



October 17, 2011, both dates inclusive (the “Class Period”), seeking to recover damages caused by defendants’ violations of the federal securities laws and to pursue remedies under § 10(b) Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder against the Company and certain of its top officials.

2. Trans1 designs, develops, and markets medical devices to treat degenerative disc disease affecting the lower lumbar region of the spine.

3. On October 18, 2011, after the market closed, the Company disclosed that it had received a subpoena from the Department of Health and Human Services (“DHHS”), Office of Inspector General. The subpoena requested documents for the period January 1, 2008 through October 6, 2011. The subpoena was issued under the authority of the federal healthcare fraud and false claims statutes.

4. On these revelations, Trans1 shares declined \$1.27 or more than 40%, to close at \$1.85 on October 18, 2011.

5. Throughout the Class Period, Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that:(1) the Company was not in compliance with federal healthcare fraud and false claim statutes; (2) the Company engaged in improper reimbursement practices; (3) the Company lacked adequate internal and financial controls; and (4) as a result of the foregoing, the Company’s statements were materially false and misleading at all relevant times.

6. 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**

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

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

9. Venue is proper in this District pursuant to §27 of the Exchange Act, 15 U.S.C. §78aa and 28 U.S.C. §1391(b) as Trans1's principal place of business is located within this District.

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

## **PARTIES**

11. As set forth in the attached certification, Plaintiff purchased Trans1 securities at artificially inflated prices during the Class Period and has been damaged thereby.

12. Defendant Trans1 is a Delaware corporation, with its principal place of business located at 301 Government Center Drive, Wilmington, N.C. 28403. Trans1's common stock trades on the NASDAQ Global Market ("NASDAQ") under the ticker symbol "TSON."

13. Defendant Kenneth Reali ("Reali") has been the Company's Chief Executive Officer ("CEO") and a director on the Board of Directors ("Board") since January 4, 2011 and President since January 2010. Defendant Reali served as the Company's Chief Operating Officer from January 4, 2010 to January 2011.

14. Defendant Joseph Slattery (“Slattery”) has been the Company’s Executive Vice President and Chief Financial Officer (“CFO”) since April 2010. Defendant Slattery served as a director on the Board from November 2007 through April 2010.

15. Defendant Richard Randall (“Randall”) served as the Company’s Chief Executive Officer from June 2002 to January 2011 and served as its President from June 2002 until January 2010. Defendant Randall has been a member on the Company’s Board since June 2002 and has served as the Company’s Executive Chairman of the Board since January 4, 2011.

16. Defendant Michael Luetkemeyer (“Luetkemeyer”) served as the Company’s Chief Financial Officer from April 2007 through March 2010.

17. The defendants referenced above in ¶¶ 13 through 16 are sometimes referred to herein as the “Individual Defendants.”

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

18. Trans1 is a medical device company focused on designing, developing and marketing products that implement its minimally invasive surgical approach to treat degenerative conditions of the spine affecting the lower lumbar region. The Company currently markets the AxiaLIF® family of products for single and multilevel lumbar fusion, the Vectre™ and Avatar™ lumbar posterior fixation systems, and Bi-Ostetic™ bone void filler, a biologics product. The Company also markets products that may be used with its surgical approach, including bowel retractors, a bone graft harvesting system and additional discectomy tools. The AxiaLIF 1L product was commercially released in January 2005. The AxiaLIF 2L™ product was commercially released in Europe in the fourth quarter of 2006 and in the United States in the second quarter of 2008. The AxiaLIF 2L product was discontinued in 2010 after the Company

launched its AxiaLIF 2L+™ product in July 2010. The Company commercially launched its next generation Vectre facet screw system in April 2010. In the first quarter of 2010, the Company entered into agreements to distribute Avatar, a pedicle screw system, and Bi-Ostetic bone void filler, a biologics product. In March 2011, the Company received 510(k) clearance for its next generation AxiaLIF 1L+ product and made it commercially available in a limited market release. The Company sells its products directly to hospitals and surgical centers in the United States and certain European countries, and to independent distributors elsewhere.

**Materially False and Misleading  
Statements Issued During the Class Period**

19. On February 21, 2008, the Company issued a press release announcing its financial results for the fourth quarter and year ended December 31, 2007. For the fourth quarter, the Company reported a net loss of \$2.24 million, or \$0.14 diluted loss per share (“LPS”) and revenue of \$4.96 million, as compared to a net loss of \$2.5 million, or \$1.02 diluted LPS and revenue of \$2.5 million for the same period a year ago. For the year, the Company reported a net loss of \$95 million, or \$1.46 diluted LPS and revenue of \$16 million, as compared to a net loss of \$9.5 million, or \$3.91 diluted LPS and revenue of \$6 million for the same period a year ago.

20. On March 25, 2008, the Company filed an annual report for the period ended December 31, 2007 on Form 10-K with the SEC, which was signed by, among others, Defendants Randall, Luetkemeyer and Slattery, and reiterated the Company’s previously announced annual financial results and financial position. In addition, the Form 10-K contained signed certifications by Defendants Randall and Luetkemeyer, stating that the financial information contained in the Form 10-K was accurate and that they disclosed any material changes to the Company’s internal control over financial reporting.

21. The 10-K represented the following:

Surgeons use the American Medical Association's Current Procedural Terminology, or CPT, system to bill payors for the AxiaLIF procedure. CPT codes describe the services and procedures provided for patients to third party payors so that physicians may be reimbursed. For a typical AxiaLIF procedure, surgeons may use between three and six different CPT codes. In February 2008, the National Association of Spine Surgeons Reimbursement Coding Committee, which is charged to monitor new procedures and devices and how they should be reimbursed, proposed a Category III CPT code for the access portion of the current AxiaLIF procedure (transacral lumbar fusion) to the American Medical Association. Given the growing adoption of AxiaLIF, and the availability of peer-reviewed research later this year, we plan to move forward with an application for a Category I CPT code for the access portion of the AxiaLIF procedure this year. If successful, this Category I code would be effective in 2010. In the interim, physicians are still able to be reimbursed for the access portion of AxiaLIF procedures by linking to a Category I CPT code for a procedure of similar workscope and complexity. Should a Category III code be assigned to the access portion of the AxiaLIF procedure, we will work diligently with the private payor community to ensure continued patient access to AxiaLIF. Private payors typically use CPT codes as a benchmark when setting their own reimbursement rates for physicians.

22. On May 1, 2008, the Company issued a press release announcing its financial results for the first quarter ended March 31, 2008. For the quarter, the Company reported a net loss of \$2.44 million, or \$0.12 diluted LPS and revenue of \$6 million, as compared to a net loss of \$1.7 million, or \$0.39 diluted LPS and revenue of \$3 million for the same period a year ago.

23. On May 2, 2008, the Company filed a quarterly report for the period ended March 31, 2008 on Form 10-Q with the SEC, which was signed by Defendants Randall and Luetkemeyer and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Randall and Luetkemeyer, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

24. On July 31, 2008, the Company issued a press release announcing its financial results for the second quarter ended June 30, 2008. For the quarter, the Company reported a net loss of \$5 million, or \$0.26 diluted LPS and revenue of \$6 million, as compared to a net loss of \$2 million, or \$0.98 diluted LPS and revenue of \$4 million for the same period a year ago.

25. On August 8, 2008, the Company filed a quarterly report for the period ended June 30, 2008 on Form 10-Q with the SEC, which was signed by Defendants Randall and Luetkemeyer and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Randall and Luetkemeyer, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

26. On October 30, 2008, the Company issued a press release announcing its financial results for the third quarter ended September 30, 2008. For the quarter, the Company reported a net loss of \$5 million, or \$0.23 diluted LPS and revenue of \$6 million, as compared to a net loss of \$2 million, or \$0.87 diluted LPS and revenue of \$4 million for the same period a year ago.

27. On November 8, 2008, the Company filed a quarterly report for the period ended September 30, 2008 on Form 10-Q with the SEC, which was signed by Defendants Randall and Luetkemeyer and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Randall and Luetkemeyer, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

28. On February 23, 2009, the Company issued a press release announcing its financial results for the fourth quarter and year ended December 31, 2008. For the fourth quarter, the Company reported a net loss of \$4.5 million, or \$0.22 diluted LPS and revenue of \$7.35 million, as compared to a net loss of \$2 million, or \$0.14 diluted LPS and revenue of \$5 million for the same period a year ago. For the year, the Company reported a net loss of \$17 million, or \$0.84 diluted LPS and revenue of \$25 million, as compared to a net loss of \$9 million, or \$1.46 diluted LPS and revenue of \$16 million for the same period a year ago.

29. On March 13, 2009, the Company filed an annual report for the period ended December 31, 2008 on Form 10-K with the SEC, which was signed by, among others, Defendants Randall, Luetkemeyer and Slattery, and reiterated the Company's previously announced annual financial results and financial position. In addition, the Form 10-K contained signed certifications by Defendants Randall and Luetkemeyer, stating that the financial information contained in the Form 10-K was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

30. The 10-K represented the following:

Surgeons use the American Medical Association's Current Procedural Terminology, or CPT, system to bill payors for the AxiaLIF procedure. CPT codes describe the services and procedures provided for patients to third party payors so that physicians may be reimbursed. Effective January 1, 2009, AxiaLIF has a dedicated Category III CPT code (0195T-arthrodesis, presacralinterbody technique, including instrumentation). Unlike Category I CPT codes, Category III codes do not have a set value which physicians use to set their charge for a particular code. Additionally, some payors view Category III codes as "investigational" or "experimental" and may not reimburse them. However, AxiaLIF adoption continues to grow and unlike many new or novel procedures, AxiaLIF is an access variation on the current standard of care (spinal fusion). As the availability of peer-reviewed research continues to grow, we will diligently work with the private payor community to ensure continued patient access to the procedure. Furthermore, AxiaLIF is only one of up to 10 different CPT codes physicians may submit to capture the entirety of a spinal fusion procedure lessening the impact should payment for our code be initially denied.

31. On April 27, 2009, the Company issued a press release announcing its financial results for the first quarter ended March 31, 2009. For the quarter, the Company reported a net loss of \$5 million, or \$0.25 diluted LPS and revenue of \$9 million, as compared to a net loss of \$2 million, or \$0.12 diluted LPS and revenue of \$6 million for the same period a year ago.

32. On May 6, 2009, the Company filed a quarterly report for the period ended March 31, 2009 on Form 10-Q with the SEC, which was signed by Defendants Randall and Luetkemeyer and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Randall and Luetkemeyer, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

33. On July 31, 2009, the Company issued a press release announcing its financial results for the second quarter ended June 30, 2009. For the quarter, the Company reported a net loss of \$7 million, or \$0.33 diluted LPS and revenue of \$8 million, as compared to a net loss of \$5 million, or \$0.26 diluted LPS and revenue of \$6 million for the same period a year ago.

34. On August 6, 2009, the Company filed a quarterly report for the period ended June 30, 2009 on Form 10-Q with the SEC, which was signed by Defendants Randall and Luetkemeyer and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Randall and Luetkemeyer, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

35. On October 29, 2009, the Company issued a press release announcing its financial results for the third quarter ended September 30, 2009. For the quarter, the Company reported a net loss of \$5.6 million, or \$0.27 diluted LPS and revenue of \$7 million, as compared to a net loss of \$5 million, or \$0.23 diluted LPS and revenue of \$6 million for the same period a year ago.

36. On November 6, 2009, the Company filed a quarterly report for the period ended September 30, 2009 on Form 10-Q with the SEC, which was signed by Defendants Randall and Luetkemeyer and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Randall and Luetkemeyer, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

37. On February 23, 2010, the Company issued a press release announcing its financial results for the fourth quarter and year ended December 31, 2009. For the fourth quarter, the Company reported a net loss of \$5.7 million, or (\$0.28) diluted LPS and revenue of \$6 million, as compared to a net loss of \$4.5 million, or (\$0.22) diluted LPS and revenue of \$7.35 million for the same period a year ago. For the year, the Company reported a net loss of \$23 million or \$1.13 diluted LPS and revenue of \$30 million, as compared to a net loss of \$17 million, or \$0.84 diluted LPS and revenue of \$25 million for the same period a year ago.

38. On March 12, 2010, the Company filed an annual report for the period ended December 31, 2009 on Form 10-K with the SEC, which was signed by, among others, Defendants Randall, Luetkemeyer and Slattery, and reiterated the Company's previously announced annual financial results and financial position. In addition, the Form 10-K contained

signed certifications by Defendants Randall and Luetkemeyer, stating that the financial information contained in the Form 10-K was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

39. The 10-K represented the following:

Surgeons use the American Medical Association's Current Procedural Terminology, or CPT, system to bill payors for the AxiaLIF procedure. CPT codes describe the services and procedures provided for patients to third party payors so that physicians may be reimbursed. Effective January 1, 2009, the AMA implemented a Category III code which may describe the work involved in treating some AxiaLIF patients. Unlike Category I CPT codes, Category III codes do not have a set value which physicians use as a benchmark for setting their fee. Additionally, some payors view Category III codes as "investigational" or "experimental" and may not reimburse them. However, AxiaLIF adoption continues to grow and unlike many new or novel procedures, AxiaLIF is an access variation on the current standard of care (spinal fusion) and surgeons should code appropriately for the work they perform based on the unique clinical decision making, time, risk, and diagnosis of each patient.

40. On May 4, 2010, the Company issued a press release announcing its financial results for the first quarter ended March 31, 2010. For the quarter, the Company reported a net loss of \$6 million, or \$0.31 diluted LPS and revenue of \$6.7 million, as compared to a net loss of \$5 million, or \$0.25 diluted LPS and revenue of \$8.7 million for the same period a year ago.

41. On May 10, 2010, the Company filed a quarterly report for the period ended March 31, 2010 on Form 10-Q with the SEC, which was signed by Defendants Randall and Slattery and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Randall and Slattery, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting

42. On August 5, 2010, the Company issued a press release announcing its financial results for the second quarter ended June 30, 2010. For the quarter, the Company reported a net loss of \$4 million, \$0.18 diluted LPS and revenue of \$7 million, as compared to a net loss of \$7 million, or \$0.33 diluted LPS and revenue of \$8 million for the same period a year ago.

43. On August 6, 2010, the Company filed a quarterly report for the period ended June 30, 2010 on Form 10-Q with the SEC, which was signed by Defendants Randall and Slattery and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Randall and Slattery, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

44. On November 9, 2010, the Company issued a press release announcing its financial results for the third quarter ended September 30, 2010. For the quarter, the Company reported a net loss of \$3.8 million, or (\$0.18) diluted LPS and revenue of \$6 million, as compared to a net loss of \$5.6 million, or (\$0.27) diluted LPS and revenue of \$7 million for the same period a year ago.

45. On November 11, 2010, the Company filed a quarterly report for the period ended September 30, 2010 on Form 10-Q with the SEC, which was signed by Defendants Randall and Slattery and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Randall and Slattery, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

46. On February 22, 2011, the Company issued a press release announcing its financial results for the fourth quarter and year ended December 31, 2010. For the fourth quarter, the Company reported a net loss of \$5.7 million, or \$0.27 diluted LPS and revenue of \$5.9 million, as compared to a net loss of \$5.7 million, or \$0.28 diluted LPS and revenue of \$6.3 million for the same period a year ago. For the year, the Company reported a net loss of \$19.5 million, or \$0.94 diluted LPS and revenue of \$26.2 million, as compared to a net loss of \$23.2 million, or \$1.13 diluted LPS and revenue of \$30 million for the same period a year ago.

47. On March 14, 2011, the Company filed an annual report for the period ended December 31, 2010 on Form 10-K with the SEC, which was signed by, among others, Defendants Reali, Slattery and Randall, and reiterated the Company's previously announced annual financial results and financial position. In addition, the Form 10-K contained signed certifications by Defendants Reali and Slattery, stating that the financial information contained in the Form 10-K was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

48. The 10-K represented the following:

*Drive Reimbursement for Our Procedure.* We will continue to work with our surgeon customers to generate published, peer reviewed clinical literature that demonstrates our procedure's clinical efficacy and safety. We will also work to leverage this data along with our AxiaLIF surgeon advocates, with payors to secure positive coverage decisions for the reimbursement of the AxiaLIF procedure.

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Surgeons use the American Medical Association's Current Procedural Terminology, or CPT, system to bill payors for the AxiaLIF procedures. CPT codes describe the services and procedures provided for patients to thirdpartypayors so that physicians may be reimbursed. Effective January 1, 2009, the AMA implemented a Category III code which may describe the work involved in treating some AxiaLIF patients. Unlike Category I CPT codes, Category III codes do not have a set value which physicians use as a benchmark for setting their fee. Additionally, some payors view

Category III codes as “investigational” or “experimental” and may not reimburse them. However, unlike many new or novel procedures, AxiaLIF is an access variation on the current standard of care (interbody spinal fusion) and has been performed in over 10,000 U.S. procedures. In December 2010, Humana Inc. made a decision to cover the AxiaLIF procedures and reimburse physicians for use of the Category III Code. The reimbursement rates are consistent with reimbursement levels for performing other interbody fusion procedures. We intend to gain further positive reimbursement coverage decisions with other payors in the coming quarters by utilizing published clinical literature and leveraging the support of physicians that perform our procedures. Discussions are normally held with medical directors representing the payors to inform them that our approach to interbody fusion is not “investigational” or “experimental.”

49. On May 12, 2011, the Company issued a press release announcing its financial results for the first quarter ended March 31, 2011. For the quarter, the Company reported a net loss of \$5.7 million, or \$0.27 diluted LPS and revenue of \$5.1 million, as compared to a net loss of \$6.4 million, or \$0.31 diluted LPS and revenue of \$6.7 million for the same period a year ago.

50. On May 16, 2011, the Company filed a quarterly report for the period ended March 31, 2011 on Form 10-Q with the SEC, which was signed by Defendants Reali and Slattery and reiterated the Company’s previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Reali and Slattery, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company’s internal control over financial reporting.

51. On August 9, 2011, the Company issued a press release announcing its financial results for the second quarter ended June 30, 2011. For the quarter, the Company reported a net loss of \$4.3 million, or \$0.21 diluted LPS and revenue of \$5.3 million, as compared to a net loss of \$3.6 million, or \$0.18 diluted LPS and revenue of \$7.2 million for the same period a year ago.

52. On August 11, 2011, the Company filed a quarterly report for the period ended June 30, 2011 on Form 10-Q with the SEC, which was signed by Defendants Reali and Slattery

and reiterated the Company's previously announced quarterly financial results and financial position. In addition, the Form 10-Q contained signed certifications by Defendants Reali and Slattery, stating that the financial information contained in the Form 10-Q was accurate and that they disclosed any material changes to the Company's internal control over financial reporting.

53. On September 21, 2011, the Company announced that it had priced a public offering of 6.2 million shares of its common stock at a price of \$3.25 per share. The gross proceeds to Trans1 from the sale of shares, before expenses and any over-allotment exercise were expected to be \$20,150,000.

54. The statements referenced in ¶¶19 -53above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts, which were known to defendants or recklessly disregarded by them, that: (1) the Company was not in compliance with federal healthcare fraud and false claim statutes; (2) the Company engaged in improper reimbursement practices; (3) the Company lacked adequate internal and financial controls; and (4) as a result of the foregoing, the Company's statements were materially false and misleading at all relevant times.

#### **THE TRUTH BEGINS TO EMERGE**

55. On October 17, 2011, after the market closed, the Company filed a Form 8-K with the SEC, where it disclosed the following:

On or about October 6, 2011, Trans1 Inc. (the "Company") received a subpoena issued by the Department of Health and Human Services, Office of Inspector General, under the authority of the federal healthcare fraud and false claims statutes. The subpoena seeks documents for the period January 1, 2008 through October 6, 2011. The Company is cooperating with the government's request and is in the process of responding to the subpoena. The Company is unable to predict what action, if any, might be taken in the future by the Department of Health and Human Services, Office of Inspector General or other governmental authorities as a result of the matters related to this subpoena or what impact, if any, the outcome of

these matters might have on its consolidated financial position, results of operations, or cash flows. No claims have been made against the Company at this time.

56. On October 18, 2011, McNicoll Lewis Vlak (“MLV”) stated in an analyst report to clients that the subpoena “included 19 items ranging from patient names to serial lot traceability to reimbursement communications with physicians.” Further, noted the following:

Management mentioned in our conversation that they have ‘let so many reps go in the last year and a half’ (due to downsizing), which makes us think the subpoena could perhaps stem from allegations by a disgruntled former employee. Another speculation would be since about half of Trans1’s revenues come from physicians still using the ALIF code (which provides reimbursement), rather than the designated T-code (which does not provide reimbursement), the issue could be due to reimbursement communications, although we think that the Company has been making strong efforts to educate physicians about correct coding. Note that ultimately the decision regarding which code to use lies in the hands of the physician.

57. On this news, Trans1’s securities plummeted \$1.27 or 40.7%, to close at \$1.85 on October 18, 2011.

#### **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

58. 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 those who purchased or otherwise acquired Trans1 securities during the Class Period (the “Class”), and were damaged thereby. Excluded from the Class are defendants herein, 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.

59. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Trans1 securities were actively traded on the

NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Trans1 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.

60. 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.

61. 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. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

62. 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:

- whether the federal securities laws were violated by defendants' acts as alleged herein;
- whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Trans1;
- whether the Individual Defendants caused Trans1 to issue false and misleading financial statements during the Class Period;
- whether defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Trans1 securities during the Class Period were artificially inflated because of the defendants' conduct complained of herein; and

- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

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

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

- defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Trans1 securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased and/or sold Trans1 securities between the time the defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

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

## COUNT I

### **(Against All Defendants For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder)**

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

67. This Count is asserted against defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

68. During the Class Period, defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Trans1 securities; and (iii) cause Plaintiff and other members of the Class to purchase Trans1 securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

69. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Trans1 securities. Such reports, filings, releases and statements were

materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Trans1's finances and business prospects.

70. By virtue of their positions at Trans1, defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to defendants. Said acts and omissions of defendants were committed willfully or with reckless disregard for the truth. In addition, each defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.

71. Defendants were personally motivated to make false statements and omit material information necessary to make the statements not misleading in order to personally benefit from the sale of Trans1 securities from their personal portfolios.

72. Information showing that defendants acted knowingly or with reckless disregard for the truth is peculiarly within defendants' knowledge and control. As the senior managers and/or directors of Trans1, the Individual Defendants had knowledge of the details of Trans1 internal affairs.

73. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of Trans1. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Trans1's

businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Trans1 securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Trans1's business and financial condition which were concealed by defendants, Plaintiff and the other members of the Class purchased Trans1 securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by defendants, and were damaged thereby.

74. During the Class Period, Trans1 securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased shares of Trans1 securities at prices artificially inflated by defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased said securities, or would not have purchased them at the inflated prices that were paid. At the time of the purchases by Plaintiff and the Class, the true value of Trans1 securities were substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Trans1 securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

75. By reason of the conduct alleged herein, defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

76. 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, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

## **COUNT II**

### **(Violations of Section 20(a) of the Exchange Act Against The Individual Defendants)**

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

78. During the Class Period, the Individual Defendants participated in the operation and management of Trans1, and conducted and participated, directly and indirectly, in the conduct of Trans1's business affairs. Because of their senior positions, they knew the adverse non-public information about Trans1's misstatement of income and expenses and false financial statements.

79. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Trans1's financial condition and results of operations, and to correct promptly any public statements issued by Trans1 which had become materially false or misleading.

80. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Trans1 disseminated in the marketplace during the Class Period concerning Trans1's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Trans1 to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Trans1

within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Trans1 securities.

81. Each of the Individual Defendants, therefore, acted as a controlling person of Trans1. By reason of their senior management positions and/or being directors of Trans1, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Trans1 to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Trans1 and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

82. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Trans1.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment against defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
- B. Requiring defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

This the 24th day of January, 2012.

