complete explanation of our revenue recognition policies.

We occasionally 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. We review and evaluate these requests and determine if any refund is appropriate. We also review claims that have been resubmitted or where we are 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***. ***Net revenue increased $6.7 million or 19% to $41.5 million for the three months ended September 30, 2022, from $34.8 million for the same period in 2021***.

Net revenue increased $19.4 million or 22% to $109.4 million for the nine months ended September 30, 2022, from $89.9 million for the same period in 2021. For the three and nine months ended September 30, 2022, the growth in net revenue from the same periods in 2021 is primarily related to a 34% and 15% growth in device orders, respectively, which led to an increased customer base and drove higher sales of consumable supplies.

66. On January 17, 2023, Zynex reported preliminary fourth quarter 2022 results touting "yet another quarter of record growth" and orders for the quarter that "were the highest in Company history." Sandgaard attributed the Company's performance to the "durability of our product offering and the increased productivity of our growing sales force." The press release stated:

Zynex Reports Preliminary Fourth Quarter 2022 Results

ENGLEWOOD, Colo., Jan. 17, 2023 /PRNewswire/ -- Zynex, Inc. (NASDAQ: ZYXI), an innovative medical technology company specializing in the manufacture and sale of non-invasive medical devices for pain management, rehabilitation, and patient monitoring, today announced preliminary results for fourth quarter 2022 and reiterated full year guidance.

"***We experienced yet another quarter of record order growth in the fourth quarter 2022. Q4 orders were the highest in Company history and we saw a 48% increase in orders over the same period in 2021. This was the largest growth figure throughout 2022 and led to full-year order growth of 23%. Additionally, where third quarter 2022 orders had been the highest in company history, fourth quarter orders grew another 11% over Q3," said Thomas Sandgaard, CEO of Zynex. "Our continued performance is a testament to the durability of our product offering and the increased productivity of our growing sales force."***

"We are confirming our previous estimates for fourth quarter revenue between $48.0-$51.0 million and adjusted EBITDA between $10.0-$12.0 million," said Sandgaard. "I am pleased with a strong finish to a successful and profitable 2022, and look forward to the Company's expansion and growth throughout the coming year."

Based on the fourth quarter estimates, the full year 2022 revenue estimate now ranges between $157.4-$160.4 million and Adjusted EBITDA between $26.7-$28.7 million.

67. On March 13, 2023, 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.

68. 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:

> ***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.***
>
> 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.

69. 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.

70. The 2022 10-K also identified a material weakness in internal control over financial reporting as of December 31, 2022 related to "Information Technology General Controls (ITGCs) that were not designed and operating effectively to ensure (i) appropriate segregation of duties was in place to perform program changes and (ii) the activities of individuals with access to modify data and make program changes were appropriately monitored. Business process controls (automated and manual) that are dependent on the affected ITGCs were also deemed ineffective because they could have been adversely impacted." The 2022 10-K assured investors that management was "committed to maintaining a strong internal control environment" and would "take comprehensive actions to remediate the material weakness."

71. On April 11, 2023, the Company issued a press release reporting preliminary first quarter 2023 results. Orders were again, "the highest in Company history." Sandgaard touted a start to the year reflecting "strong momentum, solid order growth, and continued productivity in our sales force." He expressed optimism that the 48% year-over-year growth was an "indication that we can expect to maintain consistent revenue growth as we further penetrate sales territories." The press release stated:

> **Zynex Reports Preliminary First Quarter 2023 Results**
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> ENGLEWOOD, Colo., April 11, 2023 /PRNewswire/ -- Zynex, Inc. (NASDAQ: ZYXI), an innovative medical technology company specializing in the manufacture and sale of non-invasive medical devices for pain management, rehabilitation, and patient monitoring, today announced preliminary results for first quarter 2023 and reiterated full year guidance.
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> "***We continue to execute in both our divisions, and in our pain management division have posted another quarter of record order growth for the first quarter of 2023. Q1 orders were the highest in Company history, representing an increase of 61% over the same period in 2022. This achievement follows a strong fourth quarter in which Zynex saw 48% year-over-year growth, and we believe this to be an indication that we can expect to maintain consistent revenue growth as we further penetrate sales territories," said Thomas Sandgaard, CEO of Zynex.***

> "We are confirming our previous estimates for first quarter revenue of $39.0 - $41.0 million and earnings per share between $0.00 - $0.03", said Sandgaard. "Our first quarter revenue estimate is an increase of approximately 29% over the prior year period, and I am pleased to begin the year with strong momentum, solid order growth, and continued productivity in our sales force."
>
> The Company reiterates its full year 2023 guidance of revenue between $180 - $200 million and earnings per share between $0.40 - $0.50. First quarter revenue is affected by the resetting of health insurance deductibles in the beginning of a calendar year; seasonably lower revenues in the first quarter are a historical trend for Zynex and an industry norm.

72. 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.

73. On April 27, 2023 the Company filed on Form 10-Q its quarterly report for the first quarter of 2023 ("Q1/23 10Q"). The Company identified a single material weakness in internal control over financial reporting for the quarter ended March 31, 2023 related to ITGCs that were not designed and operating effectively to ensure "(i) appropriate segregation of duties was in place to perform program changes and (ii) the activities of individuals with access to modify data and make program changes were appropriately monitored. Business process controls (automated and manual) that are dependent on the affected ITGCs were also deemed ineffective because they could have been adversely impacted." Once again, the Company reiterated its commitment to

"maintaining a strong internal control environment" and promised to "take comprehensive actions to remediate the material weakness."

74. On May 11, 2023 an investigation conducted by *The Capitol Forum* publicly reported that:

> Zynex Medical (ZYXI), a manufacturer of electrotherapy devices for pain management, is overbilling TRICARE, the military health program for active-duty soldiers and their family members, for millions of dollars in unnecessary supplies for its devices, according to a *Capitol Forum* investigation.
>
> The practice mirrors those of a competitor that settled a False Claims Act matter with the Department of Justice in 2018.
>
> As *The Capitol Forum* has previously reported, Zynex has a practice of sending an inordinate amount of monthly supplies, such as batteries and disposable electrodes, for its Transcutaneous Electrical Nerve Stimulations (TENS) and Nueromuscular Electrical Stimulation (NMES) devices, and billing health plans for those products.
>
> That practice has caused the company to be kicked out of insurer networks and spurred at least two investigations by insurance companies and law enforcement, with agents specifically inquiring about Zynex's billing practices with the federal government, according to prior *Capitol Forum* reporting.
>
> While insurers have removed Zynex from their networks, *The Capitol Forum* received claims data from the Defense Health Agency, which oversees the TRICARE program, that show a massive spike in claims submitted by Zynex for electrodes over the last several years.
>
> Between 2015 and 2022, the annual amount Zynex has billed TRICARE for electrodes has jumped from $1.7 million to $90.5 million, a 5,223% increase. During that period, TRICARE paid roughly 83% of those claims at a reduced fee, totaling over $42 million in payments to Zynex.

75. 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.

76. The Form 10-Q filed on July 27, 2023 for the second quarter of 2023 ("2Q/23 10Q") repeated these positive results and noted that on May 10, 2023 and June 13, respectively, the Board and Audit Committee had approved the purchase of 600,000 common shares of Zynex from Sandgaard for a total transaction value of approximately $5.4 million:

On May 10, 2023, the disinterested Board and Audit Committee approved the purchase of 300,000 common shares of ZYXI from Mr. Sandgaard, Chairman, President, Chief Executive Officer and Principal Executive Officer, at the closing market price on May 10, 2023 of $9.61 per share, resulting in a total transactional value of $2,883,000.

On June 13, 2023, the disinterested Board and Audit Committee approved the purchase of 300,000 common shares of ZYXI from Mr. Sandgaard at the closing market price on June 13, 2023, of $8.62 per share, resulting in a total transactional value of $2,586,000.

At the time of each aforementioned transactions, the disinterested Board and Audit Committee Members deemed it to be in the best interest of The Company to purchase the shares as they believe the current market price for the Company's stock is undervalued and the Company's cash position is such that the purchase of shares from Mr. Sandgaard is a good use of the Company's funds at the time of each transaction.

For each transaction, the following impacts were discussed before approval of the sale: (i) the Company's cash position and capital needs for its continuing operations; (ii) the alternative uses for the cash used to purchase the Sandgaard Shares, including repayment of outstanding indebtedness; (iii) the possible effect

> on earnings per share and book value per share; (iv) and the potential effect of the trading of the Company's shares, if Mr. Sandgaard were to sell the shares in the open market.

77. The 2Q/23 10Q also identified material weaknesses in internal control over financial reporting as to ITGCs "that were not designed and operating effectively to ensure (i) appropriate segregation of duties was in place to perform program changes and (ii) the activities of individuals with access to modify data and make program changes were appropriately monitored. Business process controls (automated and manual) that are dependent on the affected ITGCs were also deemed ineffective because they could have been adversely impacted." The Company affirmed its commitment "to maintaining a strong internal control environment":

> Our management is committed to maintaining a strong internal control environment. In response to the identified material weakness above, management will take comprehensive actions to remediate the material weakness in internal control over financial reporting. We are in the process of developing and implementing remediation plans to address the material weakness described above.

78. The 2Q/23 10Q also stated that the Company was "not a party to any material pending legal proceedings" and that there were "no material changes" from the risk factors previously disclosed in the 2022 10-K.

79. On October 26, 2023, Zynex issued a press release announcing financial results for the third quarter of 2023. The press release reported touted the Company's strong financial 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 order yearover- 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.

80. The Company's Form 10-Q for the third quarter of 2023 ("3Q/23 10Q") was filed on October 26, 2023 and repeated the results set forth in the press release and noted that the Company had once again identified material weaknesses in internal control over financial reporting for the quarter ended September 30, 2023. Such weaknesses, however, were purportedly limited to ITGCs "that were not designed and operating effectively to ensure (i) appropriate segregation of duties was in place to perform program changes and (ii) the activities of individuals with access to modify data and make program changes were appropriately monitored. Business process controls (automated and manual) that are dependent on the affected ITGCs were also deemed ineffective because they could have been adversely impacted." The Company reassured investors that it had a remediation plan and was "committed to maintaining a strong internal control environment."

81. The 3Q/23 10Q also stated that the Company was "not a party to any material pending legal proceedings" and that there were "no material changes" from the risk factors previously disclosed in the 2022 10-K.

82. On November 1, 2023, Zynex announced by press release that it would be buying back up to $20 million of the Company's stock. Sandgaard cast the buyback program as "a belief in the strength of our business" and evidence of "our continued focus on stockholder returns":

> **Zynex Announces Share Repurchase Program**
>
> ENGLEWOOD, Colo., Nov. 1, 2023/PRNewswire/--Zynex, Inc. (NASDAQ: ZYXI), an innovative medical technology company specializing in the manufacture and sale of non-invasive medical devices for pain management, rehabilitation, and patient monitoring, today announced that its board of directors approved a program to repurchase up to $20.0 million of the Company's common stock. The program will commence on November 1, 2023, and is scheduled to terminate on the earlier of November 1, 2024, or when the $20.0 million limit is reached.
>
> ***"Zynex recently announced strong earnings," said Thomas Sandgaard, Founder and CEO of Zynex. "This stock buyback program reflects our belief in the strength of our business and our continued focus on stockholder returns."***
>
> The Company may repurchase stock from time to time in open market and negotiated transactions, effective November 1, 2023, and is scheduled to terminate on the earlier of November 1, 2024, or when the $20.0 million limit is reached. These transactions will be made in compliance with the SEC's Rule 10b-18 and subject to market conditions, available liquidity, cash flow, applicable legal requirements, and other factors. The specific prices, numbers of shares, and timing of purchase transactions will be determined by the Company from time to time. This program does not obligate the Company to acquire any particular amount of common stock, and the program may be suspended or discontinued at any time.
>
> The Company expects to finance the purchases with existing cash balances.
>
> Zynex, Inc. had approximately 41.9 million shares issued and 33.9 million shares outstanding as of October 30, 2023.

83. 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 financial 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.

84. In the same press release, the Company also announced that the Board had approved another repurchase program of up to $20 million of the Company's common stock:

> The Company continued its latest stock buyback by repurchasing $14.0 million of its common stock during the fourth quarter.
>
> The Board of Directors approved an additional $20 million share repurchase plan which will commence on March 4, 2024, and terminate on the earlier of March 4, 2025, or when the $20 million limit is reached.
>
> The Company may repurchase stock from time to time in open market and negotiated transactions, effective immediately through the next twelve months. These transactions will be made in compliance with the SEC's Rule 10b-18, subject to market conditions, available liquidity, cash flow, applicable legal requirements, and other factors. The specific prices, numbers of shares, and timing of purchase transactions will be determined by the Company from time to time in its sole discretion. This program does not obligate the Company to acquire any particular amount of common stock, and the program may be suspended or discontinued at any time, including in the event the Company would be deemed to be acquiring its shares under Rule 13e-3 of the Securities Exchange Act of 1934, as amended.
>
> The Company expects to finance the purchases with existing cash balances, which is not expected to have a material impact on capital levels.
>
> Zynex, Inc. had approximately 42.0 million shares issued and 32.2 million shares outstanding as of February 29, 2024.

85. During the earnings call held that day, Sandgaard emphasized the Company's achievement of "$17.8 million in positive cash from operations in 2023, another all time record for the company." Sandgaard also touted the Company's positive results as reason for "aggressively [] buying back stock on the open market":

> ***I'm proud to announce that we also produced $17.8 million in positive cash from operations in 2023, another all-time record for the company. With that, we are able to continue to invest in further sales growth, also in our monitoring division and aggressively be buying back stock on the open market.*** During the fourth quarter, we played an allowance of $6.2 million on accounts receivables, which decreased our net revenue and profitability. We continue to analyze our receivables and collections from payers. This adjustment is an anomaly and a non-recurring

adjustment. Net of this adjustment would close to a negative revenue. Revenue increased to 184.3 million while producing 17 cents of earnings per diluted share.

Dan Moorhead, our CFO, will expand on this adjustment during his portion of the presentation. ***Significant credit goes to our team who were able to drive revenue higher and deliver significant earnings per share and key cash flow as we expand our sales force, invest in our new business signage monitoring, and combat wage inflation like many others in the business. Our sales force has continued to expand the market each quarter, enabled by a strong team and great products. Orders increased 43% for the full year compared to the year before and increased 29% year over year in the fourth quarter. We believe there is considerable runway for us to continue growing orders into the future, leveraging our current portfolio and growing pipeline of existing and exciting new products***.

***

As you know, we have spent the past many years building nationwide sales coverage with 800 territories and we are just shy of 500 of these being populated by now. We are focused on filling all 800 territories and making our sales reps fully productive. It takes up to three years before a new rep is typically fully productive and at this point only half of our sales reps has more than one year in terms of tenure. Having built this strong pipeline to prescribers that see patients in pain and in need of rehab, we are now putting an extra effort into diversifying our revenue stream. ***Our best-selling product, the NexWave, was nearly 85% of all orders received a couple of years ago and only 50% was from all other products such as low back support, bracing products, cervical traction, cold or hot therapy equipment and compression. It is now up to 25% and we have launched an initiative this month with incentives for our sales force to also promote these products more actively.*** We do not expect this to cannibalize our NexWave wave revenue, but rather be an addition to our revenue in the pain management division.

Looking ahead, we're making significant progress building on our holistic, non-invasive approach with at-home pain management devices and diversifying the new products. ***We're rapidly expanding direct sales distribution channels that are delivering accelerating and high recurring revenue as we continue to execute operationally and strategically***. In tandem, we focus on ramping our hospital monitoring division which represents a large and growing market opportunity. ***We expect consistent growth and strong financial performance in 2024 following the double-digit growth we've produced year after year***. We also expect additional catalyst and regulatory milestones during the year as we work to execute on our strong pipeline of new products. We look forward to additional updates in the months to come as we build our sales force and execute on our growth objectives to improve the quality of life for patients suffering from debilitating pain and illnesses and bring long-term value for our shareholders.

86. On the call, CFO Moorhead extolled the Company's "belief in [Zynex's] management team," the Company's "growth opportunities" and management's "commit[ment] to creating shareholder value in the near and long term." Moorhead also noted that "In the fourth quarter, orders increased 29% year over year to the highest number of orders in company history for the seventh consecutive quarter. Net revenue was $47.3 million compared to $48.8 million in the fourth quarter of 2022."

87. 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.

88. 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.

89. 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.

90. During the earnings call for the first quarter of 2024 held on April 30, 2024, Sandgaard touted the Company's "ongoing revenue momentum up 10% from the prior year and being the eighth straight quarter of record high order numbers." He also stated:

> Looking ahead, we're making significant progress building on our holistic, non-invasive approach with at-home pain management devices and also diversifying with new products. ***We are expanding our direct sales force that are delivering accelerating and high recurring revenue as we continue to execute operationally and strategically***. In tandem, we are focused on ramping our hospital monitoring division which represents a large and growing market opportunity. ***We expect consistent growth and strong financial performance also in 2024 following the double digit growth that we have produced year over year***. We also expect additional catalysts and regulatory milestones during the year as we work to execute on our strong pipeline of new products. We look forward to additional updates in the months to come as we build our sales force and execute on our growth objectives to improve the quality of life of patients suffering from debilitating pain or illness and bring long-term value for our shareholders.

91. Similarly, Lucsok also commented on the Company's ongoing efforts to "refine our sales force to maximize productivity and related profitability":

> We continue to refine our sales force ***to maximize productivity and related profitability.*** At the end of Q1, we had approximately 450 sales reps as we continue to ***hold reps to strict targets and exit underperformers***. We also continue to ***thoroughly screen new reps to ensure they meet the criteria which we believe will make them successful***.

92. Moorhead praised the Company's record orders and claimed the "continuing buyback reflects our belief in our management team, the growth opportunities for both divisions, and that we remain committed to creating shareholder value in the near and long term":

> … In the first quarter, ***orders increased 23% year-over-year to the highest number of orders in company history for the eighth consecutive quarter***. Net revenue was $46.5 million compared to $42.2 million in the first quarter of 2023. Device revenue

was $14 million compared to $11.9 million in the first quarter of last year. Supplies revenue was $32.5 million, up from $30.2 million in the first quarter of last year. Gross profit in the first quarter was $37.2 million, or 80 percent of revenue, as compared to $32.9 million, or 78% of revenue in 2023. Sales and marketing expenses were $23.4 million in the first quarter of 2024, compared to $21.2 million in the same period in 2023. G&A expenses were $13.3 million in the first quarter of 2024, compared with $11.4 million last year.

***

In the first quarter, we continued our stock buyback and repurchased $13.4 million of common stock, and over the last 24 months, we've purchased $78.5 million. We continue to balance deploying cash generated between investing in our business and returning cash to shareholders. We believe both offer attractive return profiles. ***The continuing buyback reflects our belief in our management team, the growth opportunities for both divisions, and that we remain committed to creating shareholder value in the near and long term*** ….

93. On April 30, 2024, the Company filed its Form 10-Q for the first quarter of 2024 ("1Q/24 10-Q"), reaffirming the positive results and describing the Company's share repurchases during the Class Period, including the Company's approval of the purchase of 600,000 shares from Defendant Sandgaard for approximately $5.5 million. At page 19 of the 1Q/24 10Q, the Company stated:

On May 10, 2023, the disinterested members of the Board of Directors and Audit Committee approved the purchase of 300,000 shares of the Company's common stock from Thomas Sandgaard, Chairman, President, Chief Executive Officer and Principal Executive Officer, at the closing market price on May 10, 2023 of $9.61 per share for $2.9 million.

On June 13, 2023, the disinterested members of the Board of Directors and Audit Committee approved the purchase of 300,000 shares of the Company's common stock from Thomas Sandgaard, Chairman, President, Chief Executive Officer and Principal Executive Officer, at the closing market price on June 13, 2023, of $8.62 per share for $2.6 million.

On June 13, 2023 the Company announced that its Board of Directors approved a program to repurchase up to $10.0 million of the Company's common stock at prevailing market prices either in the open market or through privately negotiated transactions through June 13, 2024. From the inception of the plan through September 13, 2023, the Company purchased 1,242,892 shares of its common stock

for $10.0 million or an average price of $8.05 per share, which completed this program.

On September 11, 2023, the Company announced that its Board of Directors approved a program to repurchase up to $10.0 million of the Company's common stock at prevailing market prices either in the open market or through privately negotiated transactions through September 13, 2024. From the inception of the plan through October 19, 2023, the Company purchased 1,204,239 shares of its common stock for $10.0 million or an average price of $8.30 per share, which completed this program.

On November 1, 2023, the Company announced that its Board of Directors approved a program to repurchase up to $20.0 million of the Company's common stock at prevailing market prices either in the open market or through privately negotiated transactions through October 31, 2024. From the inception of the plan through December 31, 2023, the Company purchased 1,012,200 shares of its common stock for $9.6 million or an average price of $9.47 per share. During the quarter ended March 31, 2024, the Company purchased 821,000 shares of common stock for $10.4 million or an average price of $11.73, which completed this program.

On March 4, 2024, the Company announced that its Board of Directors approved a program to repurchase up to $20.0 million of the Company's common stock at prevailing market prices either in the open market or through privately negotiated transactions through March 4, 2025. From the inception of the plan through March 31, 2024, the Company purchased 234,015 shares of its common stock for $3.0 million or an average price of $12.83 per share.

94. As to the Company's net revenues for the quarter, the 1Q/24 10Q stated:

Net revenues are comprised of device and supply sales, constrained by estimated third-party payer reimbursement deductions. The reserve for billing allowance adjustments and allowance for uncollectible accounts are adjusted on an ongoing basis in conjunction with the processing of third-party payer insurance claims and other customer collection history. Product device revenue is primarily comprised of sales and rentals of our electrotherapy products and also includes complementary products such as our cervical traction, lumbar support and hot/cold therapy products.

Supplies revenue is primarily comprised of sales of our consumable supplies to patients using our electrotherapy products, consisting primarily of surface electrodes and batteries. Revenue related to both devices and supplies is reported net, after adjustments for estimated third-party payer reimbursement deductions and estimated allowance for uncollectible accounts. The deductions are known throughout the healthcare industry as billing adjustments whereby the healthcare insurers unilaterally reduce the amount they reimburse for our products as

compared to the sales prices charged by us. The deductions from gross revenue also take into account the estimated denials, net of resubmitted billings of claims for products placed with patients which may affect collectability. See our Significant Accounting Policies in Note 2 to the condensed financial statements for a more complete explanation of our revenue recognition policies.

We occasionally 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. We review and evaluate these requests and determine if any refund is appropriate. We also review claims that have been resubmitted or where we are 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***.

Net revenue increased ***$4.4 million or 10% to $46.5 million for the three months ended March 31, 2024, from $42.2 million for the same period in 2023. For the three months ended March 31, 2024, the growth in net revenue from the same period in 2023 is primarily related to a 23% growth in device orders during the three months ended March 31, 2024 and a*** 43% growth in device orders during the year ended December 31, 2023, which resulted from a larger customer base and led to increased sales of consumable supplies.

95. The 1Q/24 10Q further revealed material weaknesses in internal control over financial reporting as of the quarter ended March 31, 2024. It was determined that as of December 31, 2023, the Company's primary change management controls were not designed and implemented effectively to ensure IT program and data changes affecting the Company's financial IT applications and underlying accounting records, are identified, tested, authorized and implemented appropriately to validate that data produced by its relevant IT system(s) were complete and accurate Other Information Technology General Controls, automated process-level controls, and manual controls that are dependent upon the information derived from such financially relevant systems were also determined to be ineffective as a result of such deficiency. Business process controls (automated and manual) that are dependent on the affected ITGCs were

also deemed ineffective because they could have been adversely impacted; Ineffective design and implementation of controls over the valuation of accounts receivable to properly address the risk of material misstatement.

96. The 1Q/24 10Q nevertheless assured investors that the Company was "committed to maintaining a strong internal control environment" and that "management will take comprehensive actions to remediate the material weakness in internal control over financial reporting."

97. The 1Q/24 10Q claimed there were "no material changes" from the risk factors previously disclosed in the 2023 10-K and that the Company was "not a party to any material pending legal proceeding

98. The above statements identified in ¶¶ 47-97 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 on August 21, 2023, Travelers Casualty Insurance Company of America and its affiliates (collectively, "Travelers") commenced an action against Zynex, Sandgaard, Lucsok and Steve Fox in the Superior Court of California alleging that Zynex and the defendants had embarked on a fraudulent overbilling scheme and seeking more than $23 million in damages and civil penalties relating to hundreds of fraudulent claims between 2018 and 2023; (5) that management had prioritized aggressive sales strategies to drive orders over compliance with industry laws, rules and regulations; (6) that the Company was not committed to maintaining a strong internal control environment; (7) that the Company's order growth was a result of illegal

overbilling; (8) 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 (9) 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.

THE TRUTH BEGINS TO EMERGE

99. 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.

100. 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.

101. 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.

102. During the earnings call held on July 25, 2024, Defendant Sandgaard attempted to assuage any investor concerns, maintaining that the Company was actually in "a better position for profitable future growth." He also claimed the Company was "constantly tackling questions of maintaining profitable growth at scale while also maintaining ***a strong culture of compliance***." In relevant part, Sandgaard stated:

> In the second quarter, we saw continued revenue momentum up 11% from the prior year and the ninth straight quarter of record high order numbers. While we continue to produce solid revenue growth, the second quarter and the full year 2024 revenue is less than originally anticipated. ***The decrease in our 2024 revenue versus prior estimates is due to a few factors, all of which long-term will put us in a better position for profitable future growth***.
>
> ***
>
> . . . as we've discussed previously, ***we continue to scrutinize our existing sales reps and discharging reps who aren't performing to our standards. During 2024, we've been pretty aggressive on this front and have decreased our sales force which will have an effect on near-term revenue growth. It's in our best interest to exit under-performers and add sales reps who will be more productive long-term***.
>
> Lastly, at Zynex we continue to make changes to our operations. We've seen extraordinary growth from $13 million in revenue in 2016 to $184 million in 2023. Over that period, our average annual revenue growth was 47%. As we grow, we continue to refine our processes and our practices which helped us grow revenue to now around 200 million may not be optimal as we grow to 400 million and then 800 million subsequently. ***We're constantly tackling questions of maintaining profitable growth at scale while maintaining a strong culture of compliance and optimizing our processes.***

Even with the changes, we were able to drive 20% autogrowths in the period compared to the second quarter in 2023 with 10% fewer reps, which reaffirms our confidence in our core sales reps and their productivity. Revenue per rep on an annualized basis in the second quarter was approximately $485,000 in a increase of 26% over 2023. As our team continues to mature, we expect to drive sales efficiency higher further reassuring you about our performance.

We continue to refine our sales force to maximize productivity and related profitability. In the future, we believe sales for productivity is a relevant KPI for accessing our pain management business. our current scale maintaining profitable growth is paramount and we will drive future additions to the sales team. While we retain a focus on progressing to our long-term goal of 800 sales territories with a million dollars in revenue potential per territory, we recognize that our standard for all webs is high and productivity will not be sacrificed. While [sic]

While we are pleased to see the company continue to grow and diversify its revenue, profitability and cash flow, we recognize that this quarter's growth will not match our prior guidance. ***We believe this is a minor recalibration which was necessary due to our rapid growth and this sets us up for additional growth and profitability in the coming years. We believe that with a diversified revenue stream, institutional quality policies and procedures and a lean and efficient sales team, Zynex is poised to capitalize on the long-term opportunity presented by the 800 sales territories we've discussed in the past***.

With all this in mind, we now expect 2024 net revenue to increase approximately 9% total compared to 2023 to $200 million and diluted earnings per share of at least $0.20 a share. We have also reached some important milestones and see significant progress in our Monitoring Division. I'll now ask Don Gregg, President of Zynex Monitoring Solutions, to provide updates on that business division.

103. In response to a question from an analyst regarding order growth on the NexWave, Sandgaard dismissed any concerns over the Company's guidance reduction:

[ANALYST:] Hi, this is Avion for Shagun. Thanks for taking my question. So first, talking about order growth, you guys mentioned you have 20% year-over-year order growth with your rehabilitation products making up 28% of total orders versus 25% in Q1. Can you comment on the order growth specifically to your flagship product of NexWave? I'm just trying to make sense of the large guidance reduction while your order growth seems to keep breaking records every quarter.

[SANDGAARD:] ***Yeah, the growth on the NexWave device still continues***. ***It's just growing faster on the other product. It's not like a declining order growth on the NexWave.***

104. On the call, Moorhead reiterated that the continuing buyback "reflects our belief in the management team, the growth opportunities" and the Company's commitment to "creating shareholder value in the near and long term." In part, Moorhead stated:

> In the second quarter, we continued our stock buyback and repurchased $2.2 million of common stock, and over the last 24 months, we've purchased $70 million. ***We continue balance to balance deploying cash generated between investing in our business and returning cash to shareholders. We believe both offer attractive return profiles. The continuing buyback reflects our belief in the management team, the growth opportunities for both divisions, and that we remain committed to creating shareholder value in the near and long term.***

105. The Form 10-Q filed for the second quarter of 2024 ("2Q/24 10Q") again disclosed material weaknesses in internal controls over financial reporting as of the quarter ended June 30, 2024:

> It was determined that as of December 31, 2023, the Company's primary change management controls were not designed and implemented effectively to ensure IT program and data changes affecting the Company's financial IT applications and underlying accounting records, are identified, tested, authorized and implemented appropriately to validate that data produced by its relevant IT system(s) were complete and accurate Other Information Technology General Controls, automated process-level controls, and manual controls that are dependent upon the information derived from such financially relevant systems were also determined to be ineffective as a result of such deficiency. Business process controls (automated and manual) that are dependent on the affected ITGCs were also deemed ineffective because they could have been adversely impacted;
>
> Ineffective design and implementation of controls over the valuation of accounts receivable to properly address the risk of material misstatement.
>
> The material weakness identified above did not result in any material misstatements in our financial statements or disclosures, and there were no changes to previously released financial results. Our management concluded that the consolidated financial statements included in the Annual Report on Form 10-K, present fairly, in all material respects, our financial position, results of operations, and cash flows for the periods presented in accordance with accounting principles generally accepted in the United States of America, or U.S. GAAP.
>
> The effectiveness of our internal control over financial reporting as of December 31, 2023, has been audited by Marcum LLP as stated in their report, which is

included in Item 8 of the Company's Annual Report on Form 10-K filed with the SEC on March 12, 2024.

Remediation Plan
Our management is committed to maintaining a strong internal control environment. In response to the identified material weakness above, management will take comprehensive actions to remediate the material weakness in internal control over financial reporting. We are in the process of developing and implementing remediation plans to address the material weakness described above.

106. The 2Q/24 10Q further stated that the Company was "not a party to any material pending legal proceedings" and that there were "no material changes" from the risk factors previously identified in the 2023 10K.

107. 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.

108. The Form 10-Q filed on October 24, 2024 for the third quarter of 2024 ("3Q/24 10Q") repeated these positive results. With respect to pending legal proceedings, the Company merely stated that claims are made against the company "from time to time" and "in the ordinary course of business" as if nothing out of the ordinary had materialized: "***From time to time, claims are made against the Company in the ordinary course of business, which could result in litigation. Claims and associated litigation are subject to inherent uncertainties and unfavorable outcomes could occur, such as monetary damages, fines, penalties, or injunctions prohibiting us from selling our products or engaging in other activities***." Further, the 3Q/24 10Q assured investors that there were "no material changes" from the risk factors previously disclosed in the 2023 10K.

109. During the third quarter of 2024 earnings call, Sandgaard claimed that management had been "successful in diversifying our revenue stream and building a sustainable, profitable company that delivers better pain management and monitoring solutions for patients and doctors as well as hospitals." In part, Sandgaard also stated:

> ***Our continued revenue growth and sustained profitability that has allowed us to reinvest in our business and return capital to shareholders***. I think it's worth reminding the investor community that our 2024 revenue expectation of $200 million is more than 50% higher than we were just three years ago. ***Our continued growth and evolution has afforded us the opportunity to implement greater***

> ***institutional controls across the company to improve operations, collections, and new products introductions as we continue to grow as a business.***

110. Sandgaard also praised the Company's achievement of "higher orders" and explained that "onboarding new salespeople" would lead to increased order growth:

> We're currently sitting at approximately a 17 percent in terms of higher orders in October this year versus October last year. ***As our team continues to mature, we expect to drive sales efficiency even higher***. We're proud of the Payment Management Group's ability to incorporate new products while increasing orders and revenue. ***We're confident that we expedite onboarding new salespeople so we can see increased order growth while maintaining a high standard for productivity.***
>
> ***
>
> At this time, Zynex has a strong sales core that we can build upon. With this in mind, we continue to expect 2024 net revenue to increase approximately 9% compared to last year to 200 million and diluted earnings per share of at least $0.20 per share. We produced $10 million in cash from operations during the first nine months of the year and had a cash balance of $37 million at the end of the third quarter, up from $31 million earlier in the year. We believe that with a diversified product portfolio, multiple sales channels, institutional quality policies and procedures, and a lean and efficient sales team, Zynex is poised to capitalize on the long-term opportunity presented by the 800 potential or defined soil territories that we have discussed in the past. We've reached some important milestones and see significant progress in our monitoring division.

111. The above statements identified in ¶¶99-110 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 on August 21, 2023, Travelers commenced an action against Zynex, Sandgaard, Lucsok and Steve Fox in the Superior Court of California alleging that Zynex and the defendants had embarked on a fraudulent overbilling scheme and seeking more than $23 million in damages and civil penalties relating to hundreds of fraudulent claims between 2018 and

2023; (5) that management had prioritized aggressive sales strategies to drive orders over compliance with industry laws, rules and regulations; (6) that the Company was not committed to maintaining a strong internal control environment; (7) that the Company's order growth was a result of illegal overbilling; (8) 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 (9) 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.

112. 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.

113. 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. Nonetheless, the Board permitted Sandgaard to remain as a director and as Chairman.

THE TRUTH IS REVEALED

114. On July 31, 2025, the truth was partially revealed when the Company announced in a press release that it was "refocus[ing] [its] business strategy toward a more optimized payer mix and work to return Zynex to a strong growth trajectory." During the earnings call that same day, Lucsok acknowledged that the Company had been forced to undertake a "comprehensive realignment" of its sales force and to "revamp [its] sales compensation model" to ensure regulatory compliance:

> ***We've undertaken a comprehensive realignment of our sales force to drive productivity and position the organization for long-term growth***. One of the ***key initiatives has been resetting our sales organization*** to better align with and reflect our business objectives. In parallel, we've restructured the sales team by reducing the overall headcount and exiting sales reps that don't meet our standards. We also streamline our organizational structure by removing redundancies, which has allowed for oversight and support from senior leadership. This leaner structure empowers leadership to stay focused on the metrics that matter for the business and

> performance indicators that enable faster identification of coaching opportunities to ensure every individual representing our company represents our values.
>
> Additionally, ***we revamp our sales compensation model to drive a performance-focused culture that meets the company's objectives for good patient care and experience and regulatory compliance***. High-performing sales employees are now rewarded with increased base pay, while mid-tier performers are incentivized to improve through clearly defined targets. This approach not only drives accountability, but also creates a clear pathway for reps to appropriately grow their earnings if they deliver better business outcomes for better patient experience.
>
> Long-term, our objective remains unchanged. We aim to fully staff all 800 sales territories with highly capable, data-driven representatives. We believe this focused and disciplined strategy will allow us to serve our patients more effectively and deliver consistent, profitable growth.

115. The market did not receive these admissions well. On August 1, 2025, the stock fell from the previous day's $2.23 per share to $1.26 per share, a 45% decline in heavy trading volume. Nonetheless, the market still ascribed some value to the stock, as all the facts were not yet disclosed. Indeed, in the July 31, 2025 Form 10-Q, false hope was created by the claim that a meeting was held with Tricare in April 2025, described as follows: "We held a meeting with Tricare in April 2025 and believe we had good evidence to get payments reinstated." Zynex Second Quarter Form 10-Q, filed July 31, 2025, at 7. In truth and in fact, there was no "good evidence" that could justify the billings made, or support payments resuming.

116. On August 18, 2025, the Company appointed Vikram Bajaj to serve as CFO and Treasurer to replace Moorhead who was resigning effective that day. The Company also appointed John Bibb to serve as Chief Legal Officer and Secretary.

117. As part of its leadership and compliance-focused changes, on October 14, 2025, the Company announced the appointment of Bret Wise, who joined the Board on October 14, 2025, as Chair of the Audit Committee. New CEO Dyson described the appointment as part of the effort

to "refocus the Zynex mission and vision around patient and customer success with a renewed commitment to integrity and compliance."

118. On October 14, 2025, the Company disclosed that Lucsok had resigned her position as Chief Commercial Officer of the Company, effective as of October 10, 2025.

119. On November 17, 2025, in connection with the Company's announcement of results for the third quarter of 2025, CEO Dyson emphasized that the Company's "new management team [had] worked tirelessly to address the business and compliance challenges at Zynex while creating a new future for all our company."

120. On December 15, 2025, Zynex announced that it had filed a voluntary petition for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Southern District of Texas. Through this filing, investors knew for certain that Zynex was bankrupt, and that their investment value was completely lost. The risk created by the wrongful acts described above had now fully materialized. The stock declined in reaction by roughly 50%, to close at 34 cents on December 16, 2025.

121. As noted *supra* and attached hereto as Exhibit A, a federal indictment was unsealed on or about January 21, 2026. The facts therein detailed an appalling fraud stretching back many years, and they support a conclusion that Zynex stock during the Class Period was worthless or near worthless.

122. On January 23, 2026, newly-appointed Zynex Chief Legal Officer John Bibb stated;

> "Over the last six months, Zynex has executed a complete overhaul of its leadership, compliance program, billing practices, and operational controls," Under entirely new leadership, we have delivered on our commitment to the highest integrity in our business practices and implemented rigorous compliance oversight."

CLASS ACTION ALLEGATIONS

123. 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 February 25, 2021 to December 15, 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.

124. 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.

125. 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.

126. 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.

127. 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.

128. 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

129. 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.

130. During the Class Period, Defendants by words or deeds 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.

131. At all relevant times, the material misrepresentations and omissions, and deceptive actions, 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, or approved deceptive actions. These material misstatements and/or omissions and deceptive actions 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 or deceptive actions 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

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

133. 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

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

135. In 2023 Sandgaard sold 624,000 shares of Zynex stock for more than $5.67 million and Moorhead sold 85,000 shares for nearly $700,000. In 2025, Sandgaard sold 1,700,000 additional shares at inflated prices, for $4.94 million in proceeds. In May 2023 Sandgaard announced an intention to sell approximately $20 million worth of his shares, but quickly abandoned the attempt due, apparently, to an adverse market reaction when the plan was announced. In addition, in 2023, Zynex relied upon an inflated stock price to successfully

complete a crucial convertible note offering, yielding over $50 million. All of this adds, holistically, to an inference of motive and scienter.

APPLICABILITY OF PRESUMPTION OF RELIANCE
(FRAUD-ON-THE-MARKET DOCTRINE)

136. 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 January 9, 2023, the Company's share price closed at a Class Period high of $16.80 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.

137. During the Class Period, the artificial inflation of Zynex's shares was caused by the material misrepresentations and/or omissions or deceptive conduct particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants Sandgaard and Moorhead 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 as well as Defendants Cress, Disbrow and Michaels' participation in the scheme to conceal Zynex's true condition, 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 and scheme to prop up the Company's stock and defraud the market 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.

138. 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.

139. 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.

140. 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

141. 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 CAUSE OF ACTION

Against Defendants Sandgaard, Lucsok and Moorhead for Violations of Section 10(b) of The Exchange Act and Rule 10b-5 Promulgated Thereunder

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

143. During the Class Period, Zynex and Defendants Sandgaard, Lucsok and Moorhead 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, Zynex Defendants, and each defendant, took the actions set forth herein.

144. Zynex and 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. Defendants Sandgaard and Moorhead are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

145. Zynex and Defendants Sandgaard, Lucsok, and Moorhead, 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.

146. Zynex and Defendants Sandgaard, Lucsok and Moorhead 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.

147. Defendants Sandgaard, Lucsok and Moorhead's primary liability and controlling person liability arises from the following facts: (i) the 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.

148. Defendants Sandgaard, Lucsok and Moorhead 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 Sandgaard, Lucsok and Moorhead's 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.

149. 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 Zynex and Defendants Sandgaard, Lucsok and Moorhead, 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 Zynex and Defendants Sandgaard, Lucsok and Moorhead 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.

150. 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 Zynex or 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.

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

152. 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 CAUSE OF ACTION

Against Defendants Sandgaard, Lucsok and Moorhead for Violations of Section 20(a) of The Exchange Act

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

154. The actions of the top officers of Zynex are attributed to Zynex, and if they violated Section 10(b) and Rule 10b-5, Zynex did as well. The allegations of this Company demonstrate and establish Section 10(b) and Rule 10b-5 violations by Zynex, although no action can proceed against Zynex due to its bankruptcy. However, the individuals named herein have not declared bankruptcy, and they therefore may be held liable as controlling persons for the violations committed by Zynex, and otherwise.

155. Defendants Sandgaard, Lucsok and Moorhead 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, Defendants Sandgaard, Lucsok and Moorhead 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. Defendants Sandgaard, Lucsok and Moorhead 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.

156. In particular, Defendants Sandgaard, Lucsok and Moorhead 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.

157. As set forth above, Defendants Sandgaard, Lucsok and Moorhead each violated Section10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Defendants Sandgaard, Lucsok and Moorhead are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' Sandgaard, Lucsok and Moorhead's wrongful conduct in the name of Zynex and/or their own names, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

THIRD CAUSE OF ACTION

Against Defendants Cress, Disbrow and Michaels for
Violations of Section 10(b)(5) Subsections (a) and (c) of The Exchange Act

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

159. Defendants named in this Third Cause of Action were all members of the Zynex Audit Committee.

160. Zynex's Audit Committee Charter mandates that members "oversee the Company's accounting and financial reporting processes and the audit of the Company's financial statements." It specifies that members must be independent, financially literate, and include at least one "audit committee financial expert" per SEC regulations. Michaels, as Chair, and Disbrow and Cress, as members, were responsible for ensuring accurate financial disclosures and robust internal controls.

161. The Audit Committee Charter requires the Committee: "To review and discuss with management and the Company's independent auditors: *the Company's earnings press releases, including the type of information to be included* and its presentation and the use of any pro forma, adjusted or other non-GAAP financial information; and *any financial information and earnings guidance provided to analysts and ratings agencies, including the type of information to be disclosed and type of presentation to be made*." (Emphasis added). It may be inferred that the Audit Committee members performed the duties they claimed they were performing.

162. Subsections (a) and (c) make it illegal "to employ any device, scheme, or artifice to defraud" and "to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security." Defendants Cress, Disbrow and Michaels are liable under Subsections (a) and (c) of Rule 10b-5.

163. During the Class Period, Defendants Cress, Disbrow and Michaels employed a plan, scheme, and course of business to conceal Zynex's financial well-being and prospects from the investing public and support the artificially inflated price of its securities. As members of the Board and Audit Committee, there is a strong inference that they knew of serious, credible accusations of rampant fraud and overbilling from companies such as Travelers, as early as August 2023, when that prominent insurer's sealed complaint was filed in California, and from the highly public May 2023 Capitol Forum exposé.

164. Instead of stepping in to halt the fraud and alert the investors, Defendants Cress, Disbrow and Michaels deceived them further with *conduct* designed to reassure them, including repurchase programs adopted in November 2023 and March 2024. They topped this off with a repurchase of 1,700,000 shares directly from Defendant Sandgaard on March 13, 2025 at an inflated price, resulting in proceeds to Sandgaard of $4.94 million. And yet, when approving that repurchase, they may be inferred to have known of the revelations set forth in the June 2024 *STAT* article, and of the extent of the Tricare crisis.

165. At the time of the alleged 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 Zynex or Defendants and instead perpetuated through Defendants Cress, Disbrow and Michaels' approval of the share repurchases, 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.

166. The loss suffered by Plaintiff and the Class was foreseeable and a direct result of the establishment, promotion, and expansion of the schemes by Defendants Cress, Disbrow and Michaels.

167. By virtue of the foregoing, Defendants Cress, Disbrow and Michaels violated Section 10(b)(5) Subsections (a) and (c) of the Exchange Act.

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.