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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 JOHN R. SWITZER, Individually and on)
Behalf of All Others Similarly Situated,)

13 Plaintiff,)

14 vs.)

15 W.R. HAMBRECHT & CO., LLC, et al.,)

16 Defendants.)

Lead Case No. CGC-18-564904
(Consolidated with No. CGC-18-565324)

CLASS ACTION

FIRST AMENDED CONSOLIDATED
COMPLAINT FOR VIOLATIONS OF
§§12(A)(2) AND 15 OF THE SECURITIES
ACT OF 1933

Assigned for all purposes to
Judge Mary E. Wiss, Dept. 305
Date Action Filed: 03/09/18

DEMAND FOR JURY TRIAL

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

09/28/2018
Clerk of the Court

BY:ERNALYN BURA
Deputy Clerk

1 Plaintiffs John R. Switzer and Jay Mendelson (“plaintiffs”), individually and on behalf of all
2 others similarly situated, by plaintiffs’ undersigned attorneys, for plaintiffs’ complaint against
3 defendants, alleges the following based upon personal knowledge as to plaintiffs and plaintiffs’ own
4 acts, and upon information and belief as to all other matters based on the investigation conducted by and
5 through plaintiffs’ attorneys, which included, among other things, a review of Arcimoto, Inc.
6 (“Arcimoto” or the “Company”) press releases, U.S. Securities and Exchange Commission (“SEC”)
7 filings, and analyst reports, media reports and other publicly disclosed reports and information about
8 Arcimoto. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth
9 herein after a reasonable opportunity for discovery.

10 **NATURE OF THE ACTION**

11 1. This is a securities class action on behalf of all those who purchased Arcimoto common
12 stock pursuant to Arcimoto’s September 21, 2017 initial public stock offering (the “IPO”), seeking to
13 pursue remedies under the Securities Act of 1933 (the “1933 Act”). Defendants are responsible for
14 false and misleading statements and omitted material facts in connection with the IPO. Defendants
15 authorized or signed the Registration Statement, including an Offering Circular that formed part of the
16 Registration Statement (collectively, the “Prospectus”), and/or participated in making false and
17 misleading statements that omitted material facts in connection with the IPO roadshow. Defendant
18 W.R. Hambrecht & Co., LLC (“W.R. Hambrecht”) orchestrated and conducted that roadshow largely
19 through its website, where it played roadshow videos that investors viewed before purchasing shares
20 through web forms on the website. The IPO was made under Regulation A of the 1933 Act, and the
21 Offering Circular was filed purportedly pursuant to Rule 253(g)(2). This lawsuit asserts claims under
22 §12(a)(2) of the 1933 Act, which provides buyers of securities an express remedy for material
23 misstatements or omissions made by any seller or solicitor in connection with the offer or sale of the
24 issuer’s securities involving a prospectus or oral communications.

25 2. “The launch of this public offering coincides with the delivery for the first time of
26 Arcimoto vehicles to real customers and begins our push to production at ever an increasing
27 manufacturing scale. . . . [I]t’s a perfect time to jump onboard.” That was the message stated and
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1 reinforced throughout two videos W.R. Hambrecht participated in crafting and placed links to on the
2 home page of its website next to a green button labeled “INVEST NOW!” Arcimoto was, and is still,
3 trying to make a three-wheeled electric vehicle. The roadshow videos, as well as the Prospectus viewed
4 by investors before filling out a web form asking for a dollar amount and number of shares investors
5 wished to invest, contained material misstatements and omissions designed to create an impression of
6 the Company that would encourage investors to pull out their wallets. There were no deliveries of
7 Arcimoto vehicles to real customers. There were no real Arcimoto vehicles being sold, let alone
8 production-ready ones. The Company had two custom-made prototypes rife with safety and mechanical
9 issues that it falsely paraded as production ready. No design was ready for production. There was no
10 production facility capable of scaled production. Even the planned facility was not capable of that.
11 Arcimoto shared space with a taco shop and used a hydraulic motorcycle lift to tinker with its prototype.

12 3. After fleecing investors of \$20 million, Arcimoto employees spent their time continuing
13 to fabricate and tinker with custom parts that a part-time employee welded onto a frame one part at a
14 time. When this lawsuit was filed, there still had been no sale of a real Arcimoto vehicle to a real
15 customer, let alone “production at an ever increasing manufacturing scale.” When Arcimoto announced
16 its “production facility,” which had three mock assembly areas containing two more hydraulic
17 motorcycle lifts – a far cry from the assembly lines of automated robots shown in the roadshow video –
18 Arcimoto’s stock price reached a new low. As of the filing of this lawsuit, Arcimoto stock traded at
19 less than half what investors paid.

20 JURISDICTION AND VENUE

21 4. The claims alleged herein arise under §§12(a)(2) and 15 of the 1933 Act, 15 U.S.C.
22 §§771(a)(2) and 77o. Jurisdiction is conferred by §22 of the 1933 Act and venue is proper pursuant to
23 §22 of the 1933 Act. Section 22 of the 1933 Act explicitly states that “[e]xcept as provided in section
24 16(c), no case arising under this title and brought in any State court of competent jurisdiction shall be
25 removed to any court in the United States.” Section 16(c) refers to “covered class actions,” which are
26 defined as lawsuits brought as class actions or brought on behalf of more than 50 persons asserting
27 claims under state or common law. This is an action asserting federal law claims. Thus, it does not fall
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1 within the definition of a “covered class action” under §16(b)-(c) and is therefore not removable to
2 federal court, under the Securities Litigation Uniform Standards Act of 1998 or otherwise. *See Luther*
3 *v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1032 (9th Cir. 2008) (“Section 22(a) of the
4 Securities Act of 1933 creates concurrent jurisdiction in state and federal courts over claims arising
5 under the Act. It also specifically provides that such claims brought in state court are not subject to
6 removal to federal court.”) and *Plymouth County Ret. Sys. v. Model N, Inc.*, No. 14cv04516, 2015 U.S.
7 Dist. LEXIS 1104, at *8 (N.D. Cal. Jan. 5, 2015) (“Since 2013, . . . every court in this district to
8 [adjudicate a motion to remand an action brought in state court pursuant to the Securities Act] has
9 granted remand.”); *see also Luther v. Countrywide Fin. Corp.*, 125 Cal. Rptr. 3d 716, 717-18 (2011)
10 (“The federal Securities Act of 1933 . . . , as amended by the Securities Litigation Uniform Standards
11 Act . . . , provides for concurrent jurisdiction for cases asserting claims under the 1933 Act . . .”).

12 5. The violations of law complained of herein occurred in this State and specifically in
13 large part in San Francisco. Defendant W.R. Hambrecht is headquartered in San Francisco, maintains
14 its sales and trading operations in San Francisco, conducted the IPO out of its San Francisco office, and
15 solicited and sold the IPO through its website maintained in San Francisco. In addition, pursuant to the
16 July 31, 2017 Underwriting Agreement between W.R. Hambrecht and Arcimoto, executed by defendant
17 Frohnmayer for Arcimoto, the parties agreed that “[a]ny legal suit, action or proceeding arising out of or
18 based upon . . . the transactions contemplated [in the agreement] [could] be instituted in the California
19 Courts,” that “each party irrevocably submit[ted] to the exclusive jurisdiction . . . of such courts in any
20 such suit, action or proceeding,” that “[s]ervice of any process, summons, notice or document by mail to
21 such party’s address [as listed in the agreement would] be effective service of process for any suit,
22 action or other proceeding brought in any such court,” and that all “parties irrevocably and
23 unconditionally waive[d] any objection to the laying of venue of any suit, action or other proceeding in
24 the California Courts and irrevocably and unconditionally waive[d] and agree[d] not to plead or claim
25 in any such court that any such suit, action or other proceeding brought in any such court has been
26 brought in an inconvenient forum.”

1 **PARTIES**

2 6. Plaintiff John R. Switzer purchased Arcimoto common stock in the IPO through web
3 forms authorized by Arcimoto and W.R. Hambrecht, after reviewing the offering circular and road
4 show communications, and was damaged thereby. Mr. Switzer made his investment decision in part in
5 response to statements by defendant Mark Frohnmayer in the roadshow web video alleged herein. He
6 also bought in the IPO in part as a result of direct and personal interaction with defendant Douglas M.
7 Campoli, who through words and actions encouraged Mr. Switzer to buy in Arcimoto’s IPO, and who
8 facilitated the transaction.

9 7. Plaintiff Jay Mendelson purchased Arcimoto common stock in the IPO through web
10 forms authorized by Arcimoto and W.R. Hambrecht, after reviewing the offering circular and road
11 show communications, and was damaged thereby.

12 8. Defendant Arcimoto is attempting to design and build for commercial production three-
13 wheeled electric vehicles. Arcimoto was founded in 2007 as WTP, Inc. and changed its name to
14 Arcimoto, Inc. in 2011. Arcimoto created web pages soliciting investment in the IPO accessible from
15 its website and drove investor to the website through various means including social media. For
16 example, on or about August 16, 2017, Arcimoto posted to its Facebook page an announcement of the
17 kick-off of the IPO roadshow. That post, which provided links to Arcimoto’s website and to the
18 Company video detailed above in 20, below, boasted that the IPO was selling even better than
19 anticipated, stating in pertinent part as follows:

20 We’re excited to announce that the SEC has officially qualified our Reg A+ IPO.
21 The future is electric and investing in it now takes just a few simple steps on our
22 website: [https://www.arcimoto.com/invest\[.\]](https://www.arcimoto.com/invest[.])

22 Funding options include an electronic check from a U.S. bank account, a mailed
23 check, or a wire transfer. For those of you not following along at home, here are the
24 notable events that have shaped this offering since our first public filing announcement
25 in June:

25 Based on the enthusiastic reception we had presenting the offering to potential
26 investors on the east coast road show last month, we increased the offering maximum
27 from \$10M to \$29.9M. This folds in the follow-on raise we were planning next year into
28 this offering.

1 Arcimoto participated in scripting and creating videos about Arcimoto and the IPO investment that it
2 made accessible from the link above located near a red “INVEST NOW!” button on the webpage that
3 linked to a web form allowing investors to make their investment, specify how much they were willing
4 to invest and provide payment details. Arcimoto’s webpage stated “you will have your chance as soon
5 as we hit the stock exchange.”

6 9. Defendant W.R. Hambrecht is an investment banking firm that acted as underwriter of
7 the IPO, furthering the investment interest of its related WR Hambrecht Ventures III L.P. (“Hambrecht
8 Ventures”). W.R. Hambrecht participated in drafting and disseminating the Prospectus used to conduct
9 the IPO and participated in crafting the oral statements made in connection with the selling efforts,
10 including the Prospectus and roadshow videos on W.R. Hambrecht’s website. W.R. Hambrecht built
11 the broker-dealer syndicate that transacted the offering and was motivated by the financial implications
12 of an IPO, given the Company’s payment of a total of over \$1 million in return for best efforts to sell
13 the shares in the IPO, as well as W.R. Hambrecht’s financial interest in benefiting Hambrecht Ventures,
14 Arcimoto’s second largest shareholder with over 1 million shares. W.R. Hambrecht is also referred to
15 herein sometimes as the “Underwriter Defendant.” Pursuant to the 1933 Act, W.R. Hambrecht is liable
16 for the material misstatements and omissions used to market and conduct the IPO as follows:

17 (a) W.R. Hambrecht is an investment banking house that specializes, inter alia, in
18 underwriting public IPOs of securities. It served as underwriter of the IPO and received more than \$1
19 million in fees as a result. W.R. Hambrecht determined that in return for its share of the IPO proceeds,
20 it was willing to merchandize Arcimoto stock in the IPO. It arranged a roadshow prior to the IPO
21 during which it and the Roadshow Defendants (defined below) met with potential investors and
22 presented highly favorable information about the Company, its operations and its financial prospects.
23 As a significant part of the roadshow, it created web pages soliciting investment in the IPO accessible
24 from the home page of its website. W.R. Hambrecht also participated in scripting and creating videos
25 about Arcimoto and the IPO investment that it made accessible from its website alongside a green
26 “INVEST NOW!” button on the webpage that linked to a web form allowing investors to make their
27 investment, specify how much they were willing to invest and provide payment details. Through W.R.
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1 Hambrecht’s website, the IPO was sold and W.R. Hambrecht authorized, approved, participated in
2 making and communicated the statements in the roadshow videos to plaintiffs and other investors who
3 purchased Arcimoto shares in the IPO on W.R. Hambrecht’s website.

4 (b) W.R. Hambrecht also demanded and obtained an agreement from Arcimoto that
5 Arcimoto would indemnify and hold it harmless from any liability under the federal securities laws. It
6 also made certain that Arcimoto had purchased millions of dollars in directors’ and officers’ liability
7 insurance.

8 (c) Representatives of W.R. Hambrecht also assisted Arcimoto and the Individual
9 Defendants (defined below) in planning the IPO and purportedly conducted an adequate and reasonable
10 investigation into the business and operations of Arcimoto, an undertaking known as a “due diligence”
11 investigation. The due diligence investigation was required of the Underwriter Defendant in order to
12 engage in the IPO. During the course of “due diligence,” the Underwriter Defendant had continual
13 access to confidential corporate information concerning Arcimoto’s operations and financial prospects.
14 Representatives of W.R. Hambrecht and WR Hambrecht Ventures witnessed the state of Arcimoto’s
15 purported production facility and were aware of facts indicating that Arcimoto vehicles were not
16 production ready and had not been sold to real customers.

17 (d) In addition to availing itself of virtually unbridled access to internal corporate
18 documents, agents of W.R. Hambrecht met with Arcimoto’s employees and top executives as well as
19 counsel and engaged in “drafting sessions” between at least March 2017 and October 2017. During
20 these sessions, understandings were reached as to: (i) the strategy to best accomplish the IPO; (ii) the
21 terms of the IPO, including the price range at which Arcimoto stock would be sold; (iii) the language to
22 be used in the Prospectus and oral statements used to market and conduct the IPO; (iv) what disclosures
23 about Arcimoto would be made in the Prospectus and what oral statements would be used to market the
24 IPO; and (v) what responses would be made to the SEC in connection with its review of the registration
25 statement (described below). As a result of those constant contacts and communications between W.R.
26 Hambrecht representatives and Arcimoto, W.R. Hambrecht knew, or should have known, of Arcimoto’s
27 existing problems as detailed herein.

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1 10. The Underwriter Defendant caused the Prospectus to be filed with the SEC and declared
2 qualified in connection with offers and sales thereof, including to plaintiffs and the Class.

3 11. Defendant Mark Frohnmayer (“Frohnmayer”) founded Arcimoto and is, and was at the
4 time of the IPO, the Chairman of Arcimoto’s Board of Director and its Chief Executive Officer and
5 President. As one of Arcimoto’s executives in the IPO working group, Frohnmayer reviewed and
6 approved, and participated in making, statements to investors, including statements in the prospectus
7 and roadshow. On behalf of Arcimoto and at the behest of W.R. Hambrecht, Frohnmayer also pitched
8 investors to buy in the IPO in person and in a video directed to investors by Arcimoto and W.R.
9 Hambrecht. In that video (*see* ¶25) Frohnmayer exclusively appeared and talked, encouraging investors
10 to buy in the IPO. Frohnmayer was motivated by the financial implications of an IPO given his
11 financial stake in the Company and ownership of the building that Arcimoto leases. Immediately prior
12 to the IPO, defendant Frohnmayer beneficially owned over 6.9 million shares, or 55.5%, of Arcimoto’s
13 common shares, as well as 300,000 shares of Arcimoto common stock pursuant to warrants priced at
14 \$0.50 per share. Frohnmayer also beneficially owned 40,000 shares of Arcimoto common stock
15 pursuant to options at an average price of \$2.41 per share. Frohnmayer’s warrants and options
16 immediately became in the money as of the IPO with an intrinsic value of over \$1.9 million, and his
17 total holdings had a market value of over \$45 million. Frohnmayer was also motivated by the financial
18 implications of an IPO for Arcimoto and Arcimoto’s investors, which included Hambrecht Ventures.

19 12. Defendant Douglas M. Campoli (“Campoli”) is, and was at the time of the IPO, the
20 Chief Financial Officer of Arcimoto. As one of Arcimoto’s executives in the IPO working group,
21 Campoli reviewed and approved, and participated in making, statements to investors, including
22 statements in the prospectus and roadshow. On behalf of Arcimoto and at the behest of W.R.
23 Hambrecht, Campoli directly and personally, by e-mail and over the phone, encouraged investors to buy
24 in the IPO. He also personally followed up with investors by phone calls and e-mail, encouraging
25 investors to execute or complete their transaction, and suggesting buying in the IPO was a limited
26 opportunity, for investor response to the IPO was very positive. Campoli was motivated by the
27 financial implications of an IPO given his financial stake in the Company. Immediately prior to the
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1 IPO, defendant Campoli beneficially owned 19,000 and 46,000 shares of Arcimoto common stock
2 pursuant to options priced at \$2.06 and \$2.50 per share, respectively. Campoli also directly beneficially
3 owned 5,500 shares of Arcimoto common stock. Campoli's options immediately became in the money
4 as of the IPO with an intrinsic value of over \$268,000, not including the market value of his 5,500
5 shares of stock directly beneficially owned. Campoli was also motivated by the financial implications
6 of an IPO for Arcimoto and Arcimoto's investors, which included Hambrecht Ventures.

7 13. Defendant Thomas Thurston ("Thurston") is, and was at the time of the IPO, a member
8 of Arcimoto's Board of Directors and Arcimoto's audit committee. As one of four directors of the
9 Company and serving on the Board at the behest of Hambrecht Ventures, Arcimoto's principal venture
10 capital investor, holding 8.5% of the Company's common shares, defendant Thurston reviewed and
11 approved, and participated in making, statements to investors in the prospectus. Thurston was
12 motivated by the financial implications of an IPO given his financial stake in the Company as a
13 Managing Director of Hambrecht Ventures and his obligation to monetize Hambrecht Ventures'
14 investment, which included over 1.1 million shares of Arcimoto common stock that Thurston
15 beneficially owned and in which Thurston has and had a pecuniary interest. Those shares, indirectly
16 held by Hambrecht Ventures, had a market value of over \$7 million as of the IPO.

17 14. Defendant Terry Becker ("Becker") is, and was at the time of the IPO, a member of the
18 Arcimoto Board of Directors and Arcimoto's audit committee. As one of four directors of the
19 Company and a member of the audit committee, defendant Becker reviewed and approved, and
20 participated in making, statements to investors in the prospectus. Becker was motivated by the financial
21 implications of an IPO given his financial stake in the Company and ownership of Oregon Pattern &
22 Foundry, a company that profited from selling mechanical parts to Arcimoto. Immediately prior to the
23 IPO, defendant Becker beneficially owned 30,000 and 170,000 shares of Arcimoto common stock
24 pursuant to warrants priced at \$0.50 and \$0.9375 per share, respectively. Becker also beneficially
25 owned 2,500 shares of Arcimoto common stock pursuant to options priced at \$2.06 per share. Becker's
26 warrants and options immediately became in the money as of the IPO with an intrinsic value of over
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1 \$1.1 million. Becker was also motivated by the financial implications of an IPO for Arcimoto and
2 Arcimoto’s investors, which included Hambrecht Ventures.

3 15. Defendant Jefferson Curl (“Curl”) is, and was at the time of the IPO, a member of the
4 Arcimoto Board of Directors and Arcimoto’s audit committee. As one of four directors of the
5 Company and a member of the audit committee, defendant Curl reviewed and approved, and
6 participated in making, statements to investors in the prospectus. Curl was motivated by the financial
7 implications of an IPO given his financial stake in the Company. Immediately prior to the IPO,
8 defendant Curl beneficially owned 2,500 shares of Arcimoto common stock pursuant to options priced
9 at \$2.06 per share. Curl’s options immediately became in the money as of the IPO with an intrinsic
10 value of over \$11,000. Curl was also motivated by the financial implications of an IPO for Arcimoto
11 and Arcimoto’s investors, which included Hambrecht Ventures.

12 16. The defendants referenced above in ¶¶11-15 signed or authorized the signing of the
13 Registration Statement used to conduct the IPO (defined below) and are sometimes referred to herein as
14 “Individual Defendants.” The defendants referenced above in ¶¶11-12 are executives and/or certain
15 directors of Arcimoto who participated in the roadshow to sell the IPO and are sometimes referred to
16 herein as the “Roadshow Defendants.” W.R. Hambrecht and the Roadshow Defendants were
17 responsible for the roadshow videos used to sell the IPO on W.R. Hambrecht’s website and through
18 links elsewhere on the internet that led to that website. Defendant Arcimoto and the Roadshow
19 Defendants are strictly liable for the false and misleading statements, both oral and in writing, used to
20 market and conduct the IPO.

21 17. The true names and capacities of defendants sued herein under California Code of Civil
22 Procedure §474 as Does 1 through 25, inclusive, are presently not known to plaintiffs, who therefore
23 sues these defendants by such fictitious names. Plaintiffs will seek to amend this complaint and include
24 these Doe defendants’ true names and capacities when they are ascertained. Each of the fictitiously
25 named defendants is responsible in some manner for the conduct alleged herein and for the injuries
26 suffered by the Company as a result of defendants’ wanton and illegal conduct.

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1 **SUBSTANTIVE ALLEGATIONS**

2 18. The Arcimoto SRK, the Company’s first and only intended commercial product offering,
3 is an electric utility vehicle for two passengers and gear purportedly at a target base model price of
4 \$11,900. Falling under the Motorcycle class in the United States, the SRK purportedly has a top speed
5 of 80 miles per hour and goes from zero to 60 in 7.5 seconds. The SRK’s range is estimated at between
6 70 and 130 miles.



17 19. On or about March 31, 2017, Arcimoto filed with the SEC its initial registration
18 statement on Form I-A (File No. 024-10710), which, following several amendments made in response
19 to comments received from the SEC, was declared qualified by the SEC on September 19, 2017 and
20 utilized for the IPO (the “Registration Statement”). The Registration Statement was signed by
21 defendants Frohnmayer and Campoli, along with the other members of Arcimoto’s Board of Directors,
22 defendants Becker, Thurston and Curl. The Registration Statement included an Offering Circular that
23 formed part of the Registration Statement (collectively, the “Prospectus”). On or about July 31, 2017,
24 Arcimoto and the Underwriter Defendants priced the IPO at \$6.50 per share and beginning in August
25 2017, Arcimoto, the Roadshow Defendants and the Underwriter Defendants commenced a six-week
26 multi-city roadshow to market Arcimoto common stock to the investing public, which they completed
27 on or about September 20, 2017. Though defendants’ original target raise in the IPO was only \$10

1 million, due to their rigorous marketing efforts they raised more than \$19 million through the sale of
2 nearly three million shares of Arcimoto common stock during the IPO roadshow.

3 20. The IPO roadshow relied significantly on two negligently prepared videos that W.R.
4 Hambrecht displayed on its website in close proximity to and accessible from green colored “INVEST
5 NOW!” buttons that linked to web forms designed to take investor financial and share purchase
6 information. The Company, too, displayed these videos on its website in close proximity to a red
7 colored “INVEST NOW!” button that linked to web forms designed to take investor financial and share
8 purchase information. These videos that W.R. Hambrecht and the Company played from their websites
9 to investors contained material misstatements and omissions that W.R. Hambrecht and the Company
10 participated in making.

11 21. The first video, labeled “Company Video,” contained a voice-over scripted by W.R.
12 Hambrecht and the Roadshow Defendants and created the false and misleading illusion that Arcimoto
13 was on the “cusp” of “rapidly scalable” commercial production. The video stated that Arcimoto had
14 “re-envisioned the basic footprint of daily mobility and the processes of vehicle manufacture,
15 *marketing and sales to deliver the first affordable, everyday electric vehicle to the world.*” The video
16 buttressed the purported broad scale of Arcimoto’s business, stating “millions of professionals looking
17 to live more sustainable lives still want a great ride and, *as the low cost producer, Arcimoto plays in*
18 *the fleet market as well.*” “[W]e’re the first to offer a *disruptive price point*, daily utility and a
19 compelling experience in one product. . . . *We market and sell that product online,*” the video stated as
20 it showed over a *dozen vehicles it had supposedly made.* Numerous shots in the video displayed
21 persons driving or riding in the purported vehicle on city streets, to demonstrate the vehicle was street
22 legal. Likewise, the Company’s webpage alongside the video link displayed pictures of the same. The
23 video continued: “Orders are placed on our website *and vehicles are delivered directly to customers.*”

24 22. But the images and statements to investors that are referenced in ¶21 above contained
25 material misstatements and omissions as indicated. The Company had not sold or delivered a single
26 vehicle to a real customer, let alone was it “play[ing] in the fleet market.” The numerous vehicles
27 displayed in the video were repeated visuals of two prototype vehicles that were rife with safety and
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1 operational issues, including rollover problems, poor braking, and the inability of the engines, each
2 connected to a different front wheel, to operate in a synchronous manner. In the video, different skins
3 were put over the vehicles to give the impression that numerous vehicles had been made. Arcimoto
4 shared space with a taco shop and used a hydraulic motorcycle lift to tinker with its prototype. There
5 was no production facility capable of commercial production. Arcimoto employees spent their time
6 fabricating and tinkering with custom parts that a part-time employee welded onto a frame one part at a
7 time. The Company did not know exactly how much commercial production would cost, let alone what
8 parts or suppliers it would actually use to produce the vehicle in commercial scale. In light of the
9 operational and safety issues plaguing the vehicle, Arcimoto did not even know exactly what vehicle
10 and components it would possibly make in commercial production. Indeed, the vehicle was not street
11 legal as of the IPO and the Company later admitted its legal status was still being negotiated well after
12 the IPO.

13 23. The video used numerous images and statements to communicate to investors that
14 Arcimoto was on the “cusp” of commercial production. “We’re in negotiations on our first production
15 facility and are planning facility upgrades we’ll need for *assembly line manufacture. Over the course*
16 *of this year, we will assembl[e] and deploy approximately 50 Beta SRKs as we prepare for production*
17 *scaling next year.”* During and immediately after that discussion, the video showed robotic assembly
18 line stations in process and graphics of floor plans showing “*existing*” and “*planned*” facilities with
19 assembly lines. All of this was offered in support of the video’s assertion that “[w]e’re at the venture’s
20 inflection point and we have a thoroughly conceived, rapidly scalable business model,” as well as a
21 “refined and proven design on the cusp of serious production.”

22 24. But the images and statements communicated to investors that are referenced in ¶23
23 above contained material misstatements and omissions as indicated. There were no real Arcimoto Beta
24 vehicles, let alone production-ready ones. The two custom-made prototypes rife with safety and
25 mechanical issues were not ready for production. The existing facility never had an assembly line and
26 even the planned facility was not mocked for an assembly line. No robotic assembly had even been
27 ordered, designed, programmed or implemented. Even the design of the Beta vehicles had not been
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1 completed for production and was not ever complete during the course of the year. As of the filing of
2 this lawsuit, still no Beta vehicles were in production, and certainly not in the scale as stated. No design
3 had been “proven” for safe, reliable operation or even production. Safety and operational issues
4 continued to dog the prototypes and no design had even been test “proven” to be ready for production.
5 As of the IPO, and thereafter, Arcimoto’s employees spent (and continue to spend) their time tinkering
6 – designing and re-designing various parts that were and are ordered and re-ordered, after which a
7 single employee welds or otherwise attaches or tests each potential vehicle part, one part at a time.
8 There still had been no sale of a real Arcimoto vehicle to a real customer. And Arcimoto’s “planned”
9 production facility had no assembly lines or robotic machines, either. Indeed, when the planned
10 production facility was officially opened it had three mock assembly areas, each containing single
11 hydraulic motorcycle lifts. There was no assembly line, let alone an assembly line containing
12 automated robots.

13 25. The second video that W.R. Hambrecht and the Company played from their websites
14 also contained material misstatements and omissions that W.R. Hambrecht and the Company
15 participated in making. The second video, labeled “Company Interview,” contained an interview with
16 defendant Frohnmayer, which W.R. Hambrecht and Frohnmayer participated in scripting. The
17 conclusion of the second video echoed the apparent theme of the first video, namely that Arcimoto was
18 ready for commercial production. In it, Frohnmayer told investors “[w]e have seen interest from . . .
19 Uber [which] wants a less expensive, more efficient vehicle . . . [for] Uber Eats.” “[Y]ou’re going
20 to get an Arcimoto, you’re going to keep your car, you’re going to realize that you haven’t driven your car
21 in three and a half weeks and that you’ve been having a joyful time ripping around on the Arcimoto,”
22 Frohnmayer stated. Numerous shots in the video displayed persons driving or riding in the purported
23 vehicle on city streets, to demonstrate the vehicle was street legal. Frohnmayer also likened and
24 compared the vehicle favorably to street legal vehicles. Likewise, the Company’s webpage alongside
25 the video link displayed pictures of the same. According to Frohnmayer, the only “design constraints
26 [were] cost and efficiency.” And he concluded by stating: “*The launch of this public offering
27 coincides with the delivery for the first time of Arcimoto vehicles to real customers and begins our*
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1 *push to production at ever an increasing manufacturing scale. . . . [I]t's a perfect time to jump*
2 *onboard."*

3 26. But the images and statements communicated to investors that are referenced in ¶25
4 above contained material misstatements and omissions as indicated. There were no deliveries of
5 Arcimoto vehicles to real customers as of the IPO or even after the IPO to date. There were no real
6 Arcimoto vehicles being sold, let alone production-ready ones. The Company had two custom-made
7 prototypes rife with safety and mechanical issues that it falsely paraded as production ready. But no
8 design was ready for production or even close to being ready. There was no production facility capable
9 of scaled production. Even the planned facility was not capable of that, as shown at the opening of that
10 facility. Indeed, the vehicle was not street legal as of the IPO and the Company later admitted its legal
11 status was still being negotiated well after the IPO.

12 27. W.R. Hambrecht and the Company displayed from their websites purported "Pre-IPO
13 Research," in the case of W.R. Hambrecht, and "IPO Research," in the case of the Company, both of
14 which contained links to an analyst report dated August 7, 2017, that the Company and W.R.
15 Hambrecht participated in making through the contribution and confirmation of information. Like the
16 videos, that document likened and compared Arcimoto's vehicle to numerous well-known street legal
17 vehicles, and used images and discussion to demonstrate Arcimoto's vehicle was street legal. The
18 vehicle was also described as suitable for "daily driving," and advantageous for use in "urban road
19 congestion" compared to "most cars" because it was lightweight and able to "maneuver into parking
20 spaces more easily." These statements were false and misleading and omitted material information
21 because Arcimoto's vehicle was not street legal as of the IPO. Indeed the Company later admitted the
22 vehicle's legal status was still being negotiated well after the IPO.

23 28. The Prospectus, too, was negligently prepared and, as a result, contained untrue
24 statements of material facts or omitted to state other facts necessary to make the statements made not
25 misleading, and was not prepared in accordance with the rules and regulations governing its
26 preparation.

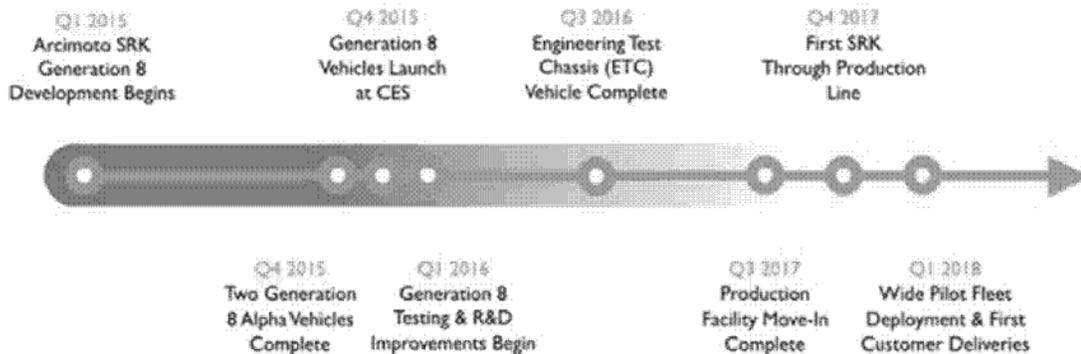
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1 29. Concerning the status and ongoing sales of Arcimoto’s “Principal Product
2 Development,” the Prospectus stated the SRK was “on the cusp of series production” and stated in
3 pertinent part as follows:

4 The company’s principal product is the SRK, an all-electric three-wheeled
5 motorcycle designed for daily transportation use.

6 Arcimoto unveiled the Generation 8 SRK alpha prototype electric vehicle on
7 November 14, 2015, and has shown these prototypes publicly as part of its preorder
8 sales campaign at the Consumer Electronics Show, the NY Auto Show, and test drive
9 events in Oregon, Washington, California, DC, Maryland, New York, Michigan, and
10 Nevada.

11 *Arcimoto will build a fleet of beta and pilot vehicles in 2017, some of which
12 will go to paying customers. Arcimoto is targeting early 2018 to begin scale
13 production of the SRK.*



The current status of development of the Generation 8 SRK is as follows:

- Engineering Test platform vehicle completed August 2015.
- Two “Alpha” prototype vehicles completed and revealed to the public in November 2015. These vehicles are currently being used for market validation through test drives and display opportunities.
- Beta vehicles are currently being built, *including six pre-sold pre-retail (signature series) vehicles to be delivered to customers Fall 2017.*
- *Pre-production pilot vehicles are expected to be built by the second half of 2017.*
- *Retail production and manufacturing of vehicles is expected to start at the beginning of 2018.*

30. Concerning Arcimoto’s “Market Entry Strategy,” the Prospectus stated the SRK was “on
the cusp of series production” and stated in pertinent part as follows:

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We will deliver the first production SRKs to customers in the three west coast states of Washington, Oregon and California. This geography was chosen both for proximity to Arcimoto’s headquarters as well as for these states’ status as leading adopters for efficient transportation solutions. We’ll hit three “tastemaker” zones: the film and television capital of southern California, Silicon Valley, the world’s leading technology hub, and the Pacific Northwest’s centers of sustainability leadership. The current top five U.S. cities for electric vehicle adoption are San Francisco, Atlanta, Los Angeles, San Diego and Seattle. Four of these five cities lie within Arcimoto’s initial deployment region. Oregon and California are currently leading the nation in electric vehicle adoption and, as important, are acting aggressively on a governmental level to spur adoption. Targeting west coast states will allow Arcimoto to efficiently distribute the first production vehicles, result in lower costs of early product service, and provide an early-adoption region halo. Although we have pre-order reservations in all 50 states, California, Oregon, and Washington residents comprise almost half of the total. Once in full production, the company will progress to nation-wide distribution as expeditiously as possible.

31. Concerning then-present demand for the Company’s purportedly soon-to-begin-shipping SRKs, the Prospectus stated that Arcimoto “began accepting pre-reservations online in September 2009,” that “[b]etween 2009 and the unveiling of the Generation 8 design in October of 2015, [Arcimoto] acquired 161 deposits,” and that “[s]ince the launch of Generation 8 [it had] acquired 1,734 deposits, an increase of 977% over the previous 6 years.”

32. Outlining Arcimoto’s purported “manufacturing plans for the 12 months following the commencement of [the IPO],” the Prospectus stated in pertinent part as follows:

We are currently able to pursue our initial material handling strategy, which will use Arcimoto primarily as a final assembly operation, where all the parts are brought into the production line from outside vendors and fabrications. The company has identified several viable manufacturing site locations to serve as the first base of operations. During Phase 1 assembly, Arcimoto will take advantage of pre-existing vendor infrastructure and so will have very limited need for fabrication capacity within its own operations.

33. Concerning the Company’s ability to start recognizing revenue on sales of the purportedly soon-to-begin-shipping SRKs, the Prospectus stated in pertinent part as follows:

Revenue Recognition

The Company will recognize revenue when the earnings process is complete on vehicle sales. This generally occurs when products are shipped to the customer in accordance with the sales agreement or purchase order, ownership and risk of loss pass to the customer, collectability is reasonably assured, and pricing is fixed or determinable. The Company’s shipping terms are generally F.O.B. shipping point, where title is transferred and revenue is recognized when the products are shipped to customers.

* * *

1 Customer Deposits

2 Customer deposits are generally held in a separate deposit account. Revenue is
3 not recognized on customer deposits until the vehicle is shipped to the customer.

4 34. Concerning the Company’s vehicles, the Prospectus communicated in numerous ways
5 that the vehicles were street legal. The SRK was compared favorably in the Prospectus to the “average
6 passenger car” and numerous well-known street legal vehicles. It was billed as a “functional daily
7 replacement for a full-sized car” and had “Daily Utility” that “allow[ed] it to be used both on city streets
8 and high-speed expressways” as well as “the carpool lane.” The Prospectus further stated: “Since the
9 SRK is a motorcycle by NHTSA definition, laws and regulations pertaining to the operation of a
10 motorcycle and wearing a helmet apply to Arcimoto’s customers.” The Prospectus went on to describe
11 helmet laws and state that the National Highway Transportation Safety Administration was reviewing
12 whether to adopt new safety regulations. But these statements were false and misleading and omitted
13 material information. For the SRK to be used as described in the Prospectus as of the IPO it was not
14 necessarily a matter of whether a driver or passenger needed to wear a helmet, and it was not
15 necessarily a matter of potential unknown future regulations - the SRK was not then street legal.
16 Indeed, after admitting not long following the IPO that it did not in fact have a production line as it
17 stated it would and it had not built the vehicles it said it was currently building and would deliver to
18 customers, the Company revealed that the vehicle’s legal status was still being negotiated.

19 35. The statements referenced above in ¶¶21, 23, 25 and 29-34 were each materially false
20 and misleading because they omitted and misrepresented the adverse facts stated above and as follows,
21 that existed at the time of the IPO:

22 (a) Arcimoto was plagued by production delays and the inability to make more than
23 even one SRK function properly. Other than one SRK that defendant Frohnmayer took possession of
24 on November 30, 2017 and one improperly working SRK delivered to Hollywood actor Nathan Fillion
25 on or about December 17, 2017, Arcimoto was not on track to deliver six SRKs to paying customers
26 during 2017 – pilot or otherwise – and was not building six SRKs as of the IPO.

27 (b) “Retail production and manufacturing of vehicles” was not on track to “start at
28 the beginning of 2018” – indeed commercial production was not objectively feasible due to delays and

1 the Company's inability to even produce a safe, reliable and properly working product. There was no
2 production facility capable of commercial production. The existing facility never had an assembly line
3 and even the planned facility was not mocked for an assembly line. No robotic assembly had even been
4 ordered, designed, programmed or implemented. No Beta vehicles were in production, and certainly
5 not in the scale as stated. Even the design of the Beta vehicles had not been completed for production
6 and was not ever complete during the course of the year. Arcimoto employees spent their time
7 fabricating and tinkering with custom parts that a part-time employee welded onto a frame one part at a
8 time. And Arcimoto's "planned" production facility had no assembly lines or robotic machines, either.
9 Indeed, when the planned production facility was officially opened it had three mock assembly areas,
10 each containing single hydraulic motorcycle lifts. There was no assembly line, let alone an assembly
11 line containing automated robots. The Company did not know exactly how much commercial
12 production would cost, let alone what parts or suppliers it would actually use to produce the vehicle in
13 commercial scale.

14 (c) The numerous vehicles displayed in the video were repeated visuals of two
15 prototype vehicles that were rife with safety and operational issues, including rollover problems, poor
16 braking, and the inability of the engines, each connected to a different front wheel, to operate in a
17 synchronous manner. No design had been "proven" for safe, reliable operation or even production.
18 Safety and operational issues continued to dog the prototypes and no design had even been test
19 "proven" to be ready for production. In light of the operational and safety issues plaguing the vehicle,
20 Arcimoto did not even know exactly what vehicle and components it would possibly make in
21 commercial production. Indeed, the vehicle was not street legal as of the IPO and the Company later
22 admitted its legal status was still being negotiated well after the IPO.

23 (d) As a result of the foregoing, at the time of the IPO, the Company's business and
24 financial prospects were not what defendants had led the market to believe in the Prospectus.

25 36. Pursuant to Item 7(a)(2) of the Form 1-A Instructions, issuers must "describe those
26 distinctive or special characteristics of the issuer's operation or industry that are reasonably likely to
27 have a material impact upon the issuer's future financial performance." Pursuant to Item 9(d) of the
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1 Form 1-A Instructions, issuers are also required to “identify the most significant recent trends in
2 production, sales and inventory, the state of the order book and costs and selling prices since the latest
3 financial year.” They “also must discuss, for at least the current financial year, any known trends,
4 uncertainties, demands, commitments or events that are reasonably likely to have a material effect on
5 the issuer’s net sales or revenues, income from continuing operations, profitability, liquidity or capital
6 resources, or that would cause reported financial information not necessarily to be indicative of future
7 operating results or financial condition.” At the time of the IPO, unbeknownst to investors, Arcimoto
8 was not on track to deliver six pilot SRKs to paying customers during the “second half of 2017,” nor
9 was its “[r]etail production and manufacturing of vehicles” on track to “start at the beginning of 2018.”
10 The adverse events and uncertainties associated with these negative trends were reasonably likely to
11 have a material impact on Arcimoto’s profitability and, therefore, were required to be disclosed in the
12 Prospectus, but were not.

13 37. The IPO was successful for the Company and the Underwriters Defendants who sold
14 2,945,657 shares of Arcimoto common stock to the investing public at \$6.50 per share, raising
15 \$19,146,771 in gross proceeds (\$18,032,000 net of underwriting fees and IPO costs).

16 38. The price of Arcimoto common stock plummeted as the market learned, following the
17 IPO, that Arcimoto had delivered only one SRK to a paying customer during the second half of 2017
18 and that it was in no position to begin mass production and sales at the “beginning of 2018.” As of the
19 filing of this lawsuit, Arcimoto stock traded at approximately \$3 per share, less than 50% of the price
20 the stock was sold at in the IPO.

21 CLASS ACTION ALLEGATIONS

22 39. Plaintiffs bring this action as a class action on behalf of all those who purchased
23 Arcimoto common stock pursuant to the Prospectus issued in connection with the IPO (the “Class”).
24 Excluded from the Class are defendants and their families, the officers, directors and affiliates of
25 defendants, at all relevant times, members of their immediate families and their legal representatives,
26 heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

1 46. By means of the defective Prospectus and other statements made in connection with the
2 roadshow and IPO, W.R. Hambrecht, Arcimoto, Frohnmayer and Campoli promoted and sold Arcimoto
3 stock to plaintiffs and other members of the Class.

4 47. The Prospectus and roadshow contained untrue statements of material fact, and/or
5 concealed or failed to disclose material facts, as detailed above. Defendants owed plaintiffs and the
6 other members of the Class who purchased Arcimoto common stock pursuant to the Prospectus the duty
7 to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure
8 that such statements were true and that there was no omission to state a material fact required to be
9 stated in order to make the statements contained therein not misleading. Defendants, in the exercise of
10 reasonable care, should have known of the misstatements and omissions contained in the Prospectus as
11 set forth above.

12 48. Plaintiffs did not know, nor in the exercise of reasonable diligence could plaintiffs have
13 known, of the untruths and omissions contained in the Prospectus and roadshow videos at the time
14 plaintiffs acquired Arcimoto common stock.

15 49. By reason of the conduct alleged herein, defendants violated §12(a)(2) of the 1933 Act.
16 As a direct and proximate result of such violations, plaintiffs and the other members of the Class who
17 purchased Arcimoto common stock pursuant to the Prospectus sustained substantial damages in
18 connection with their purchases of the stock. Accordingly, plaintiffs and the other members of the
19 Class who hold the common stock issued pursuant to the Prospectus have the right to rescind and
20 recover the consideration paid for their shares, and hereby tender their common stock to the defendants
21 sued herein. Class members who have sold their common stock seek damages to the extent permitted
22 by law.

23 SECOND CAUSE OF ACTION

24 For Violation of Section 15 of the 1933 Act 25 Against the Individual Defendants

26 50. Plaintiffs incorporate ¶¶1-49 by reference.

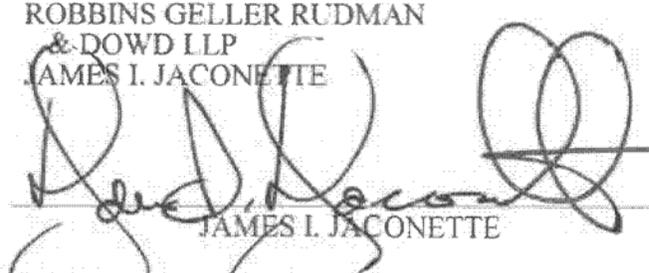
27 51. This Cause of Action is brought pursuant to §15 of the 1933 Act against the Individual
28 Defendants.

1 **JURY DEMAND**

2 Plaintiffs hereby demand a trial by jury.

3 DATED: September 28, 2018

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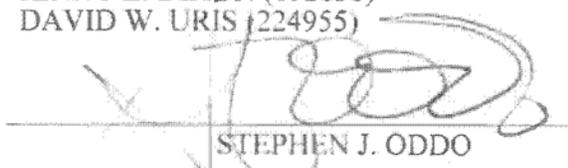
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SERVICE LIST

Switzer v. W.R. Hambrecht & Co., LLC, Lead Case No. CGC-18-564904 (Super. Ct., S.F. Cty.)
(Consolidated with No. CGC-18-565324)

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