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SOUTHERN DISTRICT OF CALIFORNIA
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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 CARIDAD MILLER, Derivatively On Behalf
of INFOSONICS CORPORATION,

11 Plaintiff,

12 vs.

13 JOSEPH RAM, JEFFREY A. KLAUSNER,
14 JOSEPH C. MURGO, ABRAHAM G.
15 ROSLER, RANDALL P. MARX, ROBERT S.
PICOW AND KIRK A WALDRON,

16 Defendants,

17 -and-

18 INFOSONICS CORPORATION, a Maryland
19 corporation,

20 Nominal Defendant.

Case **06 CV 1336 LAB BLM**
VERIFIED SHAREHOLDER DERIVATIVE
COMPLAINT FOR BREACH OF
FIDUCIARY DUTY, ABUSE OF
CONTROL, GROSS MISMANAGEMENT,
WASTE OF CORPORATE ASSETS,
UNJUST ENRICHMENT AND
VIOLATIONS OF THE SARBANES-
OXLEY ACT OF 2002 AND THE
SECURITIES EXCHANGE ACT OF 1934

DEMAND FOR JURY TRIAL

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1 Plaintiff, by her attorneys, submits this Verified Shareholder Derivative Complaint (the
2 "Complaint") against the defendants named herein.

3 NATURE OF THE ACTION

4 1. This is a shareholder derivative action brought by a shareholder of InfoSonics
5 Corporation ("InfoSonics" or the "Company"), on behalf of the Company against certain of its
6 officers and directors seeking to remedy defendants' violations of state and federal law, including
7 breaches of fiduciary duties, abuse of control, gross mismanagement, waste of corporate assets,
8 unjust enrichment, violations of California Corporations Code and violations of section 304 of the
9 Sarbanes-Oxley Act of 2002 ("SOX §304") and section 14(a) of the Securities Exchange Act of
10 1934 (the "Exchange Act") that occurred between January 2006 and the present (the "Relevant
11 Period") and that have caused substantial losses to InfoSonics and other damages, such as to its
12 reputation and goodwill.

13 JURISDICTION AND VENUE

14 2. This court has jurisdiction over this action pursuant to 28 U.S.C §1331 in that
15 plaintiff's claims arise in part out of the laws of the United States, including SOX §304 and section
16 14(a) of the Exchange Act.

17 2. This Court also has subject matter jurisdiction over the pendant state law claims
18 asserted herein pursuant to 28 U.S.C. §1367, since this statute provides that the district court has
19 supplemental jurisdiction over all other claims where, as here, they are so related to claims in the
20 action within the original jurisdiction of the Court, that they form part of the same case or
21 controversy.

22 3. This Court retains general jurisdiction over each named defendant who is a resident of
23 California. Additionally, this Court has specific jurisdiction over each named non-resident
24 defendant because these defendants maintain sufficient minimum contacts with California to render
25 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.
26 InfoSonics is a citizen of California, and because the allegations contained herein are brought
27 derivatively on behalf of InfoSonics, defendants' conduct was purposefully directed at California.
28 Defendants' conduct arose out of California, where InfoSonics maintains its corporate headquarters.

1 Finally, exercising jurisdiction over any nonresident defendants is reasonable under these
2 circumstances.

3 4. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because one or more of
4 the defendants either resides in or maintains executive offices in this District, and a substantial
5 portion of the transactions and wrongs that are the subject of this Complaint, including the
6 defendants' primary participation in the wrongful acts detailed herein, aiding and abetting, and
7 conspiracy in violation of fiduciary duties owed to InfoSonics, occurred in substantial part in this
8 District. Finally, defendants have received substantial compensation in this District by doing
9 business here and engaging in numerous activities that had an effect in this District.

10 SUMMARY OF THE ACTION

11 5. InfoSonics is a distributor of wireless handsets and accessories in the United States
12 and Latin America. InfoSonics provides end-to-end handset and wireless terminal solutions for
13 carriers in both the United States and Latin America.

14 6. In January 2006, in connection with a sale of its common stock, InfoSonics issued
15 warrants to purchase shares of the Company's stock. Under the terms of the security purchase
16 agreement, the Company would be liable to potential purchasers for liquidated damages if it failed to
17 have the registration statement declared effective by the Securities and Exchange Commission
18 ("SEC"). Accordingly, upon the closing of the purchase agreement on January 30, 2006, the
19 defendants directed the Company to treat the warrants as derivative instruments and classify them as
20 liabilities for balance sheet purposes. On February 17, 2006, the Company's registration statement
21 registering the shares underlying the warrants was declared effective by the SEC extinguishing the
22 Company's liability to pay liquidated damages.

23 7. As a result of the SEC's February 17 declaration of the effectiveness of the
24 registration statement, the Company was required under the Generally Accepted Accounting
25 Principals ("GAAP") to reclassify the warrant as equity. Defendants, including InfoSonics' Audit
26 Committee, however, directed InfoSonics to maintain the warrants' classification as a liability. As a
27 result, InfoSonics improperly booked \$564,342 in net income for the period from February 17, 2006
28 to March 31, 2006 related to an increase in the market value of the warrants.

1 false and/or misleading press releases and SEC filings. InfoSonics paid defendant Ram the
2 following compensation during the Relevant Period:

3	Defendant	Fiscal Year	Salary	Bonus	Other Compensation	Stock Options
4	Ram	2005	\$275,000	\$150,000	\$15,480	25,000

5 During the Relevant Period, Ram sold 25,000 shares of InfoSonics stock for proceeds of
6 \$428,797.50.

7 13. Defendant Jeffrey A. Klausner ("Klausner") is, and at all times relevant hereto was,
8 Chief Financial Officer ("CFO") of InfoSonics. Because of Klausner's position, he knew or should
9 have known the adverse, non-public information about the business of InfoSonics, specifically, the
10 Company's improper classification of warrants, as well as its finances, markets and present and
11 future business prospects, via access to internal corporate documents, conversations and connections
12 with other corporate officers and employees, attendance at management meetings and via reports and
13 other information provided to him in connection therewith. During the Relevant Period, Klausner
14 participated in the issuance of false and/or misleading statements, including the preparation of the
15 false and/or misleading press releases and SEC filings. InfoSonics paid defendant Klausner the
16 following compensation during the Relevant Period:

17	Defendant	Fiscal Year	Salary	Bonus	Other Compensation	Stock Options
18	Klausner	2005	\$150,000	\$75,000	\$0	170,000

19 During the Relevant Period, Klausner sold 26,000 shares of InfoSonics stock for proceeds of
20 \$628,172.25.

21 14. Defendant Joseph C. Murgu ("Murgu") is, and at all times relevant hereto was, the
22 Vice President of Sales of InfoSonics. Because of Murgu's position, he knew or should have known
23 the adverse, non-public information about the business of InfoSonics, specifically, the Company's
24 improper classification of warrants, as well as its finances, markets and present and future business
25 prospects, via access to internal corporate documents, conversations and connections with other
26 corporate officers and employees, attendance at management meetings and committees thereof and
27 via reports and other information provided to him in connection therewith. During the Relevant
28 Period, Murgu participated in the issuance of false and/or misleading statements, including the

1 preparation of the false and/or misleading press releases and SEC filings. InfoSonics paid defendant
2 Murgo the following compensation during the Relevant Period:

3	Defendant	Fiscal Year	Salary	Bonus	Other	Stock
4	Murgo	2005	\$100,000	\$54,231	Compensation \$0	Options 40,000

5 During the Relevant Period, Murgo sold 55,000 shares of InfoSonics stock for proceeds of
6 \$1,286,706.45.

7 15. Defendant Abraham G. Rosler ("Rosler") is, and at all times relevant hereto was, the
8 Executive Vice President and a director of InfoSonics. Because of Rosler's positions, he knew or
9 should have known the adverse, non-public information about the business of InfoSonics,
10 specifically, the Company's improper classification of warrants, as well as its finances, markets and
11 present and future business prospects, via access to internal corporate documents, conversations and
12 connections with other corporate officers and employees, attendance at Board and management
13 meetings and committees thereof and via reports and other information provided to him in
14 connection therewith. During the Relevant Period, Rosler participated in the issuance of false and/or
15 misleading statements, including the preparation of the false and/or misleading press releases and
16 SEC filings. InfoSonics paid defendant Rosler the following compensation during the Relevant
17 Period:

18	Defendant	Fiscal Year	Salary	Bonus	Other	Stock
19	Rosler	2005	\$120,000	\$75,000	Compensation \$7,239	Options 140,000

20 During the Relevant Period, Rosler sold 15,000 shares of InfoSonics stock for proceeds of
21 \$307,005.41.

22 16. Defendant Randall P. Marx ("Marx") is, and at all times relevant hereto was, a
23 director of InfoSonics. Because of Marx's position, he knew or should have known the adverse, non-
24 public information about the business of InfoSonics, specifically, the Company's improper
25 classification of warrants, as well as its finances, markets and present and future business prospects,
26 via access to internal corporate documents, conversations and connections with other corporate
27 officers and employees, attendance at Board meetings and committees thereof and via reports and
28 other information provided to him in connection therewith. During the Relevant Period, Marx

1 participated in the issuance of false and/or misleading statements, including the preparation of the
2 false and/or misleading press releases and SEC filings.

3 17. Defendant Robert S. Picow ("Picow") is, and at all times relevant hereto was, a
4 director of InfoSonics. Because of Picow's position, he knew or should have known the adverse,
5 non-public information about the business of InfoSonics, specifically, the Company's improper
6 classification of warrants, as well as its finances, markets and present and future business prospects,
7 via access to internal corporate documents, conversations and connections with other corporate
8 officers and employees, attendance at Board meetings and committees thereof and via reports and
9 other information provided to him in connection therewith. During the Relevant Period, Picow
10 participated in the issuance of false and/or misleading statements, including the preparation of the
11 false and/or misleading press releases and SEC filings.

12 18. Defendant Kirk A. Waldron ("Waldron") is, and at all times relevant hereto was, a
13 director of InfoSonics. Because of Waldron's position, he knew or should have known the adverse,
14 non-public information about the business of InfoSonics, specifically, the Company's improper
15 classification of warrants, as well as its finances, markets and present and future business prospects,
16 via access to internal corporate documents, conversations and connections with other corporate
17 officers and employees, attendance at Board and management meetings and committees thereof and
18 via reports and other information provided to him in connection therewith. During the Relevant
19 Period, Waldron participated in the issuance of false and/or misleading statements, including the
20 preparation of the false and/or misleading press releases and SEC filings.

21 19. The defendants identified in ¶¶12, 15-18 are referred to herein as the "Director
22 Defendants." The defendants identified in ¶¶12-15 are referred to herein as the "Officer
23 Defendants." The defendants identified in ¶¶12-15 are referred to herein as the "Insider Selling
24 Defendants." Collectively, the Director Defendants, the Officer Defendants and the Insider Selling
25 Defendants are referred to herein as the "Individual Defendants."

26 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

27 20. By reason of their positions as officers, directors and/or fiduciaries of InfoSonics and
28 because of their ability to control the business and corporate affairs of InfoSonics, the Individual

1 Defendants owed InfoSonics and its shareholders fiduciary obligations of trust, loyalty, good faith
2 and due care, and were and are required to use their utmost ability to control and manage InfoSonics
3 in a fair, just, honest and equitable manner. The Individual Defendants were and are required to act
4 in furtherance of the best interests of InfoSonics and its shareholders so as to benefit all shareholders
5 equally and not in furtherance of their personal interest or benefit.

6 21. Each director and officer of the Company owes to InfoSonics and its shareholders the
7 fiduciary duty to exercise good faith and diligence in the administration of the affairs of the
8 Company and in the use and preservation of its property and assets, and the highest obligations of
9 fair dealing. In addition, as officers and/or directors of a publicly held company, the Individual
10 Defendants had a duty to promptly disseminate accurate and truthful information with regard to the
11 Company's revenue, margins, operations, performance, management, projections and forecasts so
12 that the market price of the Company's stock would be based on truthful and accurate information.

13 22. The Individual Defendants, because of their positions of control and authority as
14 directors and/or officers of InfoSonics, were able to and did, directly and/or indirectly, exercise
15 control over the wrongful acts complained of herein, as well as the contents of the various public
16 statements issued by the Company. Because of their advisory, executive, managerial and directorial
17 positions with InfoSonics, each of the Individual Defendants had access to adverse, non-public
18 information about the financial condition, operations, and improper representations of InfoSonics.

19 23. At all times relevant hereto, each of the Individual Defendants was the agent of each
20 of the other Individual Defendants and of InfoSonics, and was at all times acting within the course
21 and scope of such agency.

22 24. To discharge their duties, the officers and directors of InfoSonics were required to
23 exercise reasonable and prudent supervision over the management, policies, practices and controls of
24 the financial affairs of the Company. By virtue of such duties, the officers and directors of
25 InfoSonics were required to, among other things:

26 (a) refrain from acting upon material inside corporate information to benefit
27 themselves;

28 (b) ensure that the Company complied with its legal obligations and requirements,

1 including acting only within the scope of its legal authority and disseminating truthful and accurate
2 statements to the SEC and the investing public;

3 (c) conduct the affairs of the Company in an efficient, business like manner so as
4 to make it possible to provide the highest quality performance of its business, to avoid wasting the
5 Company's assets, and to maximize the value of the Company's stock;

6 (d) properly and accurately guide investors and analysts as to the true financial
7 condition of the Company at any given time, including making accurate statements about the
8 Company's financial results and prospects, and ensuring that the Company maintained an adequate
9 system of financial controls such that the Company's financial reporting would be true and accurate
10 at all times;

11 (e) remain informed as to how InfoSonics conducted its operations, and, upon
12 receipt of notice or information of imprudent or unsound conditions or practices, to make reasonable
13 inquiry in connection therewith, and to take steps to correct such conditions or practices and make
14 such disclosures as necessary to comply with federal and state securities laws; and

15 (f) ensure that the Company was operated in a diligent, honest and prudent
16 manner in compliance with all applicable federal, state and local laws, rules and regulations.

17 25. Each Individual Defendant, by virtue of his or her position as a director and/or
18 officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith and
19 the exercise of due care and diligence in the management and administration of the affairs of the
20 Company, as well as in the use and preservation of its property and assets. The conduct of the
21 Individual Defendants complained of herein involves a knowing and culpable violation of their
22 obligations as directors and officers of InfoSonics, the absence of good faith on their part, and a
23 reckless disregard for their duties to the Company and its shareholders that the Individual
24 Defendants were aware or should have been aware posed a risk of serious injury to the Company.
25 The conduct of the Individual Defendants who were also officers and/or directors of the Company
26 during the Relevant Period has been ratified by the remaining Individual Defendants who
27 collectively comprised all of InfoSonics' Board during the Relevant Period.

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1 26. The Individual Defendants breached their duties of loyalty and good faith by allowing
2 defendants to cause or by themselves causing the Company to misrepresent its financial results and
3 prospects, as detailed herein *infra*, and by failing to prevent the Individual Defendants from taking
4 such illegal actions. In addition, as a result of defendants' illegal actions and course of conduct
5 during the Relevant Period, the Company is now the subject of several class action law suits that
6 allege violations of federal securities laws. As a result, InfoSonics has expended and will continue
7 to expend significant sums of money. Such expenditures include, but are not limited to:

8 (a) Costs incurred to carry out internal investigations, including legal fees paid to
9 outside counsel;

10 (b) Costs incurred in investigating and defending InfoSonics and certain officers
11 in the class actions, plus potentially millions of dollars in settlements or to satisfy an adverse
12 judgment;

13 (c) Additional costs in the form of increased directors' and officers' liability and
14 fiduciary liability insurance premiums; and

15 (d) Costs incurred from directing manpower to correct InfoSonics' defective
16 internal controls and to restate its earnings for 1Q:06.

17 27. Moreover, these actions have irreparably damaged InfoSonics' corporate image and
18 goodwill. For at least the foreseeable future, InfoSonics will suffer from what is known as the "liar's
19 discount," a term applied to the stocks of companies who have been implicated in illegal behavior
20 and have misled the investing public, such that InfoSonics' ability to raise equity capital or debt on
21 favorable terms in the future is now impaired.

22 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

23 28. In committing the wrongful acts alleged herein, the Individual Defendants have
24 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and
25 conspired with one another in furtherance of their common plan or design. In addition to the
26 wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further
27 aided and abetted and/or assisted each other in breach of their respective duties.

28

1 29. During all times relevant hereto, the Individual Defendants collectively and
2 individually initiated a course of conduct that was designed to and did: (i) conceal the fact that the
3 Company was improperly misrepresenting its financial results, in order to allow defendants to
4 artificially inflate the price of the Company's shares; (ii) maintain the Individual Defendants'
5 executive and directorial positions at InfoSonics and the profits, power and prestige that the
6 Individual Defendants enjoyed as a result of these positions; and (iii) deceive the investing public,
7 including shareholders of InfoSonics, regarding the Individual Defendants' management of
8 InfoSonics' operations, the Company's financial health and stability, and future business prospects,
9 specifically related to the Company's financials that had been misrepresented by defendants
10 throughout the Relevant Period. In furtherance of this plan, conspiracy and course of conduct, the
11 Individual Defendants collectively and individually took the actions set forth herein.

12 30. The Individual Defendants engaged in a conspiracy, common enterprise and/or
13 common course of conduct commencing by at least January 2006 and continuing thereafter. During
14 this time the Individual Defendants caused the Company to conceal the true fact that InfoSonics was
15 misrepresenting its financial results. In addition, defendants also made other specific, false
16 statements about InfoSonics' financial performance and future business prospects, as alleged herein.

17 31. The purpose and effect of the Individual Defendants' conspiracy, common enterprise,
18 and/or common course of conduct was, among other things, to disguise the Individual Defendants'
19 violations of law, breaches of fiduciary duty, abuse of control, gross mismanagement, waste of
20 corporate assets and unjust enrichment; to conceal adverse information concerning the Company's
21 operations, financial condition and future business prospects; and to artificially inflate the price of
22 InfoSonics common stock so they could dispose of over \$2.6 million of their personally held stock
23 and protect and enhance their executive and directorial positions and the substantial compensation
24 and prestige they obtained as a result thereof.

25 32. The Individual Defendants accomplished their conspiracy, common enterprise and/or
26 common course of conduct by causing the Company to purposefully, recklessly or negligently
27 misrepresent its financial results. Because the actions described herein occurred under the authority
28

1 of the Board, each of the Individual Defendants was a direct, necessary and substantial participant in
2 the conspiracy, common enterprise and/or common course of conduct complained of herein.

3 33. Each of the Individual Defendants aided and abetted and rendered substantial
4 assistance in the wrongs complained of herein. In taking such actions to substantially assist the
5 commission of the wrongdoing complained of herein, each Individual Defendant acted with
6 knowledge of the primary wrongdoing, substantially assisted the accomplishment of that
7 wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

8 **BACKGROUND**

9 34. Nominal defendant InfoSonics facilitates the delivery of wireless handsets from the
10 factory floor to the final consumer in the United States and throughout Latin America. The
11 Company distributes products of several key manufacturers, including i-mate, Motorola, Nokia,
12 Novatel, Samsung, VK Mobile and others. InfoSonics operates a warehouse and distribution center
13 in Miami, Florida, which services its customers in the United States and Latin America. The
14 Company's distribution and solution services include product testing, approval and certification, light
15 assembly, warehousing, logistics services (packing, shipping and delivery), marketing campaigns,
16 warranty services and end-user support. These services are provided for manufacturers of wireless
17 telecommunications products.

18 **IMPROPER STATEMENTS**

19 35. The Individual Defendants by their fiduciary duties of care, good faith and loyalty
20 owed to InfoSonics a duty to insure that the Company's financial reporting fairly presented, in all
21 material respects, the operations and financial condition of the Company. In order to adequately
22 carry out these duties, it is necessary for the Individual Defendants to know and understand the
23 material non-public information to be either disclosed or omitted from the Company's public
24 statements. This material non-public information included the inappropriate classification of
25 warrants and the overstatement of income. Furthermore, defendants Marx, Picow and Waldron, as
26 members of the Audit Committee, had a special duty to know and understand this material
27 information as set out in the Audit Committee's charter which provides that the Audit Committee is
28 responsible for reviewing and discussing with management the Company's quarterly financial

1 statements. Defendants Ram, Rosler, Murgu and Klausner, as officers of InfoSonics, had ample
2 opportunity to discuss the classification of warrants with their fellow officers at management
3 meetings and via internal corporate documents and reports. Moreover, defendants Marx, Ram,
4 Rosler, Picow and Waldron, as directors of InfoSonics had ample opportunity to discuss this material
5 information with management and fellow directors at any of the Board meetings that occurred during
6 the Relevant Period as well as at meetings of Committees of the Board. Despite these duties, the
7 Individual Defendants negligently, recklessly, and/or intentionally caused or allowed, by their
8 actions or inactions, the following improper statements to be disseminated by InfoSonics to the
9 investing public and the Company's shareholders during the Relevant Period.

10 36. On May 8, 2006, the Individual Defendants caused or allowed the Company to issue a
11 press release announcing its financial results for 1Q:06, the period ending March 31, 2006. The press
12 release reported a first quarter revenue increases of 125% to \$54.1 million compared to 1Q:05. The
13 press release was signed by defendant Klausner and stated in relevant part:

14 InfoSonics Corporation, one of the fastest growing distributors of wireless handsets
15 in the United States and Latin America, today announced financial results for the first
quarter ended March 31, 2006.

16 Revenues for the first quarter of 2006 were \$54.1 million, a 125% increase
17 compared with \$24.0 million reported for the first quarter a year ago. Units shipped
during the quarter increased by 253% year-over-year, offsetting a 33% decline in
18 average selling price.

19 Excluding the non-cash items described below, net income for the first
quarter of 2006 increased 163% to approximately \$827,000, or \$0.11 per diluted
20 share based on 7.7 million weighted-average shares outstanding, as compared with
approximately \$315,000, or \$0.05 per diluted share based on 5.9 million weighted-
21 average shares outstanding in the same quarter a year ago. Reconciliation of the
foregoing non-GAAP financial measures follows later in this press release.

22 *During the first quarter 2006, the Company had income from a non-cash*
23 *change in fair value of derivative liability (for financing related warrants) of*
\$963,000 and non-cash expense related to stock-option compensation of \$52,000.
24 *To comply with accounting rules for treatment of derivative liabilities (SFAS 133),*
the Company will record a non-cash loss or gain each quarter, based on the
25 *calculated change in fair value of the warrants, which were issued in conjunction*
with the Company's financing during the first quarter. In addition, the company
26 *will recognize non-cash compensation expense (SFAS 123R) each quarter for*
outstanding stock options. These non-cash items have the potential to materially
27 *affect the Company's earnings per share, both positively and negatively, on a*
quarterly basis.

28 Operating income from continuing operations for the first quarter of 2006
increased 92% to \$1.1 million compared with \$564,000 for the first quarter of 2005.

1 "The first quarter was a promising start for 2006, building on strong results in
2 2005," stated Joseph Ram, InfoSonics' President and Chief Executive Officer.
3 "During the quarter we significantly strengthened our balance sheet to position us for
4 continued growth by completing a \$14.4 million equity private placement, a portion
5 of which will be used for our new Mexico facility. Additionally, we further executed
6 on our strategy of expanding our product offering, adding Alcatel as a new
7 manufacturer to our line-up. We now have a full range of low, mid and high-end
8 phones to offer our carrier customers. In April we announced several new phone
9 models which we displayed at the recent CTIA show in Las Vegas, which were well
10 received."

11 Mr. Ram continued, "During the first quarter, we prepared for the positive
12 sales momentum we are experiencing in our overall business by adding personnel
13 and a new facility in Mexico. We continue to focus on growing our sales and profits
14 by expanding our presence in existing markets and through new opportunities in
15 growing markets; both of which augment our business scope and market position."

16 Gross profit for the first quarter of 2006 was \$4.2 million or 7.7% of
17 revenues, a dollar increase of 96%, compared to \$2.1 million, or 8.9% of revenues
18 for the first quarter of 2005. The Company's gross margins vary from quarter-to-
19 quarter depending on product and geographic mix. The dollar increase in gross profit
20 is due to the 125% increase in sales. The decline in gross profit percentage in the
21 first quarter is primarily attributable to a decrease in U.S. sales, as product
22 availability was limited and new product introductions did not materialize as
23 expected during the quarter. The products in the U.S. market have traditionally held
24 higher gross margins than those in other regions in which the Company currently
25 operates. The Company anticipates increased U.S. sales in the coming quarters and
26 expects new product launches in the U.S., thereby improving the balance to its
27 regional sales.

28 Operating expenses in the first quarter of 2006 declined as a percent of sales
to 5.7% or \$3.1 million, compared with \$1.6 million, or 6.5% of sales for the first
quarter of 2005. The decrease as a percent of revenue is primarily due to operating
efficiencies realized during the quarter. Operating margins declined to 2.0% as
compared to 2.3% a year ago due to product and geographic mix and the resulting
reduced gross margins.

37. As a result of this positive news, the value of InfoSonics began to climb. On May 8,
2006, InfoSonics' stock closed up \$1.04 per share to close at \$14.12 per share – a one day increase of
8%. Thereafter, the value of InfoSonics' common stock continued to increase substantially to a
Relevant Period high of \$33.53 on June 2, 2006.

38. InfoSonics' financial results for 1Q:06, the period ending March 31, 2006 were
repeated in the Company's Form 10-Q filed with the SEC on May 15, 2006. The Form 10-Q also
contained certifications submitted pursuant to Sections 302 and 906 and of the Sarbanes-Oxley Act
of 2002, which were signed by defendants Ram and Klausner. The certifications stated in relevant
part:

1 1. I have reviewed this Quarterly Report on Form 10-Q of InfoSonics Corporation;

2
3 2. Based on my knowledge, this report does not contain any untrue statement of
4 a material fact or omit to state a material fact necessary to make the statements made,
in light of the circumstances under which such statements were made, not misleading
with respect to the period covered by this report;

5 3. Based on my knowledge, the financial statements, and other financial
6 information included in this report, fairly present in all material respects the financial
7 condition, results of operations and cash flows of the registrant as of, and for, the
periods presented in this report;

8 4. The registrant's other certifying officer(s) and I are responsible for
9 establishing and maintaining disclosure controls and procedures (as defined in
Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

10 (a) Designed such disclosure controls and procedures, or caused such
11 disclosure controls and procedures to be designed under our supervision, to
12 ensure that material information relating to the registrant, including its
consolidated subsidiaries, is made known to us by others within those
entities, particularly during the period in which this report is being prepared;

13 (b) Evaluated the effectiveness of the registrant's disclosure controls and
14 procedures and presented in this report our conclusions about the
effectiveness of the disclosure controls and procedures, as of the end of the
period covered by this report based on such evaluation; and

15 (c) Disclosed in this report any change in the registrant's internal control
16 over financial reporting that occurred during the registrant's most recent fiscal
17 quarter (the registrant's fourth fiscal quarter in the case of an annual report)
that has materially affected, or is reasonably likely to materially affect, the
registrant's internal control over financial reporting;

18 5. The registrant's other certifying officer(s) and I have disclosed, based on our
19 most recent evaluation of internal control over financial reporting, to the registrant's
20 auditors and the audit committee of the registrant's board of directors (or persons
performing the equivalent functions):

21 (a) All significant deficiencies and material weaknesses in the design or
22 operation of internal control over financial reporting which are reasonably
likely to adversely affect the registrant's ability to record, process, summarize
and report financial information; and

23 (b) Any fraud, whether or not material, that involves management or other
24 employees who have a significant role in the registrant's internal control over
financial reporting.

25 * * *

26 (1) the Report fully complies with the requirements of Section 13(a) or 15(d)
27 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

28 (2) the information contained in the Report fairly presents, in all material
respects, the financial condition and results of operations of the Company.

THE RESTATEMENT

41. On June 12, 2006, the Individual Defendants caused or allowed the Company to file a Form 10-Q/A with the SEC. The Form 10-Q/A stated in relevant part:

NOTE 13. Restatement

The Company has reassessed its application of certain provisions of EITF 00-19, *Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock*. Specifically, it recorded \$564,000 of other income during the quarter ended March 31, 2006 related to a mark to market adjustment of certain warrants. Since these warrants became part of permanent equity on February 17, 2006, InfoSonics should have ceased applying the mark to market provisions of EITF 00-19, on that date. Accordingly, the net income for the quarter ended March 31, 2006 has been reduced by a non-cash amount of \$564,000.

The following tables set forth for the quarter ended March 31, 2006 the amounts of the restatement adjustments and reconciliation from previously reported amounts to restated amounts for the quarter.

Balance Sheet:

	Three Months Ended March 31, 2006 (Unaudited)		
	As Previously Reported	Effect of Restatement	Restated
Fair value of derivative liability	\$ 2,041,265	\$ (2,041,265)	\$ —
Total liabilities	39,622,123	(2,041,265)	37,580,858
Additional paid-in capital	24,152,706	2,605,607	26,758,313
Retained earnings	6,348,938	(564,342)	5,784,596
Total stockholders equity	30,508,410	2,041,265	32,549,675

Statement of Operations

	Three Months Ended March 31, 2006 (Unaudited)		
	As Previously Reported	Effect of Restatement	Restated
Other Income: change in fair value of derivative liability	\$ 963,351	\$ (564,342)	\$ 399,009
Income from continuing operations before provision for income taxes	1,966,551	(564,342)	1,402,209
Income from Continuing operations	1,739,513	(564,342)	1,175,171
Net income	1,737,669	(564,342)	1,173,327
<i>Basic earnings per share</i>	<i>\$ 0.27</i>	<i>\$ (0.09)</i>	<i>\$ 0.18</i>
<i>Diluted earnings per share</i>	<i>\$ 0.22</i>	<i>\$ (0.07)</i>	<i>\$ 0.15</i>

Statement of Cash Flows

Three Months Ended March 31, 2006 (Unaudited)		
As Previously Reported	Effect of Restatement	Restated

1	Net income from continuing operations	\$ 1,739,513	\$ (564,342)	\$ 1,175,171
2	Change in fair value of derivative liability	(963,351)	564,342	(399,009)
3	Cash provided by (used in) continuing operations	(16,834,744)	—	(16,834,744)

4 **REASONS THE STATEMENTS WERE IMPROPER**

5 42. During the Relevant Period, the Individual Defendants caused the Company to make
6 false and misleading statements as the Individual Defendants caused the Company to fail to disclose
7 that the Company: (a) had improperly classified warrants to liability; (b) lacked requisite internal
8 controls, and was therefore unable to ascertain its true financial condition; and (c) that as a result of
9 the forgoing, the value of the Company's net income and earnings were materially overstated at all
10 relevant times.

11 43. As a result of defendants' improprieties, InfoSonics has been forced to admit that it
12 inappropriately classified warrants to liability and has restated its results to reclassify warrants to
13 equity from liabilities. As a result, InfoSonics' 1Q:06 financial statements were not a fair
14 representation of its results and were presented in violation of GAAP and SEC rules.

15 44. GAAP are those principles recognized by the accounting profession as the
16 conventions, rules and procedures necessary to define accepted accounting practice at a particular
17 time. SEC Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the
18 SEC which are not prepared in compliance with GAAP are presumed to be misleading and
19 inaccurate, despite footnote or other disclosure. Regulation S-X requires that interim financial
20 statements must also comply with GAAP, with the exception that interim financial statements need
21 not include disclosure which would be duplicative of disclosures accompanying annual financial
22 statements. 17 C.F.R. §210.10-01(a).

23 45. In general, a company may enter into contracts that are indexed to and sometimes
24 settled in its own stock. A warrant to purchase shares of a company's stock is an example of such a
25 contract. Under EITF 00-19, *Accounting for Derivative Financial Instruments Indexed to, and*
26 *Potentially Settled in, a Company's Own Stock*, a company will classify a contract for balance sheet
27 purposes as an asset or liability or as equity at the inception date of the contract. A company
28 classifies the contract as an asset or liability if it requires a net-cash settlement. A company
classifies the contract as equity if it requires settlement in shares. Contracts that include any

1 provisions that could require net-cash settlement must be accounted for as an asset or liability.
2 Thereafter, after the initial classification, a company must reassess the classification of a contract at
3 each balance sheet date. If a company determines that the classification of a contract has changed
4 during the period, then it must account for the reclassification from the date the event occurred that
5 caused the change. EITF 00-19, ¶¶7-13.

6 46. Here, the Individual Defendants directed InfoSonics to fail to maintain the
7 classification of warrants it had issued as liabilities when GAAP required those warrants to be
8 classified as equity. Specifically, in January 2006, in connection with a sale of its common stock,
9 InfoSonics issued warrants to purchase shares of the Company's stock. Under the terms of the
10 security purchase agreement, the Company would be liable to the purchasers for liquidated damages
11 if it failed to have the registration statement declared effective by the SEC. On February 17, 2006,
12 the Company's registration statement registering the shares underlying the warrants was declared
13 effective by the SEC. Accordingly, the potential for the Company to pay liquidated damages was
14 extinguished at that time and the Company was required to reclassify the warrants as equity.

15 47. As a result of the Individual Defendants' failure to cause or allow the Company to
16 reclassify these warrants, InfoSonics improperly booked a gain for the period from February 17,
17 2006 to March 31, 2006 related to an increase in the market value of the warrants.

18 48. The Individual Defendants have caused InfoSonics to restate its 1Q:06 financial
19 statements due to this GAAP violation which is an admission that the Company overstated its
20 income for the period by \$564,342 and its diluted EPS by \$0.07 per share – an overstatement of 32%
21 as InfoSonics originally reported \$1.7 million in income and \$0.22 diluted EPS per share.

22 49. The fact that InfoSonics has been forced to restate its 1Q:06 financial statements is
23 also an admission that the Company's previously issued financial statements can no longer be relied
24 upon and that the overstatement of income was material. Pursuant to GAAP, as set forth in
25 Accounting Principles Board Opinion ("APB") No. 20, the type of restatement announced by
26 InfoSonics was to correct for material errors in its previously issued financial statements. See APB
27 No. 20, ¶¶7-13. Moreover, FASB Statement of Financial Accounting Standard ("SFAS") No. 154,
28 *Accounting Changes and Error Corrections*, ¶25 states: "Any error in the financial statements of a

1 prior period discovered subsequent to their issuance shall be reported as a prior-period adjustment by
2 restating the prior-period financial statements." Thus, GAAP provides that financial statements
3 should be restated in order to correct an error in previously issued financial statements. InfoSonics'
4 restatement is due to an error. Thus, the restatement is an admission by InfoSonics that its
5 previously issued financial results and its public statements regarding those results were false.

6 50. Due to these accounting improprieties, the Individual Defendants caused the
7 Company to present its financial results and statements in a manner which violated GAAP, including
8 the following fundamental accounting principles:

9 (a) The principle that interim financial reporting should be based upon the same
10 accounting principles and practices used to prepare annual financial statements was violated (APB
11 No. 28, ¶10);

12 (b) The principle that financial reporting should provide information that is useful
13 to present and potential investors and creditors and other users in making rational investment, credit
14 and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

15 (c) The principle that financial reporting should provide information about the
16 economic resources of an enterprise, the claims to those resources, and effects of transactions, events
17 and circumstances that change resources and claims to those resources was violated (FASB
18 Statement of Concepts No. 1, ¶40);

19 (d) The principle that financial reporting should provide information about how
20 management of an enterprise has discharged its stewardship responsibility to owners (stockholders)
21 for the use of enterprise resources entrusted to it was violated. To the extent that management offers
22 securities of the enterprise to the public, it voluntarily accepts wider responsibilities for
23 accountability to prospective investors and to the public in general (FASB Statement of Concepts
24 No. 1, ¶50);

25 (e) The principle that financial reporting should provide information about an
26 enterprise's financial performance during a period was violated. Investors and creditors often use
27 information about the past to help in assessing the prospects of an enterprise. Thus, although
28 investment and credit decisions reflect investors' expectations about future enterprise performance,

1 those expectations are commonly based at least partly on evaluations of past enterprise performance
2 (FASB Statement of Concepts No. 1, ¶42);

3 (f) The principle that financial reporting should be reliable in that it represents
4 what it purports to represent was violated. That information should be reliable as well as relevant is
5 a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

6 (g) The principle of completeness, which means that nothing is left out of the
7 information that may be necessary to insure that it validly represents underlying events and
8 conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

9 (h) The principle that conservatism be used as a prudent reaction to uncertainty to
10 try to ensure that uncertainties and risks inherent in business situations are adequately considered
11 was violated. The best way to avoid injury to investors is to try to ensure that what is reported
12 represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

13 ILLEGAL INSIDER SELLING

14 51. As a result of the Individual Defendants' actions, InfoSonics' market capitalization has
15 been damaged by over \$218 million. At the same time that the defendants were causing InfoSonics
16 to suffer such devastation of its market capitalization, the Insider Selling Defendants fared much
17 better by selling over \$2.6 million of their personally held stock.

18 52. While in possession of the undisclosed material adverse information, the Insider
19 Selling Defendants sold the following shares of InfoSonics stock:

20 Name	Transaction Date(s)	Shares	Price	Proceeds
21 Jeffrey A. Klausner	05/19/2006	1,000	19.75	\$19,750.00
	05/19/2006	1,175	19.55	\$22,971.25
22	05/19/2006	300	19.51	\$5,853.00
	05/19/2006	7,700	19.5	\$150,150.00
23	05/19/2006	125	19.1	\$2,387.50
	05/19/2006	1,200	18.89	\$22,668.00
24	05/19/2006	200	18.85	\$3,770.00
	05/19/2006	1,000	18.61	\$18,610.00
25	05/19/2006	300	18.55	\$5,565.00
	06/05/2006	500	29.86	\$14,930.00
26	06/05/2006	400	29.79	\$11,916.00
	06/05/2006	100	29.69	\$2,969.00
27	06/05/2006	400	29.59	\$11,836.00
	06/05/2006	400	29.5	\$11,800.00
28	06/05/2006	1,200	29.42	\$35,304.00

1		06/05/2006	500	29.25	\$14,625.00
		06/05/2006	1,300	29.18	\$37,934.00
2		06/05/2006	200	29.04	\$5,808.00
		06/05/2006	1,100	29.01	\$31,911.00
3		06/05/2006	900	29	\$26,100.00
		06/05/2006	900	28.9	\$26,010.00
4		06/05/2006	1,300	28.82	\$37,466.00
		06/05/2006	1,100	28.52	\$31,372.00
5		06/05/2006	1,000	28.49	\$28,490.00
		06/05/2006	350	28.46	\$9,961.00
6		06/05/2006	550	28.45	\$15,647.50
		06/05/2006	800	27.96	\$22,368.00
7			26,000		\$628,172.25
8					
9	Joseph C. Murgo	06/02/2006	500	32.02	\$16,010.00
		06/02/2006	400	32.01	\$12,804.00
10		06/02/2006	200	33.22	\$6,644.00
		06/02/2006	200	33.21	\$6,642.00
11		06/02/2006	23	33.2	\$763.60
		06/02/2006	300	33.09	\$9,927.00
12		06/02/2006	100	33.07	\$3,307.00
		06/02/2006	1,100	33.06	\$36,366.00
13		06/02/2006	2,777	33.05	\$91,779.85
		06/02/2006	200	33.02	\$6,604.00
14		06/02/2006	1,500	33	\$49,500.00
		06/02/2006	500	32.85	\$16,425.00
15		06/02/2006	800	32.8	\$26,240.00
		06/02/2006	1,100	32.74	\$36,014.00
16		06/02/2006	1,300	32.71	\$42,523.00
		06/02/2006	400	32.69	\$13,076.00
17		06/02/2006	100	32.65	\$3,265.00
		06/02/2006	200	32.62	\$6,524.00
18		06/02/2006	100	32.61	\$3,261.00
		06/02/2006	2,200	32.6	\$71,720.00
19		06/02/2006	400	32.56	\$13,024.00
		06/02/2006	400	32.55	\$13,020.00
20		06/02/2006	2,000	32.5	\$65,000.00
		06/02/2006	100	32.4	\$3,240.00
21		06/02/2006	600	32.39	\$19,434.00
		06/02/2006	200	32.29	\$6,458.00
22		06/02/2006	200	32.27	\$6,454.00
		06/02/2006	900	32.26	\$29,034.00
23		06/02/2006	600	32.25	\$19,350.00
		06/02/2006	500	32.07	\$16,035.00
24		06/02/2006	100	32.05	\$3,205.00
		05/12/2006	15,000	18.2	\$273,000.00
25		05/12/2006	1,300	18.05	\$23,465.00
		05/12/2006	100	18.02	\$1,802.00
26		05/12/2006	1,000	18.01	\$18,010.00
27		05/12/2006	17,100	18	\$307,800.00
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	05/12/2006	500	17.96	\$8,980.00
		55,000		\$1,286,706.45
Joseph Ram	05/11/2006	25,000	17.15	\$428,797.50
		25,000		\$428,797.50
Abraham G. Rosler	05/24/2006	100	19.91	\$1,991.00
	05/24/2006	160	19.64	\$3,142.40
	05/24/2006	200	19.63	\$3,926.00
	05/24/2006	400	19.54	\$7,816.00
	05/24/2006	100	19.39	\$1,939.00
	05/24/2006	200	19.28	\$3,856.00
	05/24/2006	250	19.27	\$4,817.50
	05/24/2006	440	19.26	\$8,474.40
	05/24/2006	650	19.25	\$12,512.50
	05/24/2006	110	21.2	\$2,332.00
	05/24/2006	700	21.02	\$14,714.00
	05/24/2006	2,000	21	\$42,000.00
	05/24/2006	800	20.94	\$16,752.00
	05/24/2006	900	20.9	\$18,810.00
	05/24/2006	100	20.79	\$2,079.00
	05/24/2006	200	20.78	\$4,156.00
	05/24/2006	600	20.75	\$12,450.00
	05/24/2006	100	20.74	\$2,074.00
	05/24/2006	100	20.72	\$2,072.00
	05/24/2006	1,100	20.69	\$22,759.00
	05/24/2006	300	20.67	\$6,201.00
	05/24/2006	400	20.65	\$8,260.00
	05/24/2006	100	20.64	\$2,064.00
	05/24/2006	100	20.6	\$2,060.00
	05/24/2006	900	20.58	\$18,522.00
	05/24/2006	300	20.57	\$6,171.00
	05/24/2006	100	20.55	\$2,055.00
	05/24/2006	400	20.51	\$8,204.00
	05/24/2006	800	20.46	\$16,368.00
	05/24/2006	289	20.4	\$5,895.60
	05/24/2006	500	20.36	\$10,180.00
	05/24/2006	200	20.35	\$4,070.00
	05/24/2006	100	20.26	\$2,026.00
	05/24/2006	100	20.25	\$2,025.00
	05/24/2006	900	20.2	\$18,180.00
	05/24/2006	200	20.15	\$4,030.00
	05/24/2006	101	20.01	\$2,021.01
		15,000		\$307,005.41
Total		121,000		\$2,650,681.61

1 58. As a result of defendants Rosler and Ram's access to and review of internal corporate
2 documents; conversations and connections with other corporate officers, employees and directors;
3 and attendance at management and Board meetings, each of the defendants knew the adverse, non-
4 public information regarding the improper accounting. Specifically, plaintiff on information and
5 belief alleges that defendants Rosler and Ram as members of InfoSonics' management participated
6 in the preparation of reports to the Audit Committee regarding the accounting treatment of the
7 warrants. Therefore, these defendants knew that InfoSonics was improperly classifying the warrants
8 as debt. Defendants Rosler and Ram while in possession of this material adverse, non-public,
9 information participated in the illegal insider selling:

10 (a) During the Relevant Period, Ram sold 25,000 shares of InfoSonics stock for
11 proceeds of \$428,797.50; and

12 (b) During the Relevant Period, Rosler sold 15,000 shares of Infosonics stock
13 for proceeds of \$307,005.41. Because these defendants received a personal financial benefit from
14 the challenged insider trading transactions, these defendants are interested. Also, these defendants
15 face liability for breach of their fiduciary duties for insider selling. Since these directors have
16 breached their fiduciary duties and are interested, any demand upon them is futile.

17 59. Defendant Ram dominates and controls each of the Individual Defendants on the
18 Company's Board as he founded the Company and controls over 37% of the Company's outstanding
19 common stock. Ram has sole voting power over his stock holdings. During the Relevant Period
20 defendant Ram realized over \$428,000 profit from the improper sale of his InfoSonics stock.
21 Further, defendant Ram holds and has held various executive positions within the Company
22 including President, CEO and director. Moreover, defendant Ram by his power and influence over
23 InfoSonics controls the substantial compensation paid to the officers and directors who serve on the
24 Board. By virtue of defendant Ram's substantial stock holdings, his present and past positions
25 within the Company, and his participation in the wrongdoing alleged herein, defendant Ram is not
26 independent and is not disinterested and thus demand upon him would be futile. Likewise, by virtue
27 of this defendant's domination and control over the Company's Board, demand upon defendants
28 Rosler, Marx, Picow and Waldron would be futile.

1 60. Defendants Marx and Waldron, by their specialized financial expertise, were in a
2 unique position to understand the business of InfoSonics, as well as its finances, markets and present
3 and future business prospects. Specifically, defendants Marx and Waldron were determined to be
4 "audit committee experts" and to "have, through education and experience ... sufficient financial
5 expertise in accounting and auditing, in accordance with such regulations as may be applicable to the
6 Company from time to time." These defendants because of their unique qualifications, had a
7 heightened duty to insure the accuracy and fairness of InfoSonics' financials. Nonetheless,
8 defendants Marx and Waldron breached their duties by causing or allowing the improper financials
9 described herein. As a result of these defendants' breach of their duties, any demand upon them is
10 futile.

11 61. Defendants Marx, Pico and Waldron as non-employee directors receive \$13,500 per
12 year, payable quarterly. Defendant Marx as the Chairman of the Audit Committee receives an
13 additional \$2,000 per year, payable quarterly. These defendants also received stock options to
14 purchase 30,000 shares of InfoSonics' common stock at an exercise price based on the price of a
15 share of Common Stock as reported on the New York Stock Exchange on the date of grant. Half of
16 the 30,000 options granted defendants Marx, Pico and Waldron will expire in 2010 and the other half
17 in 2008. The options were fully vested as of December 30, 2005 and are exercisable. Accordingly,
18 defendants Marx, Pico and Waldron are interested in maintaining their positions on the Board so as
19 to safeguard their substantial compensation and stock options. Thus, demand upon these defendants
20 is futile.

21 62. The entire InfoSonics Board and senior management participated in the wrongs
22 complained of herein. InfoSonics' directors are not disinterested or independent due to the
23 following: defendants Ram, Rosler, Marx, Picow and Waldron served on the InfoSonics Board
24 during the Relevant Period. Pursuant to their specific duties as Board members, each was charged
25 with the management of the Company and to conduct its business affairs. Each of the above
26 referenced defendants breached the fiduciary duties that they owed to InfoSonics and its
27 shareholders in that they failed to prevent and correct the improper financials. Thus, the InfoSonics
28 Board cannot exercise independent objective judgment in deciding whether to bring this action or

1 whether to vigorously prosecute this action because its members are interested personally in the
2 outcome as it is their actions that have subjected InfoSonics to millions of dollars in liability for
3 possible violations of applicable securities laws.

4 63. The Director Defendants of InfoSonics, as more fully detailed herein, participated in,
5 approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts to
6 conceal or disguise those wrongs from InfoSonics' stockholders or recklessly and/or negligently
7 disregarded the wrongs complained of herein, and are therefore not disinterested parties.

8 64. In order to bring this suit, all of the directors of InfoSonics would be forced to sue
9 themselves and persons with whom they have extensive business and personal entanglements, which
10 they will not do, thereby excusing demand.

11 65. The acts complained of constitute violations of the fiduciary duties owed by
12 InfoSonics' officers and directors and these acts are incapable of ratification.

13 66. Each of the Director Defendants of InfoSonics authorized and/or permitted the false
14 statements disseminated directly to the public or made directly to securities analysts and which were
15 made available and distributed to shareholders, authorized and/or permitted the issuance of various
16 of the false and misleading statements and are principal beneficiaries of the wrongdoing alleged
17 herein, and thus could not fairly and fully prosecute such a suit even if such suit was instituted by
18 them.

19 67. Any suit by the current directors of InfoSonics to remedy these wrongs would likely
20 expose the Individual Defendants and InfoSonics to further violations of the securities laws that
21 would result in civil actions being filed against one or more of the Individual Defendants, thus, they
22 are hopelessly conflicted in making any supposedly independent determination whether to sue
23 themselves.

24 68. InfoSonics has been and will continue to be exposed to significant losses due to the
25 wrongdoing complained of herein, yet the Individual Defendants and current Board have not filed
26 any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt
27 to recover for InfoSonics any part of the damages InfoSonics suffered and will suffer thereby.

28

1 69. If the current directors were to bring this derivative action against themselves, they
2 would thereby expose their own misconduct, which underlies allegations against them contained in
3 class action complaints for violations of securities law, which admissions would impair their defense
4 of the class actions and greatly increase the probability of their personal liability in the class actions,
5 in an amount likely to be in excess of any insurance coverage available to the Individual Defendants.
6 In essence, they would be forced to take positions contrary to the defenses they will likely assert in
7 the securities class actions. This they will not do. Thus, demand is futile.

8 70. If InfoSonics' current and past officers and directors are protected against personal
9 liability for their acts of mismanagement, abuse of control and breach of fiduciary duty alleged in
10 this Complaint by directors' and officers' liability insurance, they caused the Company to purchase
11 that insurance for their protection with corporate funds, *i.e.*, monies belonging to the stockholders of
12 InfoSonics. However, due to certain changes in the language of directors' and officers' liability
13 insurance policies in the past few years, the directors' and officers' liability insurance policies
14 covering the defendants in this case contain provisions that eliminate coverage for any action
15 brought directly by InfoSonics against these defendants, known as, *inter alia*, the "insured versus
16 insured exclusion." As a result, if these directors were to sue themselves or certain of the officers of
17 InfoSonics, there would be no directors' and officers' insurance protection and thus, this is a further
18 reason why they will not bring such a suit. On the other hand, if the suit is brought derivatively, as
19 this action is brought, such insurance coverage exists and will provide a basis for the Company to
20 effectuate recovery. If there is no directors' and officers' liability insurance at all then the current
21 directors will not cause InfoSonics to sue them, since they will face a large uninsured liability.

22 71. Moreover, despite the Individual Defendants having knowledge of the claims and
23 causes of action raised by plaintiff, the current Board has failed and refused to seek to recover for
24 InfoSonics for any of the wrongdoing alleged by plaintiff herein.

25 72. Plaintiff has not made any demand on shareholders of InfoSonics to institute this
26 action since such demand would be a futile and useless act for the following reasons:

27 (a) InfoSonics is a publicly held company with 13.5 million shares outstanding,
28 and thousands of shareholders;

1 (b) Making demand on such a number of shareholders would be impossible for
2 plaintiff who has no way of finding out the names, addresses or phone numbers of shareholders; and

3 (c) Making demand on all shareholders would force plaintiff to incur huge
4 expenses, assuming all shareholders could be individually identified.

5 **COUNT I**

6 **Against Defendants Ram and Klausner for Disgorgement Under**
7 **the Sarbanes-Oxley Act of 2002**

8 73. Plaintiff incorporates by reference and realleges each and every allegation set forth
9 above, as though fully set forth herein.

10 74. Section 304 of the Sarbanes-Oxley Act of 2002 provides that if a public company
11 prepares an accounting restatement due to material non-compliance with any financial reporting
12 requirement under federal securities laws, and such non-compliance resulted from misconduct, then
13 the company's chief executive officer and chief financial officer must reimburse the company for
14 certain payments made by the company to those executives. Section 304, entitled "Forfeiture of
15 Certain Bonuses and Profits," provides in full:

16 a. **Additional compensation prior to noncompliance with commission**
17 **financial reporting requirements.** If an issuer is required to prepare an
18 accounting restatement due to the material non-compliance of the issuer, as a
19 result of misconduct, with any financial reporting requirement under the
20 securities laws, *the chief executive officer and chief financial officer of the*
21 *issuer shall reimburse the issuer for –*

- 22 1. any bonus or other incentive-based or equity-based compensation
23 received by that person from the issuer during the 12-month period
24 following the first public issuance or filing with the Commission
25 (whichever first occurs) of the financial document embodying such
26 financial reporting requirement; and
- 27 2. any profits realized from the sale of securities of the issuer during that
28 12-month period.

29 b. **Commission exemption authority.** The Commission may exempt any
30 person from the application of subsection (a), as it deems necessary and
31 appropriate.

32 75. InfoSonics restated its financial statements for the first quarter of FY:06 due to the
33 material non-compliance of such statements with federal securities laws reporting requirements.
34 These restatements resulted from "misconduct" within the meaning of SOX §304. The statement to

1 require restatement during this period was the Form 10-Q filed on May 15, 2006, for the quarterly
2 period ending March 31, 2006. As a result, defendant Ram (as the Company's CEO from 1994 to
3 the present), and defendant Klausner (as the Company's CFO since July 2003 to the present), are
4 required to reimburse InfoSonics for all bonuses or other incentive-based or equity-based
5 compensation received by them from the Company during May 15, 2006 through and including May
6 15, 2007. Further, defendants Ram and Klausner also are liable to InfoSonics for any profits realized
7 from the sales of securities by the Company during that same period of time.

8 76. Defendants Ram and Klausner are also liable to plaintiff for reasonable costs and
9 attorneys' fees in the prosecution of this derivative action on behalf of InfoSonics.

10 **COUNT II**

11 **Against the Director Defendants for Violation of Section 14(a) of the Exchange Act**

12 77. Plaintiff incorporates by reference and realleges each and every allegation set forth
13 above, as though fully set forth herein.

14 78. The Individual Defendants caused to be issued and participated in the issuance of
15 materially false and misleading written statements to shareholders which were contained in the
16 Company's proxy statement issued on April 28, 2006 ("2006 Proxy"). The 2006 Proxy falsely
17 represented and failed to disclose the Company's true financial prospects at the time. Specifically,
18 the 2006 Proxy failed to disclose that InfoSonics was improperly classifying warrants as debt and
19 that the Company lacked requisite internal controls to ascertain its financial condition. By reasons of
20 the improprieties alleged herein, defendants Ram, Rosler, Marx, Picow and Waldron who were
21 directors that caused or allowed the issuance of this proxy statement, violated §14(a) of the
22 Exchange Act. As a direct and proximate result of the Director Defendants' wrongful conduct,
23 InfoSonics misled and/or deceived its shareholders by falsely portraying the Company's true
24 financial condition.

25 79. This information would have been material to InfoSonics' shareholders in determining
26 whether or not: (i) to approve the proposed 2006 Equity Incentive Plan for the Individual Defendants
27 contained in the 2006 Proxy and (ii) to reelect defendants Ram, Rosler, Marx, Picow and Waldron as
28 directors of the Company.

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COUNT IV

Against the Insider Selling Defendants for Breach of Fiduciary Duties for Insider Selling and Misappropriation of Information

86. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

87. At the time of the stock sales set forth herein, the Insider Selling Defendants knew the information described above, and sold InfoSonics common stock on the basis of such information.

88. The information described above was proprietary non-public information concerning the Company's financial condition and future business prospects. It was a proprietary asset belonging to the Company, which the Insider Selling Defendants used for their own benefit when they sold InfoSonics common stock.

89. At the time of their stock sales, the Insider Selling Defendants knew that the Company's revenues were materially overstated. The Insider Selling Defendants' sales of InfoSonics common stock while in possession and control of this material adverse, non-public information was a breach of their fiduciary duties of loyalty and good faith.

90. Since the use of the Company's proprietary information for their own gain constitutes a breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits the Insider Selling Defendants obtained thereby.

COUNT V

Against All Defendants for Breach of Fiduciary Duty

91. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

92. The Individual Defendants owed and owe InfoSonics fiduciary obligations. By reason of their fiduciary relationships, the Officer Defendants and Director Defendants owed and owe InfoSonics the highest obligation of good faith, fair dealing, loyalty and due care.

93. The Individual Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff demands judgment as follows:

3 A. Against all of the Individual Defendants and in favor of the Company for the amount
4 of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary
5 duties, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment;

6 B. Declaring that defendants Ram and Klausner are liable under the SOX §304 of the
7 Sarbanes-Oxley Act of 2002 and requiring them to reimburse InfoSonics for all bonuses or their
8 incentive-based or equity-based compensation received by them from May 15, 2006 through May
9 15, 2007.

10 C. Declaring and decreeing that defendants Ram, Rosler, Marx, Picow and Waldron
11 caused the Company to act in violation of §14(a) of the Exchange Act;

12 D. Directing InfoSonics to take all necessary actions to reform and improve their
13 corporate governance and internal procedures to comply with applicable laws and to protect
14 InfoSonics and its shareholders from a repeat of the damaging events that occurred during the
15 Relevant Period, including, but not limited to, putting forward for shareholder vote resolutions for
16 amendments to the companies' By-Laws or Articles of Incorporation and taking such other action as
17 may be necessary to place before shareholders for a vote the following Corporate Governance
18 Policies:

19 1. a proposal to strengthen the Boards' supervision of operations and develop and
20 implement procedures for greater shareholder input into the policies and guidelines of the Board;

21 2. a provision to permit the shareholders of InfoSonics to nominate at least three
22 candidates for election to the Board;

23 3. appropriately test and then strengthen the internal audit and control functions;

24 and

25 4. control and limit insider stock selling;

26 E. Extraordinary equitable and/or injunctive relief as permitted by law, equity and state
27 statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust
28

1 on or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to
2 assure that plaintiff on behalf of InfoSonics has an effective remedy;

3 F. Awarding to InfoSonics restitution from the defendants, and each of them, and
4 ordering disgorgement of all profits, benefits and other compensation obtained by the defendants;

5 G. Awarding to plaintiff the costs and disbursements of the action, including reasonable
6 attorneys' fees, accountants' and experts' fees, costs, and expenses; and

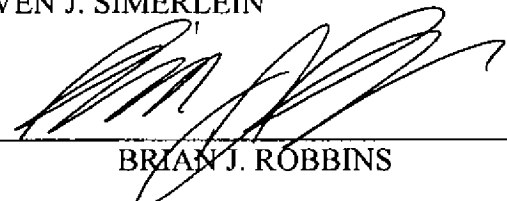
7 H. Granting such other and further relief as the Court deems just and proper.

8 **JURY DEMAND**

9 Plaintiff demands a trial by jury.

10 DATED: June 27, 2006

ROBBINS UMEDA & FINK, LLP
BRIAN J. ROBBINS
STEVEN J. SIMERLEIN

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14 _____
BRIAN J. ROBBINS

610 West Ash Street, Suite 1800
San Diego, CA 92101
Telephone: 619/525-3990
Facsimile: 619/525-3991

Attorneys for Plaintiff

VERIFICATION

I, BRIAN J. ROBBINS, hereby declare as follows:

1. I am a member of the law firm of Robbins Umeda & Fink, LLP, counsel for plaintiff in the above entitled action. I have read the foregoing complaint and know the contents thereof. I am informed and believe the matters therein are true and on that ground allege that the matters stated therein are true.

2. I make this Verification because plaintiff is absent from the County of San Diego where I maintain my office.

Executed this ^{27th} day of June, 2006, at San Diego, California


BRIAN J. ROBBINS

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Caridad Miller, Derivatively on Behalf of InfoSonics Corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Calaveras, CA (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS Joseph Ram, Jeffrey A. Klausner, Abraham Klausner, Joseph C. Murgo, Randall P. Marx, Robert S. Picow, Kirk A. Waldron COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Brian J. Robbins, Robbins Ureda & Fink, LLP 610 West Ash Street, Suite 1800 San Diego, CA 92101 Telephone No.: 619/525-3990

ATTORNEYS (IF KNOWN)

'06 CV 1336 LAB BLM

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff
Federal Question (U.S. Government Not a Party)
U.S. Government Defendant
Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

Table with columns for Plaintiff (PT) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business in This State, Incorporated and Principal Place of Business in Another State, Foreign Nation.

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 USC 1331
Shareholder Derivative Action; Breach of Fiduciary Duty, Abuse of Control, Gross Mismanagement Waste of Corporate Assets, Unjust Enrichment and Violations of Sarbanes-Oxley Act of 2002 and Securities Exchange Act of 1934.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Large grid table for Nature of Suit with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- Original Proceeding
Removal from State Court
Remanded from Appellate Court
Reinstated or Reopened
Transferred from another district (specify)
Multidistrict Litigation
Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE June 27, 2006

SIGNATURE OF ATTORNEY OF RECORD

Handwritten notes: #126560 \$350 kb 6/27/06