Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

JONATHAN A. CALLOWHILL and SHANE CHAMBERS

Plaintiffs

- and –

AIRBOSS OF AMERICA CORP., P. GREN SCHOCH, FRANK IENTILE and PATRICK CALLAHAN

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: December 16, 2022

Issued by _____
Local registrar

Address of court office: 50 Eagle St. W.
Newmarket, ON
L3Y 6B1

TO: **AirBoss of America Corp.**
16441 Yonge Street
Newmarket, ON
L3X 2G8

AND TO: **P. Gren Schoch**
16441 Yonge Street
Newmarket, ON
L3X 2G8

AND TO: **Frank Ientile**
16441 Yonge Street
Newmarket, ON
L3X 2G8

AND TO: **Patrick Callahan**
16441 Yonge Street
Newmarket, ON
L3X 2G8

I. DEFINED TERMS

4. In this Statement of Claim, the capitalized terms below have the following meanings:

(a) **"ADG"** means Airboss Defense Group, Inc, a subsidiary of Airboss

(b) **"AIF"** means Annual Information Form;

(c) "**Airboss**" means the Defendant Airboss of America Corp., along with its subsidiaries and affiliates, or any of them, as the context requires.

(d) "**CBP**" means U.S. Customs and Border Protection, an agency of the US government;

(e) "**CEO**" means Chief Executive Officer;

(f) **"CFO**" means Chief Financial Officer;

(g) "***CJA***" means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;

(h) "**Class**" and "**Class Members**" mean all persons and entities, wherever they may reside or be domiciled, who acquired **Airboss** securities during the **Class Period**, other than **Excluded Persons**;

(i) "**Class Period**" means the period from November 9, 2021 to and including September 6, 2022;

(j) **"Company"** means Airboss;

(k) "***CPA***" means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

(l) "**Defendants**" means Airboss and the Individual Defendants

(m) "**Excluded Persons**" means the **Defendants**, and **Airboss'** past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any family member of an **Individual Defendants**' families;

(n) "**HHS**" means the US Department of Health and Human Service

(o) "**IFRS**" means the "International Financial Reporting Standards";

(p) **"Individual Defendants"** means the Defendants P. Gren Schoch, Frank Ientile, and Patrick Callahan;

(q) "**MD&A**" means Management's Discussion and Analysis;

(r) "**Misleading Core Documents**" means Airboss':

a. MD&A for the three and six months ending June 30, 2022 (filed August 4, 2022 on SEDAR) ("**Q2/22 MD&A"**);

b. Interim consolidated financial statements for the three and six months ending on June 30, 2022 (filed August 4, 2022 on SEDAR) (**"Q2/22 Financial Statements"**);

c. MD&A for the three months ending on March 31, 2022 (filed May 11, 2022 on SEDAR) ("**Q1/22 MD&A"**);

d. Interim consolidated financial statements for the three months ending on March 31, 2022 (filed May 11, 2022 on SEDAR) (**"Q1/22 Financial Statements"**);

e. 2021 Annual Report (filed April 8, 2022 on SEDAR) (**"2021 Annual Report"**);

f. Management information circular (filed April 8, 2022 on SEDAR) ("**2022 MIC**");

g. AIF for the year ended December 31, 2021 (filed on March 8, 2022 on SEDAR) ("**2021 AIF**");

h. MD&A for the year ended December 31, 2021 (filed March 8, 2022 on SEDAR) ("**2021 MD&A"**);

i. Audited consolidated financial statements for the year ending on December 31, 2021 (filed March 8, 2022 on SEDAR) (**"2021 Financial Statements"**);

j. MD&A for the three and nine months ending on September 30, 2021 (filed November 9, 2021 on SEDAR) (**"Q3/21 MD&A"**);

k. Interim consolidated financial statements for the three and nine months ending on September 30, 2021 (filed November 9, 2021 on SEDAR) (**"Q3/21 Financial Statements"**);

l. AIF for the year ended December 31, 2020 (filed on March 9, 2021 on SEDAR) ("**2020 AIF**");

(s) "**Misleading Non-Core Documents**" means:

a. the news release dated August 4, 2022, entitled "AirBoss Announces 2nd Quarter Results and Continued Strength in Its Opportunity Pipeline" ("**Q2/22 News Release**");

b. Form 52-109F2 Certification of Interim Filings (CEO) for the interim period ended June 30, 2022 (filed with SEDAR on August 4, 2022);

c. Form 52-109F2 Certification of Interim Filings (CFO) for the interim period ended June 30, 2022 (filed with SEDAR on August 4, 2022);

d. the news release dated May 11, 2022, entitled "AirBoss Announces Record First Quarter 2022 Results" ("**Q1/22 News Release**");

e. Form 52-109F2 Certification of Interim Filings (CEO) for the interim period ended March 31, 2022 (filed with SEDAR on May 11, 2022);

f. Form 52-109F2 Certification of Interim Filings (CFO) for the interim period ended March 31, 2022 (filed with SEDAR on May 11, 2022);

g. the news release dated March 8, 2022, entitled "AirBoss Announces Strong 4th Quarter and Full Year 2021 Results With Continued Momentum" ("**Q4/Full Year/21 News Release**");

h. Form 52-109F2 Certification of Annual Filing (CEO) for the year ended December 31, 2021 (filed with SEDAR on March 8, 2022);

i. Form 52-109F2 Certification of Annual Filing (CFO) for the period ended December 31, 2021 (filed with SEDAR on March 8, 2022);

j. the news release dated December 29, 2021, entitled "AirBoss Announces Updated Opportunity Pipeline and Revised Guidance" ("**December 2021 Update**");

k. the news release dated November 9, 2021, entitled "AirBoss Announces Solid 3rd Quarter Results and Ongoing Momentum" ("**Q3/21 News Release**");

l. Form 52-109F2 Certification of Interim Filings (CEO) for the interim period ended September 30, 2021 (filed with SEDAR on November 9, 2021);

m. Form 52-109F2 Certification of Interim Filings (CFO) for the interim period ended September 30, 2021 (filed with SEDAR on November 9, 2021);

(t) "**Misleading Oral Representations**"

a. means the statements made on the earnings call with investors held on August 5, 2022 ("**Q2/22 Earnings Call**");

b. means the statements made on the earnings call with investors held on May 12, 2022 ("**Q1/22 Earnings Call**");

c. means the statements made on the earnings call with investors held on March 9, 2022 ("**Q4/Full Year/21 Earnings Call**");

d. means the statements made on the earnings call with investors held on November 10, 2021 ("**Q3/21 Earnings Call**");

(u) "**MD&A**" means Management's Discussion and Analysis;

(v) "***OSA***" means the *Securities Act,* RSO 1990, c S.5, as amended;

(w) **"OSC"** means the Ontario Securities Commission;

(x) "**Plaintiffs**" means the plaintiffs, Jonathan A. Callowhill and Shane Chambers;

(y) "**Securities Legislation**" means , collectively, the *Securities Act,* RSA 2000, c S-4, as amended; the *Securities Act,* RSBC 1996, c 418, as amended; *The Securities Act,* CCSM c S50, as amended; the *Securities Act,* SNB 2004, c S- 5.5, as amended; the *Securities Act,* RSNL 1990, c S-13, as amended; the *Securities Act,* SNWT 2008, c 10, as amended; the *Securities Act,* RSNS 1989, c 418, as amended; the *Securities Act,* S Nu 2008, c 12, as amended; the *Securities Act,* RSPEI 1988, c S-3.1, as amended; the *Securities Act,* RSQ c V-1.1, as amended; *The Securities Act, 1988,* SS 1988-89, c S-42.2, as amended; and the *Securities Act,* SY 2007, c 16, as amended;

(z) **"SEDAR"** means the System for Electronic Document Analysis and Retrieval which is a filing system developed for the Canadian Securities Administration;

(aa) "**TSX**" means the Toronto Stock Exchange; and

(bb) "**WRO**" means Withhold Release Order, a type of regulatory action issued by CBP.

2. Unless otherwise stated, all dollar amounts stated herein are in Canadian dollars.

II. RELIEF SOUGHT

3. The Plaintiffs claim on their own behalf and on behalf of the other Class Members:

(a) an order granting leave to pursue the statutory causes of action under Part XXIII.1 of the OSA and the Other Canadian Securities Legislation (if necessary);

(b) an order certifying this action as a class proceeding pursuant to s. 5 of the *CPA* and appointing the Plaintiffs as the representative plaintiffs for the Class;

(c) a declaration that the Misleading Core Documents, the Misleading Non-Core Documents and the Misleading Oral Representations contained one or more

misrepresentations within the meaning of the *OSA* and the Other Canadian Securities Legislation (if necessary);

(d) a declaration that the Defendants or one of them made the misrepresentations pleaded below;

(e) a declaration that the Individual Defendants authorized, permitted or acquiesced in the making of the misrepresentations while knowing them to be misrepresentations;

(f) a declaration that Airboss is vicariously liable for the acts and/or omissions of the Individual Defendants and, as may be application, of its other officers, directors or employees;

(g) damages pursuant to Part XXIII.1 of the OSA and, if necessary, the corresponding provisions of the Securities Legislation in an amount that this Court find appropriate;

(h) monetary relief in an amount to be determined by this Honourable Court;

(i) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(j) pre-judgment and post-judgment interest pursuant to the *CJA*;

(k) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity;

(l) pursuant to section 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and

(m) such further and other relief as this Honourable Court may deem just.

III. OVERVIEW

4. This is a proposed class proceeding against AirBoss, its CEO Gren Schoch, its CFO Frank Ientile, and its officer Patrick Callahan, based on misrepresentations made throughout the Class Period. The Plaintiffs bring this action on behalf of AirBoss securityholders who suffered losses when the truth behind the Company's misrepresentations about its performance on its largest-ever contract was publicly disclosed.

IV. THE PARTIES

A. The Plaintiffs and Class

5. Jonathan A. Callowhill is an individual residing in Edmonton, Alberta. Mr. Callowhill acquired 2,400 shares in Airboss identified by the ticker symbol BOS on the TSX during the Class Period and continued to hold shares at the end of the Class Period.

6. Shane Chambers is an individual residing in South Lake, Texas. Mr. Chambers acquired 6,000 shares in Airboss securities identified by the ticker symbol ABSSF on the over-the-counter market in the United States of America and continued to hold shares at the end of the Class Period.

7. The Class consist of all persons and entities, wherever they may reside or be domiciled, who acquired AirBoss securities on the secondary market during the Class Period, other than Excluded Persons.

B. The Defendants

(i) Airboss of America Corp.

8. AirBoss is a company incorporated in Ontario with its principal place of business in Newmarket, Ontario. Its operations are carried on by Airboss as well as nine wholly-owned operating subsidiaries.

9. Airboss was a reporting issuer during the Class Period in all Canadian provinces. Its shares were publicly listed for trading on the TSX under the ticker symbol "BOS" and over the counter in the United States of America under the ticker "ABSSF". Airboss published the documents identified below on, among other places, SEDAR.

10. Airboss controlled the contents of its AIFs, MD&As, financial statements, and the other misleading documents, and the misrepresentations made therein were made by Airboss.

(ii) The Individual Defendants

(a) P. Gren Schoch

11. Schoch is an individual residing in Ontario. During the Class Period, he was the CEO of Airboss as well as chairman of its the board of directors. During this time, he was a "director" and "officer" of Airboss within the meaning of the *OSA* and the Securities Legislation.

12. As a director and officer, Schoch caused Airboss to make the misrepresentations particularized below.

13. Schoch, in his capacity as CEO and director, certified each of the Misleading Documents that were quarterly and annual disclosures of Airboss. On behalf of the board of directors, Schoch approved and signed each of Airboss's financial statements issued during the Class Period. In doing so, he adopted as his own the false statements made in those documents.

(b) Frank Ientile

14. Ientile is an individual residing in Ontario. During the Class Period, he was Airboss' CFO and Treasurer. During this time, he was an "officer" of Airboss within the meaning of the *OSA* and the Securities Legislation.

15. As an officer, Ientile caused Airboss to make the misrepresentations particularized below.

16. Ientile, in his capacity as CFO, certified each of the Misleading Documents that were quarterly and annual disclosures of Airboss. In doing so, he adopted as his own, the false statements made in those documents.

(c) Patrick Callahan

17. Patrick Callahan is an individual residing in South Carolina, USA. During the Class Period, he was CEO of ADG. During this time, he was an "officer" of Airboss within the meaning

of the *OSA* and the Securities Legislation.

18. As an officer, Callahan caused Airboss to make the misrepresentations particularized below.

V. THE DEFENDANTS' DISCLOSURE OBLIGATIONS

A. Airboss's Disclosure Obligations

19. As a reporting issuer, Airboss was subject to the continuous disclosure obligations prescribed by National Instrument 51-102 to prepare and file on SEDAR certain disclosure documents prepared on regular basis, including:

    (a) Annual and interim MD&As (filed together with the financial statements) which provide material information about Airboss' business, management and operational and financial status during the period covered by the financial statements.

    (b) Annual information forms, which provide material information about Airboss and its business at a point in time, in the context of historical and possible future development.

    (c) Annual and interim financial statements, which provide information about Airboss' business and financial positions.

20. In fulfilling its continuous disclosure obligations, Airboss was prohibited from making a statement that it knew or reasonably ought to have known:

    (a) in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading; and

    (b) would reasonably be expected to have a significant effect on the market price or value of its securities.

21. In its MD&As, Airboss was required to provide a narrative explanation, through the eyes of management, of how the Company performed during the period covered by the financial

statements, and of its financial conditions and prospects.

22. In its AIFs, Galaxy was required to disclose risk factors relating to its business, including any matter that would be likely to influence an investor's decision to purchase Galaxy's securities.

23. In its financial statements, Airboss was required to comply with IFRS.

24. Contemporaneously with the filing of the financial statements and MD&As, Airboss was required to file certifications signed by the CEO and CFO certifying their review of the required documents and certain other matters.

B. Individuals Defendants' Role in Disclosure

25. Each of the Individual Defendants knew Airboss was a reporting issuer and that, in his role as a director and/or officer of Airboss, he would have direct responsibility for ensuring the accuracy and completeness of Airboss's disclosure documents.

26. The *OSA*, Securities Legislation, and National Instruments and Companion Policies promulgated thereunder imposed specific obligations on the Individual Defendants in the preparation of Airboss' continuous disclosure documents.

27. Sections 77 and 78 of the *OSA*, and the concordant provisions of the Securities Legislation, informed by National Instrument 52-109, required Schoch as CEO and Ientile as CFO to review, approve and certify the accuracy of Airboss's interim and annual financial statements and MD&As released during the Class Period.

28. National Instrument 51-102 requires the board of directors of a reporting issuer to approve each interim and annual financial statement and MD&A released by an issuer prior to the release of those documents.

29. Each of the Individual Defendants was aware of and accepted these obligations in assuming his or her position as a director and/or officer of Airboss. The Individual Defendants authorized, permitted and/or acquiesced in the release or making of, and adopted as their own, the false statements particularized below.

VI. EVENTS GIVING RISE TO THIS ACTION

A. Background

30. Airboss is a supplier and manufacturer of rubber products. The Company operates through three divisions, AirBoss Rubber Solutions, AirBoss Engineered Products, and AirBoss Defense Group.

31. Airboss Defense Group ("ADG") provides military, law enforcement, healthcare providers, industrial providers, and first responders with protective equipment.

32. The onset of the Covid-19 pandemic caused a surge for demand in nitrile rubber gloves -- a crucial tool for fighting the COVID-19 pandemic.

33. In March 2021, ADG was awarded a contract with the US government, through the Department of Health and Human Services ("HHS"), to supply 18.2 million boxes of nitrile rubber gloves (the "Glove Contract").

34. The Glove Contract required immediate delivery of gloves and consisted of two tranches. Under the first tranche, Airboss would deliver US$288 million worth of nitrile gloves to HHS within one year. Airboss had also given HHS an option to order another US$288 million in a second tranche. In a press release dated March 16, 2022, the Company summarized the Glove Contract as follows:

> *AirBoss ... has been awarded a contract worth up to US$576 million by [HHS] for the sale of nitrile patient examination gloves. HHS has provided ADG authorization to*

proceed immediately on an initial order expected to be worth up to US$288 million, with an equivalent follow-on option which HHS may exercise later in 2021 for an additional US$288 million.

35. The Glove Contract was transformational for Airboss. In fiscal year 2020, a record year for the Company, total revenues had been just $501 million, less than the potential size of this one contract with HHS.

36. But the benefits of the Glove Contract for the Company went beyond just its massive near-term financial impact. Airboss regularly touted the longer-term benefits of the Glove Contract. In meetings with investors between March and September of 2021, the Company consistently promoted these other benefits.

    (a) The Company stated with reference to the Glove Contract that it was "recurring revenue" and "not a one-off thing" because its successful performance under that contract would give it a competitive advantage in future contract opportunities for nitrile rubber gloves. It stated that it was "in discussion with folks like HHS and FEMA for opportunities that are two or three years away" and that this represented a "massive opportunity for us." It confidently declared that, "beyond this contract, which we will complete this year, we are in conversations with the government for future need of nitrile rubber gloves because there are … tens of billions that are needed within the US…"

    (b) The Company pointed to its "exclusive relationship" with one of the very small number of FDA-approved manufacturers of nitrile rubber products in Malaysia as a competitive advantage in winning future contracts for nitrile gloves around the world.

    (c) The Company claimed that its performance under the Glove Contract would establish it as a "trusted partner of the US government" and that therefore Airboss was more likely to win future contracts because it was developing a "great relationship with the US government." In particular, the Company pointed to $1 billion worth of contract opportunities for which it was currently competing and claimed that it was more likely to secure those awards because its performance under the Glove Contract.

37. Investors took notice of the Glove Contract and agreed with the Company about its direct financial and other longer-term benefits. The Company's stock price more than doubled

during March of 2021.

38. Approximately 80% of the world's supply of nitrile rubber gloves is manufactured in Malaysia. Within Malaysia there are only a handful of large manufacturers of nitrile rubber gloves.

39. For years, Malaysian producers of nitrile rubber products have been plagued by allegations of use of forced labor in manufacturing, with several companies barred from importing products into the US, Canada, and many other countries.

40. As such, identifying a reliable manufacturer able to meet the US government's demands in a timely manner was an important task for Airboss. The Company engaged in a frantic worldwide search to find glove manufacturers able to manufacture and deliver the gloves on a timely basis. That search, through an intermediary in Thailand, led Airboss to a company named Smart Glove in Malaysia.

41. Throughout April 2021 to June 2021, the Company conducted due diligence, toured Smart Glove's facilities, and engaged in numerous discussions about Smart Glove's capabilities and capacity.

42. Airboss contracted FedEx to provide ocean transportation for 578 containers of nitrile gloves from Malaysia to the U.S. FedEx completed delivery of 376 containers.

B. The Withhold Release Order

43. On November 4 2021, or shortly thereafter, Airboss learned that 202 of the 578 containers of gloves that it had purchased for delivery to HHS had been detained at ports in California by Customs and Border Protection ("CBP"), an agency of the government of the United States of America.

44. The containers had been detained by CBP pursuant to a Withhold Release Order ("WRO")

issued on November 4, 2021. The WRO was based on information that Smart Glove facilities utilized forced labor and therefore its products could not be imported into the United States.

45. The CBP describes the process for issuing WROs as follows:

> *CBP issues a Withhold Release Order (WRO) when the agency has reasonable evidence of the use of forced labor in the manufacturing of a good or goods entering the US supply chain. A WRO allows CBP to detain the products in question at all U.S. ports of entry until/unless importers can prove the absence of forced labor in their product's supply chain.*

46. WROs are an extraordinary measure and quite rare; since 1991, CBP has issued just 52 WROs. It is even more rare for an importer to be able to overturn a WRO by providing sufficient evidence to disprove the CPB's "reasonable evidence." It is much more common for a WRO to remain outstanding indefinitely or lead to a seizure of the assets in question.

47. The issuance of the WRO and its repercussions were highly material for Airboss whose stock had more than doubled based on the Glove Contract. The WRO negated much of the financial and other benefits that Airboss had so vociferously promoted to investors and which had been priced into the Company's securities. It also created previously unforeseen challenges and risks for the Company.

48. The repercussions of the WRO included, among other things, the following:

    (a) the WRO meant that Smart Glove products could no longer be imported into the US and that therefore the Company's supply of nitrile gloves was halted and the much-vaunted "exclusive relationship" with one of the few eligible suppliers of nitrile rubber products was no longer functional;

    (b) the interrupted supply of gloves and the detained inventory imperiled the Company's ability to fulfill the remainder of the initial $288 million order from HHS within the permitted timeframe;

    (c) the WRO and the interrupted supply of nitrile gloves reduced the probability that HHS would pick up the option on the second tranche of the Glove Contract;

(d) the WRO and the interrupted supply of nitrile gloves harmed the Company's status as a "trusted partner" of the US government and therefore reduced the prospects of success on its much-advertised billion-dollar pipeline of near-term future contract opportunities; and

(e) the indefinitely detained inventory would cause a material deterioration in the company's financial position by (i) tying up a significant amount of capital in inaccessible inventory and therefore reducing free cash flow, (ii) increasing the Company's balance sheet exposure to the price of nitrile gloves just as prices were beginning to decline, (iii) increasing debt and related financing costs associated with higher working capital requirements, and (iv) exposing the Company to the direct costs and risk associated with the detained inventory, including spoilage risk, storage costs, demurrage charges, and related fees.

49. The Defendants were, or ought to have been, aware of the WRO and its repercussions.

C. Market Communications Subsequent to the WRO

50. Instead of disclosing the material facts about the WRO, the detained inventory, the interrupted supply of gloves, the potentially harmed relationship with the US government, and the other repercussions of the WRO, over the next 10 months, the Defendants actively sought to hide the truth about all of it.

51. On November 9, 2021, only days after the WRO was issued, the supply halted, and the inventory detained, the Company filed its third quarter 2021 disclosure material. The Company did not inform investors of the WRO or any of its repercussions.

52. On December 28, 2021, the Company issued the December 2021 Update. In it, Airboss revised its financial guidance for the year 2021. The revision was necessitated by the halted flow of gloves from Smart Glove due to the WRO. But once again, Airboss did not disclose the truth. In fact, the Company sought to mislead investors by blaming the revision on "custom and border delays" associated with the "the holiday season:"

As a result of the customs, logistics and border delays, glove deliveries originally scheduled for the fourth quarter of 2021 are now expected to be delivered by the end of

the first quarter of 2022, which revised delivery window remains within the original timeframe set forth under the contract in respect of such product. Accordingly, as management expects the current customs and border delays to alleviate following the holiday season, the remaining revenue from the contract, representing approximately US$95M of sales, should be recognized in the first quarter of 2022.

53. On March 8, 2022, the Company filed its fourth quarter and full year 2021 disclosure material. By this time the WRO had been in place for four months. The inventory was still detained and the supply of nitrile gloves from Smart Glove still halted. The Company did not mention any of it and once again used subterfuge to explain away delayed deliveries.

(a) On the Q4/Full Year/21 Earnings Call, the Glove Contract came up multiple times. When an analyst asked about the percentage of the contract was left to be delivered, the Company inexplicably referenced "supply chain challenges" caused by the "Ukranian thing", and then stated that whatever was left under the $288 million contract was "currently in transit", without mentioning that a very large number of gloves were in fact detained by the US government in transit at ports in California. The Company also claimed "continued delivery for HHS" and "continued execution under this contract." It also stated that it continued to pursue contracts for PPE, including nitrile gloves, without noting that it could not sell a material portion of its inventory in the US and other countries or that its chosen supplier had been compromised.

(b) In the 2021 Financial Statements, the Company included the detained gloves in its inventory but did not disclose the circumstances surrounding them. The Company did not disclose a contingent liability or account for the effect of the detained inventory in any other way, as it was required to do under IFRS.

54. On March 8, 2022, the Company filed the 2021 AIF. There was no mention of the WRO or its repercussions.

(a) In the 2021 AIF, the Company dedicated several paragraphs to discussing risks associated with its inventory and its suppliers. But it did not mention that a material portion of its inventory was in gloves that were detained by the US government and stored in uncertain conditions. It also did not mention that its main supplier of nitrile rubber products had been compromised.

(b) In the 2021 AIF, the Company discussed legal and regulatory proceedings but did not mention the WRO or the fact that its inventory had been detained pursuant to a regulatory proceeding.

55. On April 8, 2022, the Company filed the 2021 Annual Report. Airboss highlighted the Glove Contract as its primary achievement for 2021 but did not mention the WRO or the gloves detained by the US government, or the compromised supplier of nitrile gloves, or the potential harm to its prospects for winning future contracts, or any of the other repercussions of the WRO.

56. On May 11, 2022, Airboss released its first quarter 2022 disclosure material. The Company announced the "completion" of the Glove Contract with the delivery of a total of US$237 million within the permitted contractual timeframe, rather than the total contracted amount of US$288 million. Instead of explaining that the shortfall had been caused by the detained inventory, the interrupted supply of nitrile gloves, and the other repercussions of the WRO, the Company once again misled the market.

    (a) On the Q1/22 Earnings call, the Company claimed that its performance under the Glove Contract "added further depth to our relationship with HHS" and that it expected "to compete for similar PPE contracts in the coming months and years." It did not mention the WRO, or the detained glove inventory, or its compromised supplier of nitrile gloves, or the other repercussions of the WRO.

    When an analyst from CIBC asked why the Glove Contract had been truncated from its original amount, the Company did not disclose that the WRO had hampered its ability to deliver the full US$288 million within the permitted timeline. Instead, the following exchange took place:

    Analyst: … if you could provide some, maybe some, additional colour on the completion of the HHS contract in Q1. The absolute size was smaller when completed. I guess… how did you and HHS decide on the revised number here? Is that just a reflection of the supply chain issues and them not wanting to wait anymore? And do you think this has implications for longer term demand for nitrile gloves just given how this contract shaped out in the end?

    Schoch: HHS informed us late in the quarter that they would they had enough… with what we were going to be able to deliver them… that that would satisfy their short-term needs and they paused any additional acquisitions until they knew their needs better. So it was agreed between us that we would stop shipping by the end of the contract date.

(b) In the Q1/22 News Release, the Company claimed that the shortfall in deliveries was caused by a "fractured supply chain."

(c) In the Q1/22 Financial Statements, the Company included the detained gloves in its inventory but did not disclose the circumstances surrounding them. The Company did not disclose a contingent liability or account for the effect of the detained inventory in any other way, as it was required to do under IFRS.

57. On August 4, 2022, the Company filed its second quarter 2022 disclosure material. By this time, the Glove Contract had expired five months earlier. But the Company's total inventory levels remained very high compared to historical norms because a large portion of its total inventory was in fact detained by the US government pursuant to the WRO. Analysts noticed the elevated inventory levels and asked questions about it, but once again, instead of disclosing the material facts and circumstances of the detained inventory and the WRO, the Company chose to hide the truth. It claimed that it would be able to freely convert the inventory into free cash flow without disclosing that the inventory was detained and restricted from being imported into the United States, its largest market, and certain other countries.

(a) On the Q2/22 Earnings Call, analysts noted the Company's elevated inventory levels and the resulting negative impact on the Company's ability to generate free cash flow. Here is one such exchange:

Analyst: Frank [Ientile, CFO], when I take a look at where the inventory is today, it looks elevated versus historic norms. I think that's because you guys probably had a little bit of nitrile gloves that that you are carrying over from your balance sheet just because the HHS contract was ended a little bit early. Can you confirm that?

CFO: Yes, absolutely, there is definitely carryover of gloves there which is what's driving lower free cash flow conversion but we are very focused on converting that in the as well in the coming quarters and working down our cash conversion cycle.

Analyst: Do you guys have demand that there is demand for customers or… you could potentially use them in another rfp with hhs going forward.

CEO: Hmmm… there is demand with customers. The…and…we are working with some potentially large ones at the moment.

(b) In the Q2/22 Financial Statements, the Company included the detained gloves in its inventory but did not disclose the circumstances surrounding them. The Company did not disclose a contingent liability or account for the effect of the detained inventory in any other way, as it was required to do under IFRS.

(c) In its MD&A, the Company mentioned the glove contract multiple times but did not mention the WRO or the stranded gloves. It attributed an increase in cash used for operating activities partially to the "carryover of inventory of nitrile gloves…" but did not note the circumstances of that inventory.

VII. THE MISREPRESENTATIONS AND OMISSIONS

58. During the Class Period, the Defendants did not disclose the truth about the WRO or any of its repercussions for the Company and misled investors about those material developments.

59. The misrepresentations included, but were not limited, to the following:

(a) Defendants misled investors about the existence of the WRO and its repercussions.

(b) Defendants misled investors about the inventory detained by the US government and its impact on the Company.

(c) Defendants misled investors about the risks and costs associated with storing and maintaining the detained inventory.

(d) Defendants misled investors about the Company's ability to source nitrile rubber gloves from reliable suppliers.

(e) Defendants misled investors about the Company's relationship with the US government as it related to their prospects for winning other contracts on which Airboss was actively bidding.

(f) Defendants failed to comply with IFRS in accounting for the detained inventory.

60. These statements and omissions were all misrepresentations within the meaning of the OSA and Other Canadian Securities Legislation, if necessary.

VIII. THE PUBLIC CORRECTIONS

61. In early September a research report appeared online entitled "*Short AirBoss (TSX:BOS): Lawsuit & Forced Labor Issues Impact Growth Pipeline & Inventory*" (the "Report"). It was dated September 7, 2022 and was first posted online on that day. By September 16th, it was broadly disseminated and posted to the popular investing website Seeking Alpha.

62. The Report disclosed the WRO, the detained inventory, and detailed some of the repercussions. Among other things, the report noted that:

(a) the detained inventory would increase the Company's exposure to the declining price of nitrile gloves potentially necessitating a charge to write down that inventory;

(b) the stranded inventory required additional storage and demurrage costs;

(c) the WRO and the interrupted flow of gloves would lower the Company's chances of winning additional US government contracts;

(d) the WRO and failure to deliver the gloves on time had caused HHS to truncate the original base contract by 18% and not pick up the option on the second tranche; and that

(e) the incremental capital required to hold the detained inventory and a potential write-down on the Company's balance sheet would weaken the Company's financial position and possibly cause a breach of debt covenants.

63. With the WRO and its repercussions now publicly disclosed, Airboss sued Smart Glove seeking compensation for damages it had suffered. In that suit, the Company summarized the direct damages resulting from the WRO as follows:

To date, ADG incurred at least more than $11.6 million in charges for protracted demurrage, storage, and other Withhold Release Order-related charges, more than $12.3 million in logistics costs to procure alternative gloves, lost profits of more than $12.6

million, and potential inventory losses upwards of $32 million. ADG has thus been damaged in an amount of more than $68.5 million on account of Smart Glove's conduct and has or will likely suffer other or further damages in an amount to be proven at trial.

64. On October 31, 2022, the Company issued an intra-quarter update to investors in which it announced that it was taking a $57 million charge on its inventory, resulting from the decline in nitrile glove prices as well as spoilage of glove inventory.

Based on significant downward shifts in pricing in the nitrile glove market during 2022, the Company has determined that it is necessary to take a non-cash charge in respect of nitrile gloves held in ADG's finished goods inventory. In addition, upon inspection, it was determined that a portion of the gloves no longer meet ADG's safety standards, and arrangements have been made for disposal of the affected glove supply. As a result of these factors, a material portion of the gloves will be disposed of, and a corresponding non-cash, non-covenant-impacting write-down of inventory totaling US$57 million will be taken.

65. The write-down would have caused the Company to be in violation on its covenants with certain creditors. As a result, prior to announcing the write-down, the Company was forced to negotiate with creditors for an exclusion for the charge from calculations with respect to debt covenants. That negotiation had taken place months earlier and was completed in September, more than a month before the Company had disclosed the charge.

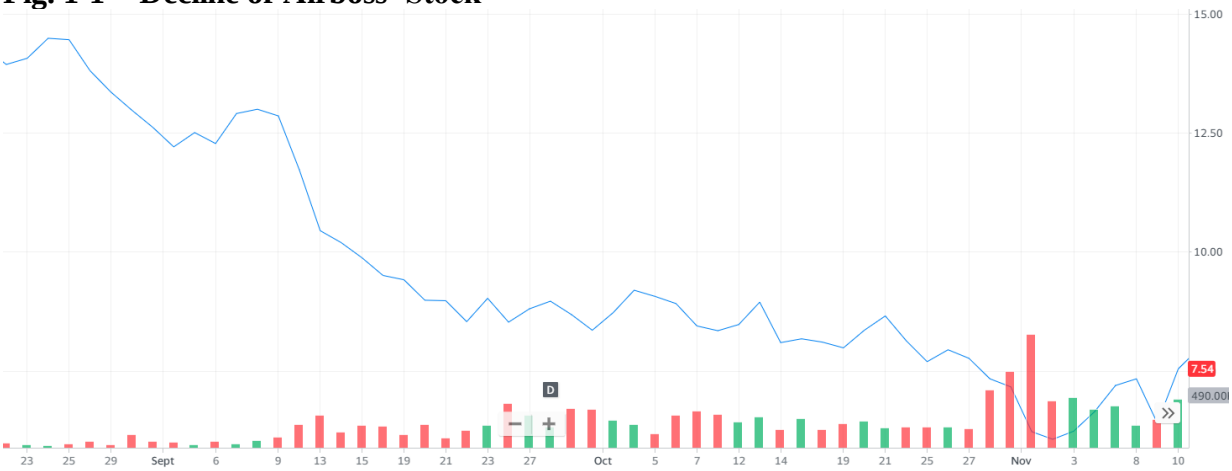
IX. THE MISREPRESENTATIONS AND THE PRICE OF AIRBOSS SECURITIES

66. During the Class Period, Airboss securities traded at an artificially inflated price because Airboss misrepresented the facts and circumstances surrounding its performance under the Glove Contract, including the WRO, the interrupted supply of nitrile gloves, and the material portion of its glove inventory detained by the US government, and the impact on the probability of success in securing other awards from the US government.

67. The Company's stock price had closed at $12.90 on Friday September 9, 2022, before the public correction. By the end of that week, on Friday September 16, when the Report had

been widely disseminated, the stock price had dropped to $9.50, a decline of 36%. A graph of the price decline is shown below in Fig. 1.1.

Fig. 1-1 – Decline of Airboss' Stock



X. RIGHTS OF ACTION

68. On behalf of the Class Members, the Plaintiffs plead the right of action found in section 138.3(1) of Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation) against the Defendants for misrepresentations in the Misleading Core documents, Misleading Non-Core Documents and Misleading Oral Representations subject to leave being granted under section 138.8(1) of the *OSA* (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

69. The Misleading Core Documents and Misleading Non-Core Documents are documents within the meaning of Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

70. The Misleading Oral Representations are public oral statements within the meaning of Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

71. At all material times, Airboss was a "responsible issuer" within the meaning of Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

72. The Individual Defendants were officers and/or directors of Airboss during the Class Period. The Individual Defendants authorized, permitted or acquiesced in the release of the Misleading Core Documents and the Misleading Non-Core Documents and in the making of the Misleading Oral Representations.

73. The Misleading Core Documents, Misleading Non-Core Documents, and Misleading Oral Representations contained misrepresentations as described herein. Any one of such misrepresentations is a misrepresentation for the purposes of the *OSA* (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

74. The Defendants knew at the time the Misleading Non-Core Documents were released and at the time the Misleading Oral Representations were made, that they contained a misrepresentation; or alternatively, at or before the time that those Documents were released or the misrepresentations were made the Defendants deliberately avoided acquiring knowledge that they contained a misrepresentation; or alternatively, the Defendants were, through action or failure to act, guilty of gross misconduct in connection with the release of the Misleading Non-Core Documents or the making of the Misleading Oral Representations.

75. The Plaintiffs and the other Class Members who purchased securities of Airboss in the secondary market during the Class Period are entitled to damages assessed in accordance with section 138.5 of the *OSA* (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

XI. VICARIOUS LIABILITY

76. Airboss is vicariously liable for the acts and omissions of the Individual Defendants.

77. The acts or omissions particularized and alleged herein to have been done by Airboss were authorized, ordered and done by the Individual Defendants and other agents, employees and representatives of Airboss, while engaged in the management, direction, control and transaction of the business and affairs of Airboss.

78. By virtue of the relationship between the Individual Defendants and Airboss, such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of Airboss.

79. At all material times, the Individual Defendants were directors and/or officers of Airboss.

XII. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

80. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other things:

(a) Airboss is a reporting issuer in Ontario;

(b) Airboss is incorporated and headquartered in Ontario;

(c) Airboss has substantial operations in Ontario;

(d) Airboss trades on the TSX, which is based in Toronto, Ontario;

(e) the misrepresentations alleged herein were disseminated to Class Members resident in Ontario;

(f) a substantial proportion of the Class Members reside in Ontario; and

(g) damage was sustained by Class Members in Ontario.

XIII. SERVICE OUTSIDE OF ONTARIO

81. The Plaintiffs plead and rely on Rules 17.02(a), (n), and (p) of the Rules of Civil Procedure to serve this statement of claim outside Ontario without leave.

XIV. RELEVANT LEGISLATION AND PLACE OF TRIAL

82. The Plaintiffs plead and rely on the *CJA*, the *CPA*, the *OSA*, the Other Canadian Securities Legislation, securities regulatory instruments and the TSX Company Manual.

83. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

December 16, 2022

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CALLOWHILL et al. v. AIRBOSS OF AMERICA CORP. et al. Court File No.:
Plaintiffs Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced in Newmarket

STATEMENT OF CLAIM

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