

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

WILLIAM G. JOHNSON, Individually and)
On Behalf Of All Others Similarly Situated,)
)
Plaintiff,)
)
vs.)
)
)
OPNEXT, INC., HARRY L. BOSCO, ROBERT J.)
NOBILE, NAOYA TAKAHASHI, DAVID LEE,)
TESTSUO TAKEMURA, RYUICHI OTSUKI,)
GOLDMAN, SACHS & CO., JPMORGAN,)
CIBC WORLD MARKETS, COWEN AND)
COMPANY, JEFFRIES & COMPANY and)
ERNST & YOUNG LLP)
)
Defendants.)

CIVIL ACTION NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

William G. Johnson, Plaintiff, alleges the following based upon the investigation by Plaintiff's counsel, which included, among other things, a review of the defendants' public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Opnext, Inc., ("Opnext" or the "Company"), securities analysts' reports and advisories about the Company, and information readily available on the Internet; and Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION AND OVERVIEW

1. This is a federal class action on behalf of purchasers of the securities of Opnext, who purchased or otherwise acquired Opnext securities pursuant or traceable to the Company's

February 14, 2007 Initial Public Offering (the “IPO” or the “Offering”), seeking to pursue remedies under the Securities Act of 1933 (the “Securities Act”).

2. Opnext is a laser technology company formed out of Hitachi. The Company’s products and services are used in communications networks, security systems, medical systems, and consumer electronics.

3. On February 13, 2008, the Company unexpectedly announced that it would be restating earnings for each of the fiscal years ended March 31, 2006 and March 31, 2007, and for the three-month periods ended December 31, 2006, September 30, 2006, and June 30, 2006, due to errors in its financial statements that were incorporated into its Registration Statement. As a result, previous figures for these periods could no longer be relied upon. Specifically, the Company stated that the Company’s net income was overstated by \$1.8 million for the fiscal year ended March 31, 2007 and its net loss was understated by \$1.0 million for the fiscal year ended March 31, 2006. Moreover, net income was overstated by \$0.7 million for the three-month period ended December 31, 2006 and understated by \$0.1 million for the three-month period ended September 30, 2006. Finally, net loss was understated by \$0.5 million for the three-month period ended June 30, 2006.

4. In response to this news, shares of the Company’s stock declined \$0.89 per share, or 16.06 percent, to close on February 13, 2008 at \$4.65 per share, on unusually heavy trading volume. This closing price represented a loss of \$10.35, or 69 percent, of the IPO price just months prior.

5. The Complaint alleges that, in connection with the Company’s IPO, defendants, the Registration Statement, failed to disclose or indicate the following: (1) that the financial statements contained in the Registration Statement materially understated the Company’s net

loss for fiscal year ended March 31, 2006 by approximately \$1.0 million; (2) that the Company overstated its net income for the quarter ended December 31, 2006 by \$700,000, or nearly 27 percent; and (3) that the Company lacked adequate internal and financial controls.

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 11, 12(a)(2), and 15 of the Securities Act (15 U.S.C. §§ 77k, 77l, and 77o).

8. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act (15 U.S.C. § 77v).

9. Venue is proper in this Judicial District pursuant to Section 22 of the Securities Act. Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this Judicial District. Additionally, the Company's principal executive offices are located within this Judicial 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 mails, interstate telephone communications, and the facilities of the national securities exchange.

PARTIES

11. Plaintiff William G. Johnson, as set forth in the accompanying certification and incorporated by reference herein, purchased Opnext securities at artificially inflated prices during the Class Period and has been damaged thereby.

12. Defendant Opnext is a Delaware corporation with its principal executive offices located at 1 Christopher Way, Eatontown, New Jersey.

13. Defendant Harry L. Bosco (“Bosco”) was, at all relevant times, the Company’s President, Chief Executive Officer (“CEO”), and a member of the Company’s Board of Directors.

14. Defendant Robert J. Nobile (“Nobile”) was, at all relevant times, the Company’s Chief Financial Officer (“CFO”) and Senior Vice President of Finance.

15. Defendant Naoya Takahashi (“Takahashi”), was, at relevant times, Chairman of the Company’s Board of Directors.

16. Defendant David Lee (“Lee”) was, at relevant times, Co-Chairman of the Company’s Board of Directors.

17. Defendant Tetsuo Takemura (“Takemura”) was, at relevant times, a member of the Company’s Board of Directors.

18. Defendant Ryuichi Otsuki (“Otsuki”) was, at relevant times, a member of the Company’s Board of Directors.

19. Defendants Bosco, Nobile, Takahashi, Lee, Takemura and Otsuki are collectively referred to hereinafter as the “Individual Defendants.” The Individual Defendants, because of their positions within the Company, possessed the power and authority to control the contents of Opnext’s quarterly reports, press releases, and presentations to securities analysts, money and portfolio managers, and institutional investors, i.e., the market. Each Individual Defendant was provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to or shortly after their issuance, and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these Individual Defendants knew that the adverse facts, specified herein, had not been

disclosed to and were being concealed from the public, and that the positive representations which were being made were thus materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each “group-published” information and the result of the collective actions of the Individual Defendants.

20. Defendants Goldman, Sachs & Co. (“Goldman”), JPMorgan (“JPMorgan”), CIBC World Markets (“CIBC”), Cowen and Company (“Cowen”), and Jefferies & Company (“Jefferies”), served as financial advisors and assisted in the preparation of the Registration Statement and/or the Prospectus for the February 14, 2007 IPO.

21. Defendants Goldman, JPMorgan, CIBC, Cowen, and Jefferies are collectively referred to hereinafter as the “Underwriter Defendants.”

22. Defendant Ernst & Young LLP (“Ernst & Young”) is an accounting and auditing firm. Ernst & Young audited Opnext’s materially false and misleading financial statements at the time of the February 14, 2007 IPO. Ernst & Young thus participated in the scheme, plan, and common course of conduct as described herein.

SUBSTANTIVE ALLEGATIONS

Background

23. Opnext is a laser technology company formed out of Hitachi. The Company’s products and services are used in communications networks, security systems, medical systems, and consumer electronics.

24. On February 14, 2007, the Company conducted its IPO. In connection with the IPO, the Company filed a Registration Statement and Prospectus (collectively referred to as the “Registration Statement”) with the SEC. The IPO was a financial success for the Company, as it was able to raise \$253.64 million by selling 16.91 million shares of stock to the public at a price of \$15 per share.

Materially False and Misleading Statements
Made in the Registration Statement

25. The Registration Statement contained financial statements for the Company for the quarter and nine months ended December 31, 2006 and for the fiscal year ended March 31, 2006. In terms of net income, the Registration Statement showed: a net loss of \$30,474,000 for the fiscal year ended March 31, 2006; net income of \$3,225,000 for the three-month period ended December 31, 2006; a net income of \$1,174,000 for the three-month period ended September 30, 2006; and a net loss of \$3,474,000 for the three-month period ended June 30, 2006.

26. The statements contained in ¶ 25 were materially false and misleading when made because defendants failed to disclose or indicate the following: (1) that the financial statements contained in the Registration Statement understated the Company's net loss for the fiscal year ended March 31, 2006 by approximately \$1.0 million; (2) that the Company overstated its net income for the quarter ended December 31, 2006 by \$700,000, or nearly 27percent; and (3) that the Company lacked adequate internal and financial controls.

The Truth Begins to Emerge

27. On February 13, 2008, the Company issued a press release entitled "Opnext Announces Expected Restatement of Financial Statements." Therein, the Company, in relevant part, stated:

Opnext, Inc, (NASDAQ:OPXT), a global leader in the design and manufacturing of optical modules and components, announced today that in the course of preparing the Company's financial statements for the quarter ended December 31, 2007, *the Company has determined that errors occurred in the valuation of inventory consigned to one of its contract manufacturers and that, as a result, the Company's inventory and trade payables balances and the reported amounts of cost of goods sold and other income expense, net, were not properly reported for each of the fiscal years ended March 31, 2006 and March 31, 2007, and for the affected quarterly periods in each of those years.*

The Company estimates that, as a result of the errors, the Company's net income was overstated by approximately \$1.8 million for the fiscal year ended March 31, 2007 and its net loss was understated by approximately \$1.0 million for the fiscal year ended March 31, 2006. In addition, net income was overstated by approximately \$0.7 million for the three-month period ended December 31, 2006 and was understated by approximately \$0.1 million: for the three-month period ended September 30, 2006, while net loss was understated by approximately \$0.5 million for the three-month period ended June 30, 2006. The Company expects to file an amendment to its Annual Report on Form 10-K for the fiscal year ended March 31, 2007 to restate the previously issued audited financial statements for the years ended March 31, 2007 and March 31, 2006. The Company also expects to file amendments to its Quarterly Reports on Form 10-Q for the quarters ended June 30, 2007 and September 30, 2007 to restate the previously issued comparative financial statements for the quarters ended June 30, 2006 and September 30, 2006, respectively. The previously issued comparative financial statements for the quarter and nine-month period ended December 31, 2006 will be restated in the Company's Quarterly Report on Form 10-Q for the quarter ended December 31, 2007.

Senior management of the Company has reviewed the errors and determined that its previously issued financial statements for the above-referenced periods should no longer be relied upon. Management has discussed the matters described above with the Company's Audit Committee of the Board of Directors, and the Audit Committee has concurred with management's determinations relating to the restatement. The Audit Committee and management have also discussed the matters described above with Ernst & Young LLP, the Company's independent registered public accounting firm. Furthermore, the Company has notified the NASDAQ National Market of the review and of the Company's expected restatement of previously reported financial statements.

Pending the completion of the restatement, the Company is postponing its earnings release and the filing of its Quarterly Report on Form 10-Q for the quarter ended December 31, 2007. [Emphasis added.]

28. Upon the release of this news, shares of the Company's stock declined more than 16 percent, to close on February 13, 2008 at \$4.65 per share, on unusually heavy trading volume. This

closing price on Opnext represented a cumulative loss of \$10.35, or 69 percent, of the value of the Company's shares at the time of its IPO just months prior.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

29. 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 Opnext's securities pursuant or traceable to the Company's February 14, 2007, IPO and who were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which defendants have or had a controlling interest.

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

31. 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.

32. 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.

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

- (a) whether the federal securities laws were violated by defendants' acts as alleged herein;
- (b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Opnext; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages,

34. 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.

UNDISCLOSED ADVERSE FACTS

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

36. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Opnext's securities, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company and its business and operations, as alleged herein.

37. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, in connection with the Offering, defendants made or caused to be made a series of materially false or misleading statements about Opnext's financial results and controls. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Opnext and its financial well-being and operations, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein.

LOSS CAUSATION

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

39. During the Class Period, Plaintiff and the Class purchased securities of Opnext at artificially inflated prices and were damaged thereby. The price of Opnext's securities significantly declined when the misrepresentations made to the market, and/or the information

alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, thus causing investors' losses.

Applicability of Presumption of Reliance:

Fraud On The Market Doctrine

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

- (a) Opnext stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, Opnext filed periodic public reports with the SEC and the NASDAQ;
- (c) Opnext regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (d) Opnext was followed by several securities analysts, employed by major brokerage firms, who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

41. As a result of the foregoing, the market for Opnext's securities promptly digested current information regarding Opnext from all publicly-available sources and reflected such information in Opnext's stock price. Under these circumstances, all purchasers of Opnext's securities during the Class Period suffered similar injury through their purchases of the Company's securities at artificially inflated prices and a presumption of reliance applies.

NO SAFE HARBOR

42. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.

The false financial results pleaded herein were not forward-looking statements nor identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements were made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Opnext who knew that those statements were false when made.

FIRST CLAIM
Violation of Section 11 of
The Securities Act Against All Defendants

43. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein only to the extent, however, that such allegations do not allege fraud, scienter or the intent of the defendants to defraud Plaintiff or members of the Class. This count is predicated upon defendants’ strict liability for making false and materially misleading statements in the Registration Statement.

44. This claim is asserted by Plaintiff against all defendants by, and on behalf of, persons who acquired shares of the Company’s securities pursuant to or traceable to the false Registration Statement issued in connection with the February 14, 2007 IPO.

45. Individual Defendants, as signatories of the Registration Statement, and as directors and/or officers of Opnext and controlling persons of the issuer, owed to the holders of the stock obtained through the Registration Statement the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement at the time

they became effective to ensure that such statements were true and correct, and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading. Defendants knew, or in the exercise of reasonable care should have known, of the material misstatements and omissions contained in or omitted from the Registration Statement as set forth herein. As such, defendants are liable to the Class.

46. Underwriter Defendants and Ernst & Young owed to the holders of the stock obtained through the Registration Statement the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement at the time they became effective to ensure that such statements were true and correct and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading. Defendants knew, or in the exercise of reasonable care should have known, of the material misstatements and omissions contained in or omitted from the Registration Statement as set forth herein. As such, defendants are liable to the Class.

47. None of the defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true or that there was no omission of material facts necessary to make the statements made therein not misleading.

48. Defendants issued and disseminated, caused to be issued and disseminated, and participated in the issuance and dissemination of, material misstatements to the investing public which were contained in the Registration Statement, which misrepresented or failed to disclose, inter alia, the facts set forth above. By reason of the conduct herein alleged, each defendant violated and/or controlled a person who violated Section 11 of the Securities Act.

49. As a direct and proximate result of defendants' acts and omissions in violation of the Securities Act, the market price of Opnext's securities sold in the IPO was artificially inflated, and Plaintiff and the Class suffered substantial damage in connection with their ownership of Opnext's securities pursuant to the Registration Statement.

50. Opnext is the issuer of the stock sold via the Registration Statement. As issuer of the stock, the Company is strictly liable to Plaintiff and the Class for the material misstatements and omissions therein.

51. At the times they obtained their shares of Opnext, Plaintiff and members of the Class did so without knowledge of the facts concerning the misstatements or omissions alleged herein.

52. This action is brought within one year after discovery of the untrue statements and omissions in and from the Registration Statement which should have been made through the exercise of reasonable diligence, and within three years of the effective date of the Prospectus.

53. By virtue of the foregoing, Plaintiff and the other members of the Class are entitled to damages under Section 11 as measured by the provisions of Section 11(e), from the defendants and each of them, jointly and severally.

SECOND CLAIM
Violation of Section 12(a)(2) of
The Securities Act Against All Defendants

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

55. This Count is brought pursuant to Section 12(a)(2) of the Securities Act on behalf of the Class, against all defendants.

56. Defendants were sellers, offerors, and/or solicitors of purchasers of the shares offered pursuant to the Registration Statement.

57. The Opnext IPO Registration Statement contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. The Individual Defendants' actions of solicitation included participating in the preparation of the false the misleading Registration Statement.

58. Defendants owed to the purchasers of Opnext's securities, including Plaintiff and other members of the Class, the duty to make a reasonable and diligent investigation of the statements contained in the IPO materials, including the Registration Statement, to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants knew of, or in the exercise of reasonable care should have known of, the misstatements and omissions contained in the IPO materials as set forth above.

59. Plaintiff and other members of the Class purchased or otherwise acquired Opnext's securities pursuant to and/or traceable to the defective Registration Statement. Plaintiff did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Registration Statement.

60. Plaintiff individually and representatively, hereby offer to tender to defendants those securities which Plaintiff and other Class members continue to own, on behalf of all members of the Class who continue to own such securities, in return for the consideration paid for those securities together with interest thereon. Class members who have sold their Opnext securities are entitled to rescissory damages.

61. By reason of the conduct alleged herein, these defendants violated, and/or controlled a person who violated Section 12(a)(2) of the Securities Act. Accordingly, Plaintiff and members of the Class who hold Opnext securities purchased in the IPO have the right to rescind and recover the

consideration paid for their Opnext securities, and hereby elect to rescind and tender their Opnext securities to the defendants sued herein. Plaintiff and Class members who have sold their Opnext securities are entitled to rescissory damages.

62. This action is brought within three years from the time that the securities upon which this Count is brought was sold to the public, and within one year from the time when Plaintiff discovered or reasonably could have discovered the facts upon which this Count is based.

THIRD CLAIM
Violation of Section 15 of The Securities Act
Against the Individual Defendants

63. Plaintiff repeats and realleges each and every allegation contained above, excluding all allegations above that contain facts necessary to prove any elements not required to state a Section 15 claim, including without limitation, scienter.

64. This count is asserted against Individual Defendants and is based upon Section 15 of the Securities Act.

65. Individual Defendants, by virtue of their offices, directorship and specific acts were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of Opnext within the meaning of Section 15 of the Securities Act. The Individual Defendants had the power and influence and exercised the same to cause Opnext to engage in the acts described herein.

66. Individual Defendants' position made them privy to and provided them with actual knowledge of the material facts concealed from Plaintiff and the Class.

67. By virtue of the conduct alleged herein, the Individual Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

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

- (a) Determining that this action is a proper class action under Rule 23 of the federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: March 20, 2008

Respectfully submitted,

By: /s/ Daniel S. Sommers

Steven J. Toll

Daniel S. Sommers (NJ Bar No. 2084-1986)

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