

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

10000997329 ONTARIO LTD.

Plaintiff

– and –

SUPER MICRO COMPUTER, INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 plaintiff's lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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 \$5,000.00 for 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 plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date Issued:	Issued by: _____ _____ Local Registrar
	<i>Address of Court Office:</i> Superior Court of Justice 330 University Avenue, 7th Floor Toronto, Ontario, M5G 1R8

TO:

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DEFINED TERMS

1. In addition to the terms defined in ss. 1(1) and 138.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, and elsewhere herein, the following capitalized terms used throughout this Statement of Claim have the meanings indicated below:

- (a) “**CDRs**” means Canadian Depositary Receipts;
- (b) “**Class (Common Law)**” means all Canadian beneficial owner entities and persons, other than Excluded Persons, who acquired SMCI’s securities (including CDRs of SMCI) and who held some or all of those securities until after the release of at least one of the Public Corrective Disclosures;
- (c) “**Class (OSA Statutory)**” means all beneficial owner entities and persons, other than Excluded Persons, who acquired SMCI’s securities (including CDRs of SMCI) during Class Period B and who held some or all of those securities until after the release of at least one of the Public Corrective Disclosures;
- (d) “**Class Period A**” means August 8, 2023 through February 24, 2025;
- (e) “**Class Period B**” means April 16, 2024 through February 24, 2025;
- (f) “**CBOE**” means the Canadian securities exchange operating under the business name CBOE Canada recognized by the Ontario Securities Commission for operation in Ontario;
- (g) “**Company**” or “**SMCI**” means Super Micro Computer, Inc;
- (h) “**CPA**” means the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, as amended;
- (i) “**EY**” means Ernst & Young LLP;
- (j) “**Excluded Persons**” means the Defendant’s board members, executives, family members and business partners during the Class Periods;

- (k) “**Hindenburg**” means Hindenburg Research LLC, an activist shareholder fund based in Manhattan, New York;
- (l) “**MD&A**” means Management’s Discussion and Analysis;
- (m) “**OSA**” means the *Securities Act*, R.S.O. 1990 c. S.5, as amended; and,
- (n) “**Public Corrective Disclosures**” means the material facts released to the market on August 27, 2024, October 30, 2024, and February 25, 2025.

CAUSES OF ACTION

2. The causes of action asserted by the Plaintiff, on behalf of himself and the Classes in this proceeding, are:

- (a) Common law primary market misrepresentations;
- (b) Common law secondary market misrepresentations;
- (c) If SMCI is deemed to be a responsible issuer or a reporting issuer under the *OSA*, statutory primary market negligent misrepresentations for offerings on or around December 4, 2023 and March 20, 2024, pursuant to Part XXIII, s. 130 of the *OSA*; and,
- (d) If SMCI is deemed to be a responsible issuer or a reporting issuer under the *OSA* and if leave under Part XXIII.1, s. 138.8 of the *OSA* is granted, statutory secondary market negligent misrepresentations, pursuant to Part XXIII.1, s. 138.3 of the *OSA*.

RELIEF CLAIMED

3. The Plaintiff claims on its own behalf and on behalf of the members of the Classes, subject to further disclosures and discovery:

- (a) a declaration that SMCI is a “responsible issuer” as defined within the *OSA* beginning as of April 16, 2024 when the CDRs began trading in Ontario;

- (b) a declaration that the impugned documents released by the Defendants contained misrepresentations related to the Company's business, operations and finances because the documents omitted material facts;
- (c) an order pursuant to s. 5 of the *CPA* certifying this action as a class proceeding and appointing 1000099729 Ontario Ltd. as the representative plaintiff for the Classes advancing the causes of action identified herein;
- (d) subject to common law and Part XXIII.1 of the *OSA*, damages in a sum to be determined, or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;
- (e) for the Class (Common Law), the option for class members to elect the rescissionary measure of damages;
- (f) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- (g) prejudgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (h) costs of this action, plus, pursuant to s. 26(9) of the *CPA*, the costs of administering the plan of distribution of the recovery in this action; and
- (i) such further and other relief that this Honourable Court deems just.

NATURE OF THIS ACTION

4. SMCI is a technology firm that manufactures and markets various types of computer components for high performance and high-efficiency server and storage systems for a variety of markets, including enterprise data centers, cloud computing, artificial intelligence (“AI”), 5G and edge computing.

5. SMCI lists its common shares on the Nasdaq Global Select Market. Commencing on or about April 16, 2024, the beginning of Class Period B, CDRs of SMCI became listed on the CBOE Canada (trading books NEO D, L, and N) and Nasdaq Canada (trading books CX, CX2 and CXD).
6. During the Class Periods, SMCI published material fact news contained within core and non-core documents that its business operations and financials were being reported in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), and that the Company's internal control over financial reporting as of June 30, 2023 was based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission.
7. SMCI also released quarterly certifications representing that its financial statements, and other financial information included in its reports fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in the quarterly reports.
8. As reflected by the Public Corrective Disclosures, SMCI negligently reported that its financial statements, MD&As, and news releases published during the Class Periods were accurate when, in fact, they were not.
9. On August 27, 2024, Hindenburg released a report to the market highlighting SMCI's prior and new accounting irregularities in great detail (the "**Hindenburg Report**"). The Hindenburg Report provided numerous examples of undisclosed related party transactions, and of exporting products to Russia in contravention of U.S. export restrictions and statements made to the markets within the impugned documents. The market impact of this public corrective statement caused the price of SMCI's CDRs to diminish from \$19.18 down to \$15.02.

10. On October 30, 2024, SMCI released a statement that EY had abruptly resigned because EY did not trust certain of management's representations, and that EY had refused to provide an audit opinion for SMCI's F/2024 financial statements (i.e., commencing July 1, 2024).
11. On February 25, 2025, following several months of failing to submit its required filings, and under threat of its securities being delisted, SMCI finally filed its delinquent reports, including its Form 10-K Annual Report. In its Form 10-K Annual Report, SMCI's new auditor, BDO USA, P.C. ("**BDO**") issued an adverse opinion, stating that SMCI did not maintain, in all material respects, effective internal control over financial reporting as of June 30, 2024.
12. SMCI concluded both that its internal control over financial reporting was not effective as of June 30, 2024 due to the existence of material weaknesses in such controls; and, its disclosure controls and procedures were not effective as of June 30, 2024 due to material weaknesses in its internal control over financial reporting.
13. SMCI also reported that as of February 25, 2025 it had not remediated any of the material weaknesses in its internal control over financial reporting, meaning that these weaknesses had continued to the present and existed at least from the period June 30, 2024 – February 25, 2025.
14. SMCI omitted to disclose to the markets that EY had raised concerns until October 30, 2024, despite being aware of EY's concerns since at least July of 2024, during a period where SMCI has now admitted to having had material weaknesses in its internal control over financial reporting.
15. The Plaintiff and putative Classes suffered a foreseeable economic loss from the market impact of the Public Corrective Disclosures – an over 50% drop in value/price of CDRs of SMCI on Canadian stock exchanges that offer trading of SMCI's securities.

THE PLAINTIFF

16. The Plaintiff is located in the City of Frankford, Ontario, Canada. During the Class Periods and in relying upon the Company's core and non-core documents to make investment decisions, the Plaintiff purchased CDRs of SMCI listed on the CBOE Canada at a price between \$15.26 and \$17.11 per share and held them until after the release of the Public Corrective Disclosures. The Plaintiff sold 3,028 CDRs of SMCI on October 30, 2024, after the Public Corrective Disclosure on that day, at \$11.96 per share and suffered an economic loss.

17. The Plaintiff:

- (a) has disclosed a cause of action for common law negligent misrepresentations seeking damages for (i) purchasing securities (including CDRs of SMCI) at artificially high prices during Class Period A; and (ii) purchasing securities (including CDRs of SMCI) at any time and holding them until after the release of at least one of the Public Corrective Disclosures that publicly corrected the misrepresentations that began on August 8, 2023, artificially inflating the price of SMCI's securities;
- (b) in good faith believes that there are more than several similarly situated investors like him, i.e., that purchased SMCI's securities (including CDRs of SMCI) at artificially high prices and/or held said securities during a period after the release of one or more of the Public Corrective Disclosures;
- (c) in good faith believes that he shares the same common issues as other similarly situated investors;

- (d) in good faith believes that a class proceeding would be the preferable procedure for the resolution of the common issues, and specifically, for the Canadian causes of action advanced herein; and
- (e) in good faith retained Class Counsel who are experienced in Canadian and U.S. shareholder class action litigation that can adequately represent him and the putative members of the Classes, who can produce the same type of Litigation Plan in other similar shareholder class actions, and does not believe that there are any conflicts of interest with the putative members of the Classes.

THE DEFENDANT

Super Micro Computer, Inc.

18. SMCI is a Delaware incorporated corporation based in San Jose, California that engages in the business of providing accelerated computing platforms that are application-optimized, high performance, and high-efficiency server and storage systems for a variety of markets, including enterprise data centers, cloud computing, AI, 5G and edge computing.

19. SMCI's securities that traded in Canada were listed under the ticker symbols:

- (a) CDRs: CBOE Canada trading books (i) NEO D ("SMCI.QG"); (ii) NEO L ("SMCI.QF"); and (iii) NEO N ("SMCI.QH") which have a CUSIP identifier number of 86805E105; and
- (b) Common shares: Nasdaq Canada trading books: (i) CX ("SMCI.TX"); (ii) CX2 ("SMCI.DT"); and (iii) CXD ("SMCI.DJ") which have a CUSIP identifier number of 86800U302.

THE TOTAL MIX OF INFORMATION AND PUBLIC CORRECTIVE DISCLOSURES

20. On **March 9, 2023**, SMCI approved the engagement of EY as the Company's independent registered public accounting firm for the Company's fiscal year ending June 30, 2024, replacing Deloitte & Touche LLP ("**Deloitte**"). Deloitte had been SMCI's longstanding auditor since 2007.

Deloitte continued as SMCI's independent registered public accounting firm for the fiscal year ending June 30, 2023 and was dismissed effective upon completion of the audit for fiscal year ending June 30, 2023.

21. On **August 8, 2023**, SMCI released a news release announcing its financial results for the fourth quarter and fiscal year ending June 30, 2023, as well as its pro forma financials and sales for 2024.

22. On **August 15, 2023**, the Canadian Imperial Bank of Commerce ("**CIBC**") published a short form base shelf prospectus to offer and issue CDRs to be issued in Canada in one or more series. Each series of CDR would relate to a single class of equity securities of an issuer incorporated or formed outside of Canada to be listed on the CBOE.

23. SMCI was aware that CDRs of its securities were being offered and soon traded in Canada, resulting in increased ownership of its securities by Canadian residents. SMCI was aware that these Canadian investors relied upon SMCI's representations about its business, operations and finances when making decisions to buy, sell or hold CDRs of SMCI.

24. As later revealed by the Hindenburg Report, which publicly disclosed that SMCI overshipped amounts of product and/or incomplete product in order to book revenues, and sold products to Russia in contravention of U.S. federal laws, and consistent with EY's reasoning as to why it ceased its relationship with SMCI and refused to provide an audit opinion for SMCI's F/2024 financials, this non-core document contained misrepresentations of material fact about SMCI's pro forma financials for F/2024.

25. On **August 28, 2023**, SMCI released its F/2023 audited annual financial statements, MD&A, and other core documents, including NI-52-109s, affirming that:

- (a) Certificates pursuant to section 302 of the Sarbanes-Oxley Act of 2002, affirming that based on their knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (b) Deloitte served as SMCI's independent auditor and certified that it audited SMCI in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of June 30, 2023, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated August 25, 2023, expressed an unqualified opinion on the Company's internal control over financial reporting and that SMCI's consolidated financial statements present fairly, in all material respects, the consolidated financial position of SMCI as of June 30, 2023 and in accordance with accounting principles generally accepted in the United States; and
- (c) SMCI had already hired EY to serve as its new independent auditor for the fiscal year ending June 30, 2024 audited annual report.

26. As later revealed by the Hindenburg Report, which publicly disclosed that SMCI overshipped amounts of product and/or incomplete product in order to book revenues, and sold products to Russia in contravention of U.S. federal laws, and consistent with EY's reasoning as to why it ceased its relationship with SMCI and refused to provide an audit opinion for SMCI's

F/2024 financials, this non-core document contained misrepresentations of material fact about SMCI's pro forma financials for F/2024.

27. On **November 3, 2023**, SMCI updated the total mix of information to the market about its capital, financials, and operations by releasing its Q1 2024 financial statements, MD&A, and other core documents, including certificates of the President, CEO and Chairman of the Board as well as the CFO, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, affirming that based on their knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

28. As later revealed by the Hindenburg Report, which publicly disclosed that SMCI overshipped amounts of product and/or incomplete product in order to book revenues, and sold products to Russia in contravention of U.S. federal laws, and consistent with EY's reasoning as to why it ceased its relationship with SMCI and refused to provide an audit opinion for SMCI's F/2024 financials, these core documents contained misrepresentations of material fact about SMCI's pro forma financials for F/2024.

29. On **December 4, 2023**, after the market closed, SMCI updated the total mix of information to the market about its capital, financials, and operations by releasing a prospectus to sell 2,100,700 common shares at a price of USD \$262 per share. This prospectus expressly states that securities from this primary offering may be sold to Canadian resident investors.

30. As later revealed by the Hindenburg Report, which publicly disclosed that SMCI overshipped amounts of product and/or incomplete product in order to book revenues, and sold products to Russia in contravention of U.S. federal laws, and consistent with EY's reasoning as to why it ceased its relationship with SMCI and refused to provide an audit opinion for SMCI's

F/2024 financials, this core document contained misrepresentations of material fact about SMCI's pro forma financials for F/2024.

31. On **February 2, 2024**, SMCI updated the total mix of information to the market about its capital, financials, and operations by releasing its Q2 2024 financial statements, MD&A, and other core documents, including certificates of the President, CEO and Chairman of the Board as well as the CFO, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, affirming that based on their knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

32. As later revealed by the Hindenburg Report, which publicly disclosed that SMCI overshipped amounts of product and/or incomplete product in order to book revenues, and sold products to Russia in contravention of U.S. federal laws, and consistent with EY's reasoning as to why it ceased its relationship with SMCI and refused to provide an audit opinion for SMCI's F/2024 financials, these core documents contained misrepresentations of material fact about SMCI's pro forma financials for F/2024.

33. On **March 20, 2024**, SMCI updated the total mix of information to the market about its capital, financials, and operations by releasing a prospectus to sell 2,000,000 common shares at a price of USD \$875 per share. This prospectus expressly states that securities from this primary offering may be sold to Canadian resident investors.

34. As later revealed by the Hindenburg Report, which publicly disclosed that SMCI overshipped amounts of product and/or incomplete product in order to book revenues, and sold products to Russia in contravention of U.S. federal laws, and consistent with EY's reasoning as to why it ceased its relationship with SMCI and refused to provide an audit opinion for SMCI's

F/2024 financials, this core document contained misrepresentations of material fact about SMCI's pro forma financials for F/2024.

35. On **April 2, 2024**, CIBC published a prospectus supplement to offer and issue CDRs in Canada with SMCI common shares as the underlying share.

36. On **April 16, 2024**, SMCI's securities became listed on the CBOE Canada in the form of CDRs for the first time. SMCI was aware that CDRs of its securities were being traded in Canada on a recognized Canadian Stock Exchange.

37. On **May 6, 2024**, SMCI updated the total mix of information to the market about its capital, financials, and operations by releasing its Q2 2024 financial statements, MD&A, and other core documents, including certificates of the President, CEO and Chairman of the Board as well as the CFO, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, affirming that based on their knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

38. As later revealed by the Hindenburg Report, which publicly disclosed that SMCI overshipped amounts of product and/or incomplete product in order to book revenues, and sold products to Russia in contravention of U.S. federal laws, and consistent with EY's reasoning as to why it ceased its relationship with SMCI and refused to provide an audit opinion for SMCI's F/2024 financials, these core documents contained misrepresentations of material fact about SMCI's pro forma financials for F/2024.

39. On **August 6, 2024**, SMCI published a press release announcing financial results for the quarter and fiscal year ended June 30, 2024, as well as its pro forma financials for F/2025.

40. As later revealed by the Hindenburg Report, which publicly disclosed that SMCI overshipped amounts of product and/or incomplete product in order to book revenues, and sold products to Russia in contravention of U.S. federal laws, and consistent with EY's reasoning as to why it ceased its relationship with SMCI and refused to provide an audit opinion for SMCI's F/2024 financials, this non-core document contained misrepresentations of material fact about SMCI's pro forma financials for F/2024.

41. On **August 27, 2024**, the first Public Corrective Disclosure, the Hindenburg Report was released to the market highlighting SMCI's prior and new accounting irregularities in great detail. The Hindenburg Report provided numerous examples of undisclosed related party transactions, and of exporting products to Russia in contravention of U.S. export restrictions and statements made to the markets within the impugned documents.

42. The market impact of this negative material fact news was harsh and immediate on the price for SMCI's securities; sending SMCI's CDRs' price from \$19.18 (closing price of August 26, 2024) to \$18.65 (closing price of August 27, 2024) to \$15.02 (closing price of August 28, 2024).

43. On **August 30, 2024**, SMCI updated the total mix of information to the market about its capital, financials, and operations by announcing that it would not timely file its F/2024 Annual Report, which was supposed to include EY's audit statement. SMCI also reported that additional time was needed for SMCI's management to complete its assessment of the design and operating effectiveness of its internal controls over financial reporting as of June 30, 2024. SMCI did not make updates to its results for the fiscal year and quarter ended June 30, 2024 that were announced in SMCI's press release dated August 6, 2024.

44. SMCI announced that in response, its Board of Directors had formed a committee to review certain of its internal controls and “other matters”. SMCI would later refer to this committee as an independent special committee of its Board (the “**Special Committee**”).

45. SMCI failed to disclose that these “other matters” included EY’s communications to the Audit Committee about several matters relating to governance, transparency and completeness of communications to EY, and other matters pertaining to the Company’s internal control over financial reporting, and that the timely filing of the Company’s annual report was at “significant risk”, only revealing this to the market on October 30, 2024, whereby SMCI revealed that EY had raised these concerns in late July.

46. On **September 3, 2024**, SMCI updated the total mix of information to the market about its capital, financials, and operations by announcing that the Hindenburg Report contained false or inaccurate statements about SMCI, including misleading presentations of information.

47. On **September 20, 2024**, SMCI updated the total mix of information to the market about its capital, financials, and operations by announcing that it received a notification letter from the Nasdaq Stock Market LLC (a/k/a the “**NASDAQ**”) indicating that SMCI was not in compliance with its listing requirements because it failed to release its F/2024 audited financial statements, due on August 29, 2024.

48. On **September 27, 2024**, the Wall Street Journal reported that the U.S. Department of Justice had opened an investigation on SMCI and commenced asking current and former employees questions about SMCI’s accounting and sales practices.

49. On **October 30, 2024**, the second Public Corrective Disclosure, SMCI published a statement to the market reporting that EY conveyed to SMCI’s Board of Directors’ Audit Committee on October 24, 2024, “we are resigning due to information that has recently come to

our attention which has led us to no longer be able to rely on managements' and the Audit Committee's representations and to be unwilling to be associated with the financial statements prepared by management, and after concluding we can no longer provide the Audit Services in accordance with applicable law or professional obligations.”

50. SMCI's statement also indicated that as early as late July 2024, EY had communicated to the Audit Committee concerns about several matters relating to governance, transparency and completeness of communications to EY, and other matters pertaining to the Company's internal control over financial reporting, and that the timely filing of the Company's annual report was at significant risk.

51. In response, SMCI reported that it had appointed the Special Committee to review the matters relating to EY's concerns, certain of SMCI's internal controls and certain governance procedures.

52. EY's resignation reasons are consistent with the Hindenburg Report's allegations and inconsistent with SMCI's statements released on September 3, 2024.

53. The market impact of this negative material fact news was harsh and immediate on the price for SMCI's securities; sending SMCI's CDRs' price from \$16.69 (closing price of October 29, 2024) to \$11.25 (closing price of October 30, 2024) to \$9.90 (closing price of October 31, 2024), which continued to fall.

54. On **November 5, 2024**, SMCI announced certain preliminary financial information for the quarter ended September 30, 2024, and reported that it continued to work diligently on matters related to its Form 10-K Annual Report that was due on August 29, 2024, but remained unable to predict when it would be filed.

55. SMCI also announced that the Special Committee had found that the Audit Committee of SMCI's Board had acted independently and that there was no evidence of fraud or misconduct on the part of management or the Board.

56. On **November 13, 2024**, SMCI reported that it was unable to file its quarterly report on Form 10-Q for the period ended September 30, 2024 in a timely manner without unreasonable effort or expense.

57. On **November 18, 2024**, SMCI submitted a compliance plan to the NASDAQ to support its request for an extension of time to regain compliance with the NASDAQ'S continued listing requirements. SMCI further reported that it had appointed BDO as its new independent registered public accounting firm.

58. On **November 20, 2024**, the NASDAQ sent a notification letter to SMCI stating that it was not in compliance with NASDAQ listing rule 5250(c)(1), which requires timely filing of reports with the U.S. Securities and Exchange Commission. The Letter was sent as a result of SMCI's delay in filing its Q1 2025 Form 10-Q and its continued delay in filing its 2024 Form 10-K Annual Report.

59. SMCI also prepaid in full and terminated its obligations under a loan agreement with Cathay Bank and a Loan and Security Agreement with Bank of America, N.A.

60. On **December 2, 2024**, SMCI reported that the Special Committee had completed its investigation. The Special Committee's key findings included that:

- (i) the evidence reviewed did not give rise to any substantial concerns about the integrity of SMCI's senior management or Audit Committee, or their commitment to ensuring that SMCI's financial statements were materially accurate;

- (ii) that the Audit Committee demonstrated appropriate independence and generally provided proper oversight over matters related to financial reporting; and,
- (iii) the Special Committee did not believe that the resignation of EY or the conclusions reached by EY in EY's correspondence of October 24, 2024 were supported by the facts uncovered by the Special Committee or the findings set forth in the Special Committee's report.

61. SMCI also laid out plans to appoint new leadership, disclosing that it would commence a search for a new Chief Financial Officer immediately, with David Weigand continuing in the role until his successor had been appointed.

62. On **December 6, 2024**, the NASDAQ sent a notification letter to SMCI stating that it had granted SMCI's request for an exception to NASDAQ'S Listing Rule 5250(c)(1) through February 25, 2025. The exception gave SMCI until February 25, 2025 to file its Form 10-K Annual Report for the fiscal year ended June 30, 2024, its Quarterly Report on Form 10-Q for the period ended September 30, 2024 and any other required filings.

63. In the event that SMCI did not file its required reports by February 25, 2025, its common stock would be delisted from the NASDAQ.

64. On **February 11, 2025**, SMCI announced its preliminary financial information for its second quarter of fiscal year 2025 ended December 31, 2024.

65. SMCI also stated that it had received subpoenas from the Securities and Exchange Commission and the Department of Justice in late 2024 seeking certain documents following the publication of allegations in the Hindenburg Report.

66. On or about **February 25, 2025**, the third Public Corrective Disclosure, SMCI filed its delinquent reports, including its Form 10-K Annual Report for the fiscal year ended June 30, 2024, its Form 10-Q for the quarterly period ended September 30, 2024, and its Form 10-Q for the quarterly period ended December 31, 2024.

67. In its Form 10-K Annual Report, SMCI's new auditor BDO issued an adverse opinion, stating that SMCI did not maintain, in all material respects, effective internal control over financial reporting as of June 30, 2024 based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission.

68. SMCI concluded both that its internal control over financial reporting was not effective as of June 30, 2024 due to the existence of material weaknesses in such controls; and, its disclosure controls and procedures were not effective as of June 30, 2024 due to material weaknesses in its internal control over financial reporting.

69. Specifically, SMCI identified material weaknesses pertaining to:

- (i) information technology general controls for certain IT systems that supported SMCI's financial reporting process were not appropriately identified, designed or implemented;
- (ii) controls to address segregation of duties conflicts were not properly designed and appropriately implemented;
- (iii) controls and documentation thereof, over the review and approval of manual journal entries were not properly designed and appropriately implemented to prevent unauthorized access to post journal entries;

- (iv) controls over the completeness and accuracy of information produced by the entity impacting multiple financial statement areas were not properly documented; and
- (v) management did not design, implement and retain appropriate documentation of control procedures to achieve timely, complete and accurate recording and disclosures across multiple financial statement areas including the timely identification and disclosure of new leasing arrangements and new related party transactions.

70. These material weaknesses could have increased the risk of unauthorized access to certain information technology systems that support SMCI's financial reporting processes, manipulation of data that SMCI used to produce its financial statements, and/or lack of complete and accurate information, which could lead to financial misstatements and affect SMCI's ability to report its information on a timely basis.

71. SMCI reported that as of February 25, 2025, it had not remediated any of the above material weaknesses, meaning that they existed from June 30, 2024 – February 25, 2025, a period encompassing when EY had communicated to the Audit Committee concerns about several matters relating to governance, transparency and completeness of communications to EY, and other matters pertaining to the Company's internal control over financial reporting, and that the timely filing of the Company's annual report was at significant risk in late July of 2024.

72. SMCI omitted to disclose to the markets that EY had raised concerns until October 30, 2024, despite being aware of EY's concerns since at least late July of 2024, during a period where SMCI had material weaknesses in its internal controls over financial reporting.

73. BDO's adverse opinion and SMCI's conclusions set out in SMCI's Form 10-K Annual Report stood in stark contrast to the key findings of the Special Committee's investigation as reported to the market on December 2, 2024, including but not limited to the Special Committee's finding that SMCI's Audit Committee demonstrated appropriate independence and generally provided proper oversight over matters related to financial reporting.

74. The market impact of this material fact news caused the price of SMCI's securities to decrease over the next ten trading days, sending SMCI's CDRs' price from \$15.25 (closing price of February 25, 2025) to \$13.65 (closing price of March 11, 2025), a decrease of 21.14%.

POST CLASS PERIOD DEVELOPMENTS

75. On **March 31, 2025**, SMCI appointed Scott Angel as a new director of its Board for an initial term expiring at SMCI's annual meeting of stockholders following the fiscal year ending June 30, 2026. Scott Angel spent over 37 years in the audit and assurance practice at SMCI's former auditor, Deloitte. SMCI also appointed Yitai Hu as its General Counsel and Senior Vice President of Corporate Development.

COMMON LAW

76. The directors of SMCI had a special relationship with its investors, including the members of the Class because, among other reasons, the directors were voted into their position of authority and control at SMCI by the investors and certain members of the Board and other executives consented to SMCI publishing the impugned documents.

77. A duty of care was owed to the Class Members to ensure the impugned documents did not contain misrepresentations, including that the material facts reported therein that the financial statements, and other financial information included, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods

presented and consistent with in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of June 30, 2023, based on criteria established in Internal Control — Integrated Framework (2013).

78. The Plaintiff relied upon the material fact statements within the impugned documents and in other related non-core documents/statements released on EDGAR and SMCI's website in making a decision to purchase the Defendant's securities and to hold all of those securities until the release of the Public Corrective Disclosures.

79. It was reasonable for members of the Class to rely upon the Defendant's core documents in making a decision to invest, as reflected by the act of purchasing the Defendant's securities for an investment that the price or value of the Defendant's securities would go up in price or value and continue to pay dividends.

80. The impugned documents contain misrepresentations of material fact.

81. The Defendant, i.e., through its directors and officers, breached the applicable standard of care as set out above by negligently reporting the material facts within the impugned documents and statements by:

- (a) omitting the material facts arising at some point during the Class Periods and which were publicly corrected on August 27, 2024 October 30, 2024, and February 25, 2025, to be determined during discovery, and negligently reporting the accuracy of SMCI's financial statements and corresponding business operations and financials;
- (c) misrepresenting that the Company's financial statements could be relied upon;
- (d) omitting to disclose the material facts as to why the Hindenburg Report was inaccurate; and

- (e) omitting to disclose when EY first started to question management and the Audit Committee's representations.

82. The Plaintiff and members of the Class suffered a direct and foreseeable economic injury by purchasing the Defendant's securities at a time when the investment price and value was artificially inflated and holding all or some of the artificially priced securities until after the Defendant released the Public Corrective Disclosures.

ONTARIO SECURITIES ACT

83. SMCI is a responsible issuer and/or a reporting issuer and subject to the continuous disclosure requirements of the OSA.

84. Subject to s. 138.8 of the OSA, the Plaintiff will advance the s. 138.3 of the OSA cause of action.

85. Subject to s. 138.5 of the OSA, the Plaintiff will seek damages.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

86. The Plaintiff pleads that this action has a real and substantial connection with Ontario and for the application of Ontario substantive and procedural laws on behalf of all Class Members for the following non-exhaustive reasons:

- (a) SMCI is a responsible issuer in Ontario;
- (b) The Plaintiff and members of the Class are residents of Canada;
- (c) The Plaintiff and members of the Class purchased CDRs and/or common shares of SMCI in Toronto on the CBOE Canada and Nasdaq Canada marketplace books.

RELEVANT LEGISLATION, PLACE OF TRIAL AND JURY TRIAL

87. The Plaintiff pleads and relies upon the *CJA*, *CPA*, *OBCA*, and *OSA*.

88. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

89. The Plaintiff may serve a jury notice.

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Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT **TORONTO**

FRESH AS AMENDED STATEMENT OF CLAIM

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