

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(FT. LAUDERDALE)**

<p>BRIAN PARKER, Individually and on Behalf of All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MAKO SURGICAL CORPORATION, MAURICE R. FERRÉ, and FRITZ L. LAPORTE,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.</p> <p><b>CLASS ACTION</b></p> <p><b>COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS</b></p> <p><b>DEMAND FOR JURY TRIAL</b></p>
--	---

Plaintiff, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief is based upon, among other things, his counsel's investigation, which includes without limitation: (a) review and analysis of regulatory filings made by MAKO Surgical Corporation ("MAKO" or the "Company") with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and media reports issued by and disseminated by MAKO; and (c) review of other publicly available information concerning MAKO.

**SUMMARY OF THE ACTION**

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of MAKO Surgical Corporation ("MAKO" or the "Company") common stock between January 9, 2012 and May 7, 2012, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 ("Exchange Act").

2. MAKO is a medical device company that offers its robotic arm solution and orthopedic implants for minimally invasive orthopedic procedures in the United States and internationally. The Company's RIO Robotic Arm Interactive Orthopedic ("RIO") system and MAKOplasty applications (collectively, the "RIO system") enable orthopedic surgeons to treat patient-specific osteoarthritic disease.

3. During the Class Period, defendants issued materially false and misleading statements concerning the Company's financial performance and future prospects. Specifically, defendants misrepresented and/or failed to disclose that: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis. As a result of these misrepresentations and omissions, MAKO common stock traded at artificially inflated prices during the Class Period. When defendants revealed the Company's true financial condition and future prospects, MAKO common plummeted more than 40% from its Class Period high, thereby damaging investors.

### **JURISDICTION AND VENUE**

4. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

6. Venue is proper in this Judicial District pursuant to §28 U.S.C. §1391(b) and §27

of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District.

7. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

8. Plaintiff purchased MAKO common stock as described in the attached Certification and was damaged as set forth herein.

9. Defendant MAKO is a Delaware corporation with headquarters situated at 2555 Davie Road, Fort Lauderdale, Florida. The Company's common stock trades on the NASDAQ Global Select Market under the symbol "MAKO."

10. Defendant Maurice R. Ferré ("Ferré") is, and was at all times relevant hereto, the Company's President, Chief Executive Officer and Chairman.

11. Defendant Fritz L. LaPorte ("LaPorte") is, and was at all times relevant hereto, the Company's Senior Vice President of Finance and Administration, Chief Financial Officer and Treasurer.

12. Defendants Ferré and LaPorte are collectively referred to herein as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of MAKO's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had

the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading.

### **CLASS ACTION ALLEGATIONS**

13. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired MAKO common stock during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which defendants have or had a controlling interest.

14. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of April 30, 2012, MAKO had more than 42 million shares of stock outstanding, owned by hundreds, if not thousands, of persons.

15. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) whether defendants violated the Exchange Act;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of MAKO common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

16. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

17. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

### **SUBSTANTIVE ALLEGATIONS**

19. On January 9, 2012, MAKO issued a press release announcing selected operating results for the fourth quarter and full-year 2011, including, among other things, figures for the RIO systems sold, MAKOplasty procedures performed, 2012 annual guidance, and stating in part:

“We are pleased with our strong RIO system sales and the interest in our hip application during the fourth quarter. In addition, we believe the increased MAKOplasty procedure volume and utilization trends continue to demonstrate the clinical value of our technology” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “2011 was a positive year for MAKO and we look forward to continuing to drive the adoption of MAKOplasty in 2012.”

#### **2012 Annual Guidance**

MAKO anticipates that it will sell 56 to 62 RIO systems and that its customers will perform 11,000 to 13,000 MAKOplasty procedures in 2012.

20. Following this news, the price of MAKO common stock rose \$2.29 per share, to a closing price of \$31.07 per share on January 9, 2012.

21. On March 6, 2012, the Company announced MAKO's 2011 fourth-quarter and full-year financial results, in a press release which stated in part:

"We are pleased with our strong operating results for the fourth quarter and the full year 2011, particularly our 91% growth in revenue from the prior year. In addition, we believe the increased level of RIO system sales, initial interest in our hip application, increased MAKOpasty procedure volume and utilization trends point to the clinical value of our technology" said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. "We anticipate that our positive results in 2011 will carry forward into 2012 as we continue to drive the adoption of MAKOpasty."

22. On March 8, 2012, the Company filed with the SEC on Form 10-K its annual report for the year ended December 31, 2011. The Form 10-K repeated the financial results announced in the March 6, 2012 press release.

23. The true facts, which defendants knew or recklessly disregarded and concealed from the investing public during the Class Period, were as follows: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis.

24. Then, on May 7, 2012, MAKO issued a press release announcing disappointing financial results for the first quarter ended March 31, 2012. The press release stated in part:

RIO Systems – Six RIO systems were sold during the first quarter, of which five were sold to domestic customers and one was sold to our distributor in Japan, for use in securing regulatory approvals and to demonstrate MAKOpasty to build interest in that market. These six RIO systems bring MAKO's worldwide

commercial installed base of RIO systems to 118 systems and domestic commercial installed base to 116 systems as of March 31, 2012. The revenue associated with the sale of the international system was deferred due to a contingent obligation to reimburse the distributor for the costs it incurs in the regulatory process should the agreement be terminated prior to obtaining regulatory approval. The revenue associated with this sale will be recognized upon obtaining regulatory approval.

MAKOplasty Procedure Volume – During the first quarter, 2,297 MAKOplasty procedures were performed, of which 2,219 were performed at domestic sites. Of the 2,219 domestic procedures, 211 were Total Hip Arthroplasty (THA) procedures. The 2,297 MAKOplasty procedures performed represent a 2% increase over the procedures performed in the fourth quarter of 2011 and a 76% increase over the procedures performed in the first quarter of 2011. The average monthly utilization per system was 6.6 procedures during the first quarter of 2012, a decrease from 7.2 procedures per system per month in the fourth quarter of 2011 and an increase from 6.2 procedures per system per month in the first quarter of 2011. Through March 31, 2012, over 15,000 procedures had been performed since the first procedure in June 2006.

\* \* \*

“While the first quarter is typically our slowest quarter of the year and system placements are very difficult to predict on a quarterly basis, our results this quarter were at the low end of our expectations,” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “On the positive side, we were encouraged by the continued interest shown in our hip application and the quality and quantity of clinical data that continues to be generated that supports the clinical and economic benefit of MAKOplasty. Additionally, we are pleased to have enhanced our working capital flexibility through a credit facility arrangement with Deerfield, an acknowledged leader in health care investing.”

#### 2012 First Quarter Financial Review

Revenue was \$19.6 million in the first quarter of 2012 compared to \$13.0 million in the first quarter of 2011, representing a 51% increase. Revenue in the first quarter of 2012 primarily consisted of \$11.6 million in revenue from the sale of implants and disposables used in the 2,297 MAKOplasty procedures performed in the quarter, \$5.9 million in revenue from the sale of five domestic RIO systems and nine MAKOplasty THA applications to existing customers, and \$2.2 million in revenue from service.

Gross profit for the first quarter of 2012 was \$14.2 million compared to a gross profit of \$8.9 million in the same period in 2011. Gross margin for the first

quarter of 2012 was 72%, consisting of a 77% margin on procedure revenue, a 58% margin on RIO system revenue and an 83% margin on service revenue.

Operating expenses were \$25.9 million in the first quarter of 2012 compared to \$20.0 million in the first quarter of 2011. The increase in operating expenses was primarily attributable to the following: an increase in sales and marketing activities for the continued expansion of the direct sales force and commercialization of the RIO system, MAKOpasty applications and RESTORIS implant systems; an increase in research and development activities associated with continuous improvement of the RIO system and MAKOpasty applications and the development of potential future products; and an increase in general and administrative costs as MAKO continued to build infrastructure to support growth.

Net loss for the three months ended March 31, 2012 was \$11.7 million, or \$(0.28) per basic and diluted share, based on average basic and diluted shares outstanding of 41.7 million. This compares to a net loss for the same period in 2011 of \$11.0 million, or \$(0.27) per basic and diluted share, based on average basic and diluted shares outstanding of 40.1 million.

Cash, cash equivalents and investments were \$46.8 million as of March 31, 2012 compared to \$58.7 million as of December 31, 2011.

#### Outlook

Based on the slower than expected start to the year, MAKO now anticipates selling 52 to 58 RIO systems in 2012, which compares to prior guidance of 56 to 62 RIO system sales. MAKOpasty procedure guidance remains unchanged at 11,000 to 13,000 expected procedures in 2012.

25. As a result of this disappointing news and the Company's downward-revised guidance, MAKO common stock plummeted almost \$15.13 per share – a one-day drop of nearly 37% on unusually heavy trading volume -- to a closing price of \$26.27 per share on May 8, 2012.

26. As reported that day in an article published by *Seeking Alpha*, the decline in utilization rates reported by MAKO “represents a slowdown at a time when orthopedic companies...have all talked about a stable, if not improving, orthopedic procedure market.” The *Seeking Alpha* article further noted, in relevant part:



### **Q1 Numbers Miss The Mark**

MAKO broadly disappointed the Street in terms of its top-line components, which is really the only thing many investors care about right now.

Revenue rose 51% from last year, but dropped about 40% from the fourth quarter and missed consensus by about 20%. Procedure volume rose 76% and procedure revenue increased 79%, but that volume number missed by about 5%. Similarly, system revenue rose just 9% and the company's six system placements missed the average analyst target of nine.

\* \* \*

### **So, What Went Wrong?**

Management claimed that a "few missed orders" played into the shortfall in robot sales, but then they also lowered full-year placement guidance by more units (four) than they missed by this quarter (three). I don't really know how to interrupt "missed orders" in this context, and it doesn't sound like they're coming back in this year.

I believe it would be a mistake to take this result and try to apply it to Intuitive Surgical (ISRG) or make sweeping comments about the hospital capital equipment market. The fact is that hospital budgets are still tight, but they're finding the money for the devices/equipment that they really want or believe they need. Yes, Stryker (SYK) and Hill-Rom (HRC) are seeing slowdowns again in the sale of equipment like beds, but Intuitive is going strong and big-ticket equipment vendors like General Electric (GE) have seen pretty solid order trends recently.

The utilization numbers trouble me a bit more. Utilization per machine dropped about 8% sequentially. Management mentioned that utilization was hurt by a back end-loaded fourth quarter, and the company did indeed place a lot of systems (18) in that quarter. Still, it represents a slowdown at a time when orthopedic companies like Stryker, Zimmer (ZMH), and Johnson & Johnson (JNJ) have all talked about a stable, if not improving, orthopedic procedure market.

27. Likewise, securities analysts reacted negatively to the Company's revised guidance. As reported that same day by *Reuters.com*:

Mako Surgical Corp (MAKO) lost a third of its market value on Tuesday after the orthopedic device maker posted disappointing quarterly results and lowered its sales forecast for a key product.

Mako now expects to sell 52 to 58 RIO systems -- a robotic-arm interactive system used for minimally invasive knee procedures -- during the full year. It had previously forecast sales of 56 to 62 RIO systems.

“While management reduced its guidance by a small amount, we are concerned that it remains too high and see a risk of further misses and/or guidance reductions,”

Mizuho Securities analyst Michael Matson wrote, downgrading the stock to “neutral” from “buy”.

Echoing Matson’s view, William Blair & Co analyst Matthew O’Brien said the revised outlook range requires a strong performance from Mako during the remainder of the year, which may prove challenging as the sales cycle appears to be showing only modest improvement.

Matson downgraded Mako shares to “market perform” from “outperform.”

Mako shares, which have gained 44 percent since the company gave an upbeat outlook for 2012 in January, fell 33 percent to \$27.89 on Tuesday on the Nasdaq.

### **SCIENTER ALLEGATIONS**

28. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding MAKO, their control over, and/or receipt and/or modification of MAKO’s allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning MAKO, participated in the fraudulent scheme alleged herein.

### **LOSS CAUSATION/ECONOMIC LOSS**

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

30. During the Class Period, Plaintiff and the Class purchased MAKO common stock at artificially inflated prices and were damaged thereby. The price of the Company's common stock significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE: (FRAUD-ON-THE-MARKET DOCTRINE)**

31. At all relevant times, the market for MAKO common stock was an efficient market for the following reasons, among others:

- (a) MAKO common stock met the requirements for listing and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, MAKO filed periodic public reports with the SEC and the NASDAQ;
- (c) MAKO regularly communicated with public investors *via* established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (d) MAKO was followed by several securities analysts employed by major

brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

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

#### **NO SAFE HARBOR**

33. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of MAKO who knew that the statement was false when made.

**COUNT I**

**VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT  
AND RULE 10b-5 PROMULGATED THEREUNDER  
AGAINST ALL DEFENDANTS**

34. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

35. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they misrepresented and/or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

36. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of MAKO common stock during the Class Period.

37. By virtue of the foregoing, MAKO and each of the Individual Defendants have violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

38. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the Class have suffered damages in connection with their respective purchases and sales of MAKO common stock during the Class Period because, in reliance on the integrity of the market, they paid artificially inflated prices for MAKO common stock and experienced losses

when the artificial inflation was released from MAKO common stock as a result of the revelation and stock price decline detailed herein. Plaintiff and the Class would not have purchased MAKO common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## **COUNT II**

### **VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS**

39. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

40. The Individual Defendants acted as controlling persons of MAKO within the meaning of §20(a) of the Exchange Act. By reason of their controlling positions with the Company, the Individual Defendants had the power and authority to cause MAKO to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act.

### **PRAYER FOR RELIEF**

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

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon interest;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: May 18, 2012

**SAXENA WHITE P.A.**

/s/ Joseph E. White, III

Joseph E. White III

Lester R. Hooker

2424 N. Federal Highway, Suite 257

Boca Raton, FL 33431

Telephone: 561-394-3399

Facsimile: 561-394-3082

**GLANCY BINKOW & GOLDBERG LLP**

Lionel Z. Glancy

Michael Goldberg

1801 Avenue of the Stars, Suite 311

Los Angeles, CA 90067

Telephone: 310-201-9150

Facsimile: 310-201-9160

**LAW OFFICES OF HOWARD G. SMITH**

Howard G. Smith

3070 Bristol Pike, Suite 112

Bensalem, PA 19020

Telephone: 215-638-4847

Facsimile: 215-638-4867

**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 18, 2012, I filed the foregoing with the Court's CM/ECF System, which will send a notice of filing to all registered users.

/s/ Joseph E. White, III  
Joseph E. White, III



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(FT. LAUDERDALE)**

<p>BRIAN PARKER, Individually and on Behalf of All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MAKO SURGICAL CORPORATION, MAURICE R. FERRÉ, and FRITZ L. LAPORTE,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.</p> <p><b>CLASS ACTION</b></p> <p><b>COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS</b></p> <p><b>DEMAND FOR JURY TRIAL</b></p>
--	---

Plaintiff, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief is based upon, among other things, his counsel's investigation, which includes without limitation: (a) review and analysis of regulatory filings made by MAKO Surgical Corporation ("MAKO" or the "Company") with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and media reports issued by and disseminated by MAKO; and (c) review of other publicly available information concerning MAKO.

**SUMMARY OF THE ACTION**

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of MAKO Surgical Corporation ("MAKO" or the "Company") common stock between January 9, 2012 and May 7, 2012, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 ("Exchange Act").

2. MAKO is a medical device company that offers its robotic arm solution and orthopedic implants for minimally invasive orthopedic procedures in the United States and internationally. The Company's RIO Robotic Arm Interactive Orthopedic ("RIO") system and MAKOplasty applications (collectively, the "RIO system") enable orthopedic surgeons to treat patient-specific osteoarthritic disease.

3. During the Class Period, defendants issued materially false and misleading statements concerning the Company's financial performance and future prospects. Specifically, defendants misrepresented and/or failed to disclose that: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis. As a result of these misrepresentations and omissions, MAKO common stock traded at artificially inflated prices during the Class Period. When defendants revealed the Company's true financial condition and future prospects, MAKO common plummeted more than 40% from its Class Period high, thereby damaging investors.

### **JURISDICTION AND VENUE**

4. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

6. Venue is proper in this Judicial District pursuant to §28 U.S.C. §1391(b) and §27

of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District.

7. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

8. Plaintiff purchased MAKO common stock as described in the attached Certification and was damaged as set forth herein.

9. Defendant MAKO is a Delaware corporation with headquarters situated at 2555 Davie Road, Fort Lauderdale, Florida. The Company's common stock trades on the NASDAQ Global Select Market under the symbol "MAKO."

10. Defendant Maurice R. Ferré ("Ferré") is, and was at all times relevant hereto, the Company's President, Chief Executive Officer and Chairman.

11. Defendant Fritz L. LaPorte ("LaPorte") is, and was at all times relevant hereto, the Company's Senior Vice President of Finance and Administration, Chief Financial Officer and Treasurer.

12. Defendants Ferré and LaPorte are collectively referred to herein as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of MAKO's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had

the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading.

### **CLASS ACTION ALLEGATIONS**

13. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired MAKO common stock during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which defendants have or had a controlling interest.

14. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of April 30, 2012, MAKO had more than 42 million shares of stock outstanding, owned by hundreds, if not thousands, of persons.

15. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) whether defendants violated the Exchange Act;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of MAKO common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

16. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

17. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

### **SUBSTANTIVE ALLEGATIONS**

19. On January 9, 2012, MAKO issued a press release announcing selected operating results for the fourth quarter and full-year 2011, including, among other things, figures for the RIO systems sold, MAKOplasty procedures performed, 2012 annual guidance, and stating in part:

“We are pleased with our strong RIO system sales and the interest in our hip application during the fourth quarter. In addition, we believe the increased MAKOplasty procedure volume and utilization trends continue to demonstrate the clinical value of our technology” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “2011 was a positive year for MAKO and we look forward to continuing to drive the adoption of MAKOplasty in 2012.”

#### **2012 Annual Guidance**

MAKO anticipates that it will sell 56 to 62 RIO systems and that its customers will perform 11,000 to 13,000 MAKOplasty procedures in 2012.

20. Following this news, the price of MAKO common stock rose \$2.29 per share, to a closing price of \$31.07 per share on January 9, 2012.

21. On March 6, 2012, the Company announced MAKO's 2011 fourth-quarter and full-year financial results, in a press release which stated in part:

"We are pleased with our strong operating results for the fourth quarter and the full year 2011, particularly our 91% growth in revenue from the prior year. In addition, we believe the increased level of RIO system sales, initial interest in our hip application, increased MAKOpasty procedure volume and utilization trends point to the clinical value of our technology" said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. "We anticipate that our positive results in 2011 will carry forward into 2012 as we continue to drive the adoption of MAKOpasty."

22. On March 8, 2012, the Company filed with the SEC on Form 10-K its annual report for the year ended December 31, 2011. The Form 10-K repeated the financial results announced in the March 6, 2012 press release.

23. The true facts, which defendants knew or recklessly disregarded and concealed from the investing public during the Class Period, were as follows: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis.

24. Then, on May 7, 2012, MAKO issued a press release announcing disappointing financial results for the first quarter ended March 31, 2012. The press release stated in part:

RIO Systems – Six RIO systems were sold during the first quarter, of which five were sold to domestic customers and one was sold to our distributor in Japan, for use in securing regulatory approvals and to demonstrate MAKOpasty to build interest in that market. These six RIO systems bring MAKO's worldwide

commercial installed base of RIO systems to 118 systems and domestic commercial installed base to 116 systems as of March 31, 2012. The revenue associated with the sale of the international system was deferred due to a contingent obligation to reimburse the distributor for the costs it incurs in the regulatory process should the agreement be terminated prior to obtaining regulatory approval. The revenue associated with this sale will be recognized upon obtaining regulatory approval.

MAKOplasty Procedure Volume – During the first quarter, 2,297 MAKOplasty procedures were performed, of which 2,219 were performed at domestic sites. Of the 2,219 domestic procedures, 211 were Total Hip Arthroplasty (THA) procedures. The 2,297 MAKOplasty procedures performed represent a 2% increase over the procedures performed in the fourth quarter of 2011 and a 76% increase over the procedures performed in the first quarter of 2011. The average monthly utilization per system was 6.6 procedures during the first quarter of 2012, a decrease from 7.2 procedures per system per month in the fourth quarter of 2011 and an increase from 6.2 procedures per system per month in the first quarter of 2011. Through March 31, 2012, over 15,000 procedures had been performed since the first procedure in June 2006.

\* \* \*

“While the first quarter is typically our slowest quarter of the year and system placements are very difficult to predict on a quarterly basis, our results this quarter were at the low end of our expectations,” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “On the positive side, we were encouraged by the continued interest shown in our hip application and the quality and quantity of clinical data that continues to be generated that supports the clinical and economic benefit of MAKOplasty. Additionally, we are pleased to have enhanced our working capital flexibility through a credit facility arrangement with Deerfield, an acknowledged leader in health care investing.”

#### 2012 First Quarter Financial Review

Revenue was \$19.6 million in the first quarter of 2012 compared to \$13.0 million in the first quarter of 2011, representing a 51% increase. Revenue in the first quarter of 2012 primarily consisted of \$11.6 million in revenue from the sale of implants and disposables used in the 2,297 MAKOplasty procedures performed in the quarter, \$5.9 million in revenue from the sale of five domestic RIO systems and nine MAKOplasty THA applications to existing customers, and \$2.2 million in revenue from service.

Gross profit for the first quarter of 2012 was \$14.2 million compared to a gross profit of \$8.9 million in the same period in 2011. Gross margin for the first

quarter of 2012 was 72%, consisting of a 77% margin on procedure revenue, a 58% margin on RIO system revenue and an 83% margin on service revenue.

Operating expenses were \$25.9 million in the first quarter of 2012 compared to \$20.0 million in the first quarter of 2011. The increase in operating expenses was primarily attributable to the following: an increase in sales and marketing activities for the continued expansion of the direct sales force and commercialization of the RIO system, MAKOpasty applications and RESTORIS implant systems; an increase in research and development activities associated with continuous improvement of the RIO system and MAKOpasty applications and the development of potential future products; and an increase in general and administrative costs as MAKO continued to build infrastructure to support growth.

Net loss for the three months ended March 31, 2012 was \$11.7 million, or \$(0.28) per basic and diluted share, based on average basic and diluted shares outstanding of 41.7 million. This compares to a net loss for the same period in 2011 of \$11.0 million, or \$(0.27) per basic and diluted share, based on average basic and diluted shares outstanding of 40.1 million.

Cash, cash equivalents and investments were \$46.8 million as of March 31, 2012 compared to \$58.7 million as of December 31, 2011.

#### Outlook

Based on the slower than expected start to the year, MAKO now anticipates selling 52 to 58 RIO systems in 2012, which compares to prior guidance of 56 to 62 RIO system sales. MAKOpasty procedure guidance remains unchanged at 11,000 to 13,000 expected procedures in 2012.

25. As a result of this disappointing news and the Company's downward-revised guidance, MAKO common stock plummeted almost \$15.13 per share – a one-day drop of nearly 37% on unusually heavy trading volume -- to a closing price of \$26.27 per share on May 8, 2012.

26. As reported that day in an article published by *Seeking Alpha*, the decline in utilization rates reported by MAKO “represents a slowdown at a time when orthopedic companies...have all talked about a stable, if not improving, orthopedic procedure market.” The *Seeking Alpha* article further noted, in relevant part:



### **Q1 Numbers Miss The Mark**

MAKO broadly disappointed the Street in terms of its top-line components, which is really the only thing many investors care about right now.

Revenue rose 51% from last year, but dropped about 40% from the fourth quarter and missed consensus by about 20%. Procedure volume rose 76% and procedure revenue increased 79%, but that volume number missed by about 5%. Similarly, system revenue rose just 9% and the company's six system placements missed the average analyst target of nine.

\* \* \*

### **So, What Went Wrong?**

Management claimed that a "few missed orders" played into the shortfall in robot sales, but then they also lowered full-year placement guidance by more units (four) than they missed by this quarter (three). I don't really know how to interrupt "missed orders" in this context, and it doesn't sound like they're coming back in this year.

I believe it would be a mistake to take this result and try to apply it to Intuitive Surgical (ISRG) or make sweeping comments about the hospital capital equipment market. The fact is that hospital budgets are still tight, but they're finding the money for the devices/equipment that they really want or believe they need. Yes, Stryker (SYK) and Hill-Rom (HRC) are seeing slowdowns again in the sale of equipment like beds, but Intuitive is going strong and big-ticket equipment vendors like General Electric (GE) have seen pretty solid order trends recently.

The utilization numbers trouble me a bit more. Utilization per machine dropped about 8% sequentially. Management mentioned that utilization was hurt by a back end-loaded fourth quarter, and the company did indeed place a lot of systems (18) in that quarter. Still, it represents a slowdown at a time when orthopedic companies like Stryker, Zimmer (ZMH), and Johnson & Johnson (JNJ) have all talked about a stable, if not improving, orthopedic procedure market.

27. Likewise, securities analysts reacted negatively to the Company's revised guidance. As reported that same day by *Reuters.com*:

Mako Surgical Corp (MAKO) lost a third of its market value on Tuesday after the orthopedic device maker posted disappointing quarterly results and lowered its sales forecast for a key product.

Mako now expects to sell 52 to 58 RIO systems -- a robotic-arm interactive system used for minimally invasive knee procedures -- during the full year. It had previously forecast sales of 56 to 62 RIO systems.

“While management reduced its guidance by a small amount, we are concerned that it remains too high and see a risk of further misses and/or guidance reductions,”

Mizuho Securities analyst Michael Matson wrote, downgrading the stock to “neutral” from “buy”.

Echoing Matson’s view, William Blair & Co analyst Matthew O’Brien said the revised outlook range requires a strong performance from Mako during the remainder of the year, which may prove challenging as the sales cycle appears to be showing only modest improvement.

Matson downgraded Mako shares to “market perform” from “outperform.”

Mako shares, which have gained 44 percent since the company gave an upbeat outlook for 2012 in January, fell 33 percent to \$27.89 on Tuesday on the Nasdaq.

### **SCIENTER ALLEGATIONS**

28. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding MAKO, their control over, and/or receipt and/or modification of MAKO’s allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning MAKO, participated in the fraudulent scheme alleged herein.

### **LOSS CAUSATION/ECONOMIC LOSS**

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

30. During the Class Period, Plaintiff and the Class purchased MAKO common stock at artificially inflated prices and were damaged thereby. The price of the Company's common stock significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE: (FRAUD-ON-THE-MARKET DOCTRINE)**

31. At all relevant times, the market for MAKO common stock was an efficient market for the following reasons, among others:

- (a) MAKO common stock met the requirements for listing and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, MAKO filed periodic public reports with the SEC and the NASDAQ;
- (c) MAKO regularly communicated with public investors *via* established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (d) MAKO was followed by several securities analysts employed by major

brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

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

#### **NO SAFE HARBOR**

33. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of MAKO who knew that the statement was false when made.

**COUNT I**

**VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT  
AND RULE 10b-5 PROMULGATED THEREUNDER  
AGAINST ALL DEFENDANTS**

34. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

35. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they misrepresented and/or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

36. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of MAKO common stock during the Class Period.

37. By virtue of the foregoing, MAKO and each of the Individual Defendants have violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

38. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the Class have suffered damages in connection with their respective purchases and sales of MAKO common stock during the Class Period because, in reliance on the integrity of the market, they paid artificially inflated prices for MAKO common stock and experienced losses

when the artificial inflation was released from MAKO common stock as a result of the revelation and stock price decline detailed herein. Plaintiff and the Class would not have purchased MAKO common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## **COUNT II**

### **VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS**

39. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

40. The Individual Defendants acted as controlling persons of MAKO within the meaning of §20(a) of the Exchange Act. By reason of their controlling positions with the Company, the Individual Defendants had the power and authority to cause MAKO to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act.

### **PRAYER FOR RELIEF**

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

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon interest;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: May 18, 2012

**SAXENA WHITE P.A.**

/s/ Joseph E. White, III

Joseph E. White III

Lester R. Hooker

2424 N. Federal Highway, Suite 257

Boca Raton, FL 33431

Telephone: 561-394-3399

Facsimile: 561-394-3082

**GLANCY BINKOW & GOLDBERG LLP**

Lionel Z. Glancy

Michael Goldberg

1801 Avenue of the Stars, Suite 311

Los Angeles, CA 90067

Telephone: 310-201-9150

Facsimile: 310-201-9160

**LAW OFFICES OF HOWARD G. SMITH**

Howard G. Smith

3070 Bristol Pike, Suite 112

Bensalem, PA 19020

Telephone: 215-638-4847

Facsimile: 215-638-4867

**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 18, 2012, I filed the foregoing with the Court's CM/ECF System, which will send a notice of filing to all registered users.

/s/ Joseph E. White, III  
Joseph E. White, III



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(FT. LAUDERDALE)**

BRIAN PARKER, Individually and on Behalf of All Others Similarly Situated,  Plaintiff,  v.  MAKO SURGICAL CORPORATION, MAURICE R. FERRÉ, and FRITZ L. LAPORTE,  Defendants.	Case No.  <b>CLASS ACTION</b>  <b>COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS</b>  <b>DEMAND FOR JURY TRIAL</b>
--	--

Plaintiff, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief is based upon, among other things, his counsel's investigation, which includes without limitation: (a) review and analysis of regulatory filings made by MAKO Surgical Corporation ("MAKO" or the "Company") with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and media reports issued by and disseminated by MAKO; and (c) review of other publicly available information concerning MAKO.

**SUMMARY OF THE ACTION**

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of MAKO Surgical Corporation ("MAKO" or the "Company") common stock between January 9, 2012 and May 7, 2012, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 ("Exchange Act").

2. MAKO is a medical device company that offers its robotic arm solution and orthopedic implants for minimally invasive orthopedic procedures in the United States and internationally. The Company's RIO Robotic Arm Interactive Orthopedic ("RIO") system and MAKOplasty applications (collectively, the "RIO system") enable orthopedic surgeons to treat patient-specific osteoarthritic disease.

3. During the Class Period, defendants issued materially false and misleading statements concerning the Company's financial performance and future prospects. Specifically, defendants misrepresented and/or failed to disclose that: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis. As a result of these misrepresentations and omissions, MAKO common stock traded at artificially inflated prices during the Class Period. When defendants revealed the Company's true financial condition and future prospects, MAKO common plummeted more than 40% from its Class Period high, thereby damaging investors.

### **JURISDICTION AND VENUE**

4. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

6. Venue is proper in this Judicial District pursuant to §28 U.S.C. §1391(b) and §27

of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District.

7. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

8. Plaintiff purchased MAKO common stock as described in the attached Certification and was damaged as set forth herein.

9. Defendant MAKO is a Delaware corporation with headquarters situated at 2555 Davie Road, Fort Lauderdale, Florida. The Company's common stock trades on the NASDAQ Global Select Market under the symbol "MAKO."

10. Defendant Maurice R. Ferré ("Ferré") is, and was at all times relevant hereto, the Company's President, Chief Executive Officer and Chairman.

11. Defendant Fritz L. LaPorte ("LaPorte") is, and was at all times relevant hereto, the Company's Senior Vice President of Finance and Administration, Chief Financial Officer and Treasurer.

12. Defendants Ferré and LaPorte are collectively referred to herein as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of MAKO's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had

the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading.

### **CLASS ACTION ALLEGATIONS**

13. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired MAKO common stock during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which defendants have or had a controlling interest.

14. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of April 30, 2012, MAKO had more than 42 million shares of stock outstanding, owned by hundreds, if not thousands, of persons.

15. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) whether defendants violated the Exchange Act;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of MAKO common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

16. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

17. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

### **SUBSTANTIVE ALLEGATIONS**

19. On January 9, 2012, MAKO issued a press release announcing selected operating results for the fourth quarter and full-year 2011, including, among other things, figures for the RIO systems sold, MAKOplasty procedures performed, 2012 annual guidance, and stating in part:

“We are pleased with our strong RIO system sales and the interest in our hip application during the fourth quarter. In addition, we believe the increased MAKOplasty procedure volume and utilization trends continue to demonstrate the clinical value of our technology” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “2011 was a positive year for MAKO and we look forward to continuing to drive the adoption of MAKOplasty in 2012.”

#### **2012 Annual Guidance**

MAKO anticipates that it will sell 56 to 62 RIO systems and that its customers will perform 11,000 to 13,000 MAKOplasty procedures in 2012.

20. Following this news, the price of MAKO common stock rose \$2.29 per share, to a closing price of \$31.07 per share on January 9, 2012.

21. On March 6, 2012, the Company announced MAKO's 2011 fourth-quarter and full-year financial results, in a press release which stated in part:

"We are pleased with our strong operating results for the fourth quarter and the full year 2011, particularly our 91% growth in revenue from the prior year. In addition, we believe the increased level of RIO system sales, initial interest in our hip application, increased MAKOpasty procedure volume and utilization trends point to the clinical value of our technology" said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. "We anticipate that our positive results in 2011 will carry forward into 2012 as we continue to drive the adoption of MAKOpasty."

22. On March 8, 2012, the Company filed with the SEC on Form 10-K its annual report for the year ended December 31, 2011. The Form 10-K repeated the financial results announced in the March 6, 2012 press release.

23. The true facts, which defendants knew or recklessly disregarded and concealed from the investing public during the Class Period, were as follows: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis.

24. Then, on May 7, 2012, MAKO issued a press release announcing disappointing financial results for the first quarter ended March 31, 2012. The press release stated in part:

RIO Systems – Six RIO systems were sold during the first quarter, of which five were sold to domestic customers and one was sold to our distributor in Japan, for use in securing regulatory approvals and to demonstrate MAKOpasty to build interest in that market. These six RIO systems bring MAKO's worldwide

commercial installed base of RIO systems to 118 systems and domestic commercial installed base to 116 systems as of March 31, 2012. The revenue associated with the sale of the international system was deferred due to a contingent obligation to reimburse the distributor for the costs it incurs in the regulatory process should the agreement be terminated prior to obtaining regulatory approval. The revenue associated with this sale will be recognized upon obtaining regulatory approval.

MAKOplasty Procedure Volume – During the first quarter, 2,297 MAKOplasty procedures were performed, of which 2,219 were performed at domestic sites. Of the 2,219 domestic procedures, 211 were Total Hip Arthroplasty (THA) procedures. The 2,297 MAKOplasty procedures performed represent a 2% increase over the procedures performed in the fourth quarter of 2011 and a 76% increase over the procedures performed in the first quarter of 2011. The average monthly utilization per system was 6.6 procedures during the first quarter of 2012, a decrease from 7.2 procedures per system per month in the fourth quarter of 2011 and an increase from 6.2 procedures per system per month in the first quarter of 2011. Through March 31, 2012, over 15,000 procedures had been performed since the first procedure in June 2006.

\* \* \*

“While the first quarter is typically our slowest quarter of the year and system placements are very difficult to predict on a quarterly basis, our results this quarter were at the low end of our expectations,” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “On the positive side, we were encouraged by the continued interest shown in our hip application and the quality and quantity of clinical data that continues to be generated that supports the clinical and economic benefit of MAKOplasty. Additionally, we are pleased to have enhanced our working capital flexibility through a credit facility arrangement with Deerfield, an acknowledged leader in health care investing.”

#### 2012 First Quarter Financial Review

Revenue was \$19.6 million in the first quarter of 2012 compared to \$13.0 million in the first quarter of 2011, representing a 51% increase. Revenue in the first quarter of 2012 primarily consisted of \$11.6 million in revenue from the sale of implants and disposables used in the 2,297 MAKOplasty procedures performed in the quarter, \$5.9 million in revenue from the sale of five domestic RIO systems and nine MAKOplasty THA applications to existing customers, and \$2.2 million in revenue from service.

Gross profit for the first quarter of 2012 was \$14.2 million compared to a gross profit of \$8.9 million in the same period in 2011. Gross margin for the first

quarter of 2012 was 72%, consisting of a 77% margin on procedure revenue, a 58% margin on RIO system revenue and an 83% margin on service revenue.

Operating expenses were \$25.9 million in the first quarter of 2012 compared to \$20.0 million in the first quarter of 2011. The increase in operating expenses was primarily attributable to the following: an increase in sales and marketing activities for the continued expansion of the direct sales force and commercialization of the RIO system, MAKOpasty applications and RESTORIS implant systems; an increase in research and development activities associated with continuous improvement of the RIO system and MAKOpasty applications and the development of potential future products; and an increase in general and administrative costs as MAKO continued to build infrastructure to support growth.

Net loss for the three months ended March 31, 2012 was \$11.7 million, or \$(0.28) per basic and diluted share, based on average basic and diluted shares outstanding of 41.7 million. This compares to a net loss for the same period in 2011 of \$11.0 million, or \$(0.27) per basic and diluted share, based on average basic and diluted shares outstanding of 40.1 million.

Cash, cash equivalents and investments were \$46.8 million as of March 31, 2012 compared to \$58.7 million as of December 31, 2011.

#### Outlook

Based on the slower than expected start to the year, MAKO now anticipates selling 52 to 58 RIO systems in 2012, which compares to prior guidance of 56 to 62 RIO system sales. MAKOpasty procedure guidance remains unchanged at 11,000 to 13,000 expected procedures in 2012.

25. As a result of this disappointing news and the Company's downward-revised guidance, MAKO common stock plummeted almost \$15.13 per share – a one-day drop of nearly 37% on unusually heavy trading volume -- to a closing price of \$26.27 per share on May 8, 2012.

26. As reported that day in an article published by *Seeking Alpha*, the decline in utilization rates reported by MAKO “represents a slowdown at a time when orthopedic companies...have all talked about a stable, if not improving, orthopedic procedure market.” The *Seeking Alpha* article further noted, in relevant part:



### **Q1 Numbers Miss The Mark**

MAKO broadly disappointed the Street in terms of its top-line components, which is really the only thing many investors care about right now.

Revenue rose 51% from last year, but dropped about 40% from the fourth quarter and missed consensus by about 20%. Procedure volume rose 76% and procedure revenue increased 79%, but that volume number missed by about 5%. Similarly, system revenue rose just 9% and the company's six system placements missed the average analyst target of nine.

\* \* \*

### **So, What Went Wrong?**

Management claimed that a "few missed orders" played into the shortfall in robot sales, but then they also lowered full-year placement guidance by more units (four) than they missed by this quarter (three). I don't really know how to interrupt "missed orders" in this context, and it doesn't sound like they're coming back in this year.

I believe it would be a mistake to take this result and try to apply it to Intuitive Surgical (ISRG) or make sweeping comments about the hospital capital equipment market. The fact is that hospital budgets are still tight, but they're finding the money for the devices/equipment that they really want or believe they need. Yes, Stryker (SYK) and Hill-Rom (HRC) are seeing slowdowns again in the sale of equipment like beds, but Intuitive is going strong and big-ticket equipment vendors like General Electric (GE) have seen pretty solid order trends recently.

The utilization numbers trouble me a bit more. Utilization per machine dropped about 8% sequentially. Management mentioned that utilization was hurt by a back end-loaded fourth quarter, and the company did indeed place a lot of systems (18) in that quarter. Still, it represents a slowdown at a time when orthopedic companies like Stryker, Zimmer (ZMH), and Johnson & Johnson (JNJ) have all talked about a stable, if not improving, orthopedic procedure market.

27. Likewise, securities analysts reacted negatively to the Company's revised guidance. As reported that same day by *Reuters.com*:

Mako Surgical Corp (MAKO) lost a third of its market value on Tuesday after the orthopedic device maker posted disappointing quarterly results and lowered its sales forecast for a key product.

Mako now expects to sell 52 to 58 RIO systems -- a robotic-arm interactive system used for minimally invasive knee procedures -- during the full year. It had previously forecast sales of 56 to 62 RIO systems.

“While management reduced its guidance by a small amount, we are concerned that it remains too high and see a risk of further misses and/or guidance reductions,”

Mizuho Securities analyst Michael Matson wrote, downgrading the stock to “neutral” from “buy”.

Echoing Matson’s view, William Blair & Co analyst Matthew O’Brien said the revised outlook range requires a strong performance from Mako during the remainder of the year, which may prove challenging as the sales cycle appears to be showing only modest improvement.

Matson downgraded Mako shares to “market perform” from “outperform.”

Mako shares, which have gained 44 percent since the company gave an upbeat outlook for 2012 in January, fell 33 percent to \$27.89 on Tuesday on the Nasdaq.

### **SCIENTER ALLEGATIONS**

28. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding MAKO, their control over, and/or receipt and/or modification of MAKO’s allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning MAKO, participated in the fraudulent scheme alleged herein.

### **LOSS CAUSATION/ECONOMIC LOSS**

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

30. During the Class Period, Plaintiff and the Class purchased MAKO common stock at artificially inflated prices and were damaged thereby. The price of the Company's common stock significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE: (FRAUD-ON-THE-MARKET DOCTRINE)**

31. At all relevant times, the market for MAKO common stock was an efficient market for the following reasons, among others:

- (a) MAKO common stock met the requirements for listing and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, MAKO filed periodic public reports with the SEC and the NASDAQ;
- (c) MAKO regularly communicated with public investors *via* established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (d) MAKO was followed by several securities analysts employed by major

brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

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

#### **NO SAFE HARBOR**

33. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of MAKO who knew that the statement was false when made.

**COUNT I**

**VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT  
AND RULE 10b-5 PROMULGATED THEREUNDER  
AGAINST ALL DEFENDANTS**

34. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

35. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they misrepresented and/or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

36. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of MAKO common stock during the Class Period.

37. By virtue of the foregoing, MAKO and each of the Individual Defendants have violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

38. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the Class have suffered damages in connection with their respective purchases and sales of MAKO common stock during the Class Period because, in reliance on the integrity of the market, they paid artificially inflated prices for MAKO common stock and experienced losses

when the artificial inflation was released from MAKO common stock as a result of the revelation and stock price decline detailed herein. Plaintiff and the Class would not have purchased MAKO common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## **COUNT II**

### **VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS**

39. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

40. The Individual Defendants acted as controlling persons of MAKO within the meaning of §20(a) of the Exchange Act. By reason of their controlling positions with the Company, the Individual Defendants had the power and authority to cause MAKO to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act.

### **PRAYER FOR RELIEF**

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

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon interest;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: May 18, 2012

**SAXENA WHITE P.A.**

/s/ Joseph E. White, III

Joseph E. White III

Lester R. Hooker

2424 N. Federal Highway, Suite 257

Boca Raton, FL 33431

Telephone: 561-394-3399

Facsimile: 561-394-3082

**GLANCY BINKOW & GOLDBERG LLP**

Lionel Z. Glancy

Michael Goldberg

1801 Avenue of the Stars, Suite 311

Los Angeles, CA 90067

Telephone: 310-201-9150

Facsimile: 310-201-9160

**LAW OFFICES OF HOWARD G. SMITH**

Howard G. Smith

3070 Bristol Pike, Suite 112

Bensalem, PA 19020

Telephone: 215-638-4847

Facsimile: 215-638-4867

**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 18, 2012, I filed the foregoing with the Court's CM/ECF System, which will send a notice of filing to all registered users.

/s/ Joseph E. White, III  
Joseph E. White, III



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(FT. LAUDERDALE)**

BRIAN PARKER, Individually and on Behalf of All Others Similarly Situated,  Plaintiff,  v.  MAKO SURGICAL CORPORATION, MAURICE R. FERRÉ, and FRITZ L. LAPORTE,  Defendants.	Case No.  <b>CLASS ACTION</b>  <b>COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS</b>  <b>DEMAND FOR JURY TRIAL</b>
--	--

Plaintiff, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief is based upon, among other things, his counsel's investigation, which includes without limitation: (a) review and analysis of regulatory filings made by MAKO Surgical Corporation ("MAKO" or the "Company") with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and media reports issued by and disseminated by MAKO; and (c) review of other publicly available information concerning MAKO.

**SUMMARY OF THE ACTION**

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of MAKO Surgical Corporation ("MAKO" or the "Company") common stock between January 9, 2012 and May 7, 2012, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 ("Exchange Act").

2. MAKO is a medical device company that offers its robotic arm solution and orthopedic implants for minimally invasive orthopedic procedures in the United States and internationally. The Company's RIO Robotic Arm Interactive Orthopedic ("RIO") system and MAKOplasty applications (collectively, the "RIO system") enable orthopedic surgeons to treat patient-specific osteoarthritic disease.

3. During the Class Period, defendants issued materially false and misleading statements concerning the Company's financial performance and future prospects. Specifically, defendants misrepresented and/or failed to disclose that: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis. As a result of these misrepresentations and omissions, MAKO common stock traded at artificially inflated prices during the Class Period. When defendants revealed the Company's true financial condition and future prospects, MAKO common plummeted more than 40% from its Class Period high, thereby damaging investors.

### **JURISDICTION AND VENUE**

4. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

6. Venue is proper in this Judicial District pursuant to §28 U.S.C. §1391(b) and §27

of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District.

7. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

8. Plaintiff purchased MAKO common stock as described in the attached Certification and was damaged as set forth herein.

9. Defendant MAKO is a Delaware corporation with headquarters situated at 2555 Davie Road, Fort Lauderdale, Florida. The Company's common stock trades on the NASDAQ Global Select Market under the symbol "MAKO."

10. Defendant Maurice R. Ferré ("Ferré") is, and was at all times relevant hereto, the Company's President, Chief Executive Officer and Chairman.

11. Defendant Fritz L. LaPorte ("LaPorte") is, and was at all times relevant hereto, the Company's Senior Vice President of Finance and Administration, Chief Financial Officer and Treasurer.

12. Defendants Ferré and LaPorte are collectively referred to herein as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of MAKO's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had

the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading.

### **CLASS ACTION ALLEGATIONS**

13. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired MAKO common stock during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which defendants have or had a controlling interest.

14. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of April 30, 2012, MAKO had more than 42 million shares of stock outstanding, owned by hundreds, if not thousands, of persons.

15. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) whether defendants violated the Exchange Act;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of MAKO common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

16. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

17. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

### **SUBSTANTIVE ALLEGATIONS**

19. On January 9, 2012, MAKO issued a press release announcing selected operating results for the fourth quarter and full-year 2011, including, among other things, figures for the RIO systems sold, MAKOplasty procedures performed, 2012 annual guidance, and stating in part:

“We are pleased with our strong RIO system sales and the interest in our hip application during the fourth quarter. In addition, we believe the increased MAKOplasty procedure volume and utilization trends continue to demonstrate the clinical value of our technology” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “2011 was a positive year for MAKO and we look forward to continuing to drive the adoption of MAKOplasty in 2012.”

#### **2012 Annual Guidance**

MAKO anticipates that it will sell 56 to 62 RIO systems and that its customers will perform 11,000 to 13,000 MAKOplasty procedures in 2012.

20. Following this news, the price of MAKO common stock rose \$2.29 per share, to a closing price of \$31.07 per share on January 9, 2012.

21. On March 6, 2012, the Company announced MAKO's 2011 fourth-quarter and full-year financial results, in a press release which stated in part:

"We are pleased with our strong operating results for the fourth quarter and the full year 2011, particularly our 91% growth in revenue from the prior year. In addition, we believe the increased level of RIO system sales, initial interest in our hip application, increased MAKOpasty procedure volume and utilization trends point to the clinical value of our technology" said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. "We anticipate that our positive results in 2011 will carry forward into 2012 as we continue to drive the adoption of MAKOpasty."

22. On March 8, 2012, the Company filed with the SEC on Form 10-K its annual report for the year ended December 31, 2011. The Form 10-K repeated the financial results announced in the March 6, 2012 press release.

23. The true facts, which defendants knew or recklessly disregarded and concealed from the investing public during the Class Period, were as follows: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis.

24. Then, on May 7, 2012, MAKO issued a press release announcing disappointing financial results for the first quarter ended March 31, 2012. The press release stated in part:

RIO Systems – Six RIO systems were sold during the first quarter, of which five were sold to domestic customers and one was sold to our distributor in Japan, for use in securing regulatory approvals and to demonstrate MAKOpasty to build interest in that market. These six RIO systems bring MAKO's worldwide

commercial installed base of RIO systems to 118 systems and domestic commercial installed base to 116 systems as of March 31, 2012. The revenue associated with the sale of the international system was deferred due to a contingent obligation to reimburse the distributor for the costs it incurs in the regulatory process should the agreement be terminated prior to obtaining regulatory approval. The revenue associated with this sale will be recognized upon obtaining regulatory approval.

MAKOplasty Procedure Volume – During the first quarter, 2,297 MAKOplasty procedures were performed, of which 2,219 were performed at domestic sites. Of the 2,219 domestic procedures, 211 were Total Hip Arthroplasty (THA) procedures. The 2,297 MAKOplasty procedures performed represent a 2% increase over the procedures performed in the fourth quarter of 2011 and a 76% increase over the procedures performed in the first quarter of 2011. The average monthly utilization per system was 6.6 procedures during the first quarter of 2012, a decrease from 7.2 procedures per system per month in the fourth quarter of 2011 and an increase from 6.2 procedures per system per month in the first quarter of 2011. Through March 31, 2012, over 15,000 procedures had been performed since the first procedure in June 2006.

\* \* \*

“While the first quarter is typically our slowest quarter of the year and system placements are very difficult to predict on a quarterly basis, our results this quarter were at the low end of our expectations,” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “On the positive side, we were encouraged by the continued interest shown in our hip application and the quality and quantity of clinical data that continues to be generated that supports the clinical and economic benefit of MAKOplasty. Additionally, we are pleased to have enhanced our working capital flexibility through a credit facility arrangement with Deerfield, an acknowledged leader in health care investing.”

#### 2012 First Quarter Financial Review

Revenue was \$19.6 million in the first quarter of 2012 compared to \$13.0 million in the first quarter of 2011, representing a 51% increase. Revenue in the first quarter of 2012 primarily consisted of \$11.6 million in revenue from the sale of implants and disposables used in the 2,297 MAKOplasty procedures performed in the quarter, \$5.9 million in revenue from the sale of five domestic RIO systems and nine MAKOplasty THA applications to existing customers, and \$2.2 million in revenue from service.

Gross profit for the first quarter of 2012 was \$14.2 million compared to a gross profit of \$8.9 million in the same period in 2011. Gross margin for the first

quarter of 2012 was 72%, consisting of a 77% margin on procedure revenue, a 58% margin on RIO system revenue and an 83% margin on service revenue.

Operating expenses were \$25.9 million in the first quarter of 2012 compared to \$20.0 million in the first quarter of 2011. The increase in operating expenses was primarily attributable to the following: an increase in sales and marketing activities for the continued expansion of the direct sales force and commercialization of the RIO system, MAKOpasty applications and RESTORIS implant systems; an increase in research and development activities associated with continuous improvement of the RIO system and MAKOpasty applications and the development of potential future products; and an increase in general and administrative costs as MAKO continued to build infrastructure to support growth.

Net loss for the three months ended March 31, 2012 was \$11.7 million, or \$(0.28) per basic and diluted share, based on average basic and diluted shares outstanding of 41.7 million. This compares to a net loss for the same period in 2011 of \$11.0 million, or \$(0.27) per basic and diluted share, based on average basic and diluted shares outstanding of 40.1 million.

Cash, cash equivalents and investments were \$46.8 million as of March 31, 2012 compared to \$58.7 million as of December 31, 2011.

#### Outlook

Based on the slower than expected start to the year, MAKO now anticipates selling 52 to 58 RIO systems in 2012, which compares to prior guidance of 56 to 62 RIO system sales. MAKOpasty procedure guidance remains unchanged at 11,000 to 13,000 expected procedures in 2012.

25. As a result of this disappointing news and the Company's downward-revised guidance, MAKO common stock plummeted almost \$15.13 per share – a one-day drop of nearly 37% on unusually heavy trading volume -- to a closing price of \$26.27 per share on May 8, 2012.

26. As reported that day in an article published by *Seeking Alpha*, the decline in utilization rates reported by MAKO “represents a slowdown at a time when orthopedic companies...have all talked about a stable, if not improving, orthopedic procedure market.” The *Seeking Alpha* article further noted, in relevant part:



### **Q1 Numbers Miss The Mark**

MAKO broadly disappointed the Street in terms of its top-line components, which is really the only thing many investors care about right now.

Revenue rose 51% from last year, but dropped about 40% from the fourth quarter and missed consensus by about 20%. Procedure volume rose 76% and procedure revenue increased 79%, but that volume number missed by about 5%. Similarly, system revenue rose just 9% and the company's six system placements missed the average analyst target of nine.

\* \* \*

### **So, What Went Wrong?**

Management claimed that a "few missed orders" played into the shortfall in robot sales, but then they also lowered full-year placement guidance by more units (four) than they missed by this quarter (three). I don't really know how to interrupt "missed orders" in this context, and it doesn't sound like they're coming back in this year.

I believe it would be a mistake to take this result and try to apply it to Intuitive Surgical (ISRG) or make sweeping comments about the hospital capital equipment market. The fact is that hospital budgets are still tight, but they're finding the money for the devices/equipment that they really want or believe they need. Yes, Stryker (SYK) and Hill-Rom (HRC) are seeing slowdowns again in the sale of equipment like beds, but Intuitive is going strong and big-ticket equipment vendors like General Electric (GE) have seen pretty solid order trends recently.

The utilization numbers trouble me a bit more. Utilization per machine dropped about 8% sequentially. Management mentioned that utilization was hurt by a back end-loaded fourth quarter, and the company did indeed place a lot of systems (18) in that quarter. Still, it represents a slowdown at a time when orthopedic companies like Stryker, Zimmer (ZMH), and Johnson & Johnson (JNJ) have all talked about a stable, if not improving, orthopedic procedure market.

27. Likewise, securities analysts reacted negatively to the Company's revised guidance. As reported that same day by *Reuters.com*:

Mako Surgical Corp (MAKO) lost a third of its market value on Tuesday after the orthopedic device maker posted disappointing quarterly results and lowered its sales forecast for a key product.

Mako now expects to sell 52 to 58 RIO systems -- a robotic-arm interactive system used for minimally invasive knee procedures -- during the full year. It had previously forecast sales of 56 to 62 RIO systems.

“While management reduced its guidance by a small amount, we are concerned that it remains too high and see a risk of further misses and/or guidance reductions,”

Mizuho Securities analyst Michael Matson wrote, downgrading the stock to “neutral” from “buy”.

Echoing Matson’s view, William Blair & Co analyst Matthew O’Brien said the revised outlook range requires a strong performance from Mako during the remainder of the year, which may prove challenging as the sales cycle appears to be showing only modest improvement.

Matson downgraded Mako shares to “market perform” from “outperform.”

Mako shares, which have gained 44 percent since the company gave an upbeat outlook for 2012 in January, fell 33 percent to \$27.89 on Tuesday on the Nasdaq.

### **SCIENTER ALLEGATIONS**

28. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding MAKO, their control over, and/or receipt and/or modification of MAKO’s allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning MAKO, participated in the fraudulent scheme alleged herein.

### **LOSS CAUSATION/ECONOMIC LOSS**

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

30. During the Class Period, Plaintiff and the Class purchased MAKO common stock at artificially inflated prices and were damaged thereby. The price of the Company's common stock significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE: (FRAUD-ON-THE-MARKET DOCTRINE)**

31. At all relevant times, the market for MAKO common stock was an efficient market for the following reasons, among others:

- (a) MAKO common stock met the requirements for listing and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, MAKO filed periodic public reports with the SEC and the NASDAQ;
- (c) MAKO regularly communicated with public investors *via* established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (d) MAKO was followed by several securities analysts employed by major

brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

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

#### **NO SAFE HARBOR**

33. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of MAKO who knew that the statement was false when made.

**COUNT I**

**VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT  
AND RULE 10b-5 PROMULGATED THEREUNDER  
AGAINST ALL DEFENDANTS**

34. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

35. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they misrepresented and/or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

36. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of MAKO common stock during the Class Period.

37. By virtue of the foregoing, MAKO and each of the Individual Defendants have violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

38. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the Class have suffered damages in connection with their respective purchases and sales of MAKO common stock during the Class Period because, in reliance on the integrity of the market, they paid artificially inflated prices for MAKO common stock and experienced losses

when the artificial inflation was released from MAKO common stock as a result of the revelation and stock price decline detailed herein. Plaintiff and the Class would not have purchased MAKO common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## **COUNT II**

### **VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS**

39. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

40. The Individual Defendants acted as controlling persons of MAKO within the meaning of §20(a) of the Exchange Act. By reason of their controlling positions with the Company, the Individual Defendants had the power and authority to cause MAKO to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act.

### **PRAYER FOR RELIEF**

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

- A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon interest;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: May 18, 2012

**SAXENA WHITE P.A.**

/s/ Joseph E. White, III

Joseph E. White III

Lester R. Hooker

2424 N. Federal Highway, Suite 257

Boca Raton, FL 33431

Telephone: 561-394-3399

Facsimile: 561-394-3082

**GLANCY BINKOW & GOLDBERG LLP**

Lionel Z. Glancy

Michael Goldberg

1801 Avenue of the Stars, Suite 311

Los Angeles, CA 90067

Telephone: 310-201-9150

Facsimile: 310-201-9160

**LAW OFFICES OF HOWARD G. SMITH**

Howard G. Smith

3070 Bristol Pike, Suite 112

Bensalem, PA 19020

Telephone: 215-638-4847

Facsimile: 215-638-4867

**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 18, 2012, I filed the foregoing with the Court's CM/ECF System, which will send a notice of filing to all registered users.

/s/ Joseph E. White, III  
Joseph E. White, III



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(FT. LAUDERDALE)**

BRIAN PARKER, Individually and on Behalf of All Others Similarly Situated,  Plaintiff,  v.  MAKO SURGICAL CORPORATION, MAURICE R. FERRÉ, and FRITZ L. LAPORTE,  Defendants.	Case No.  <b>CLASS ACTION</b>  <b>COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS</b>  <b>DEMAND FOR JURY TRIAL</b>
--	--

Plaintiff, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief is based upon, among other things, his counsel's investigation, which includes without limitation: (a) review and analysis of regulatory filings made by MAKO Surgical Corporation ("MAKO" or the "Company") with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and media reports issued by and disseminated by MAKO; and (c) review of other publicly available information concerning MAKO.

**SUMMARY OF THE ACTION**

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of MAKO Surgical Corporation ("MAKO" or the "Company") common stock between January 9, 2012 and May 7, 2012, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 ("Exchange Act").

2. MAKO is a medical device company that offers its robotic arm solution and orthopedic implants for minimally invasive orthopedic procedures in the United States and internationally. The Company's RIO Robotic Arm Interactive Orthopedic ("RIO") system and MAKOplasty applications (collectively, the "RIO system") enable orthopedic surgeons to treat patient-specific osteoarthritic disease.

3. During the Class Period, defendants issued materially false and misleading statements concerning the Company's financial performance and future prospects. Specifically, defendants misrepresented and/or failed to disclose that: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis. As a result of these misrepresentations and omissions, MAKO common stock traded at artificially inflated prices during the Class Period. When defendants revealed the Company's true financial condition and future prospects, MAKO common plummeted more than 40% from its Class Period high, thereby damaging investors.

### **JURISDICTION AND VENUE**

4. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

6. Venue is proper in this Judicial District pursuant to §28 U.S.C. §1391(b) and §27

of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District.

7. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

8. Plaintiff purchased MAKO common stock as described in the attached Certification and was damaged as set forth herein.

9. Defendant MAKO is a Delaware corporation with headquarters situated at 2555 Davie Road, Fort Lauderdale, Florida. The Company's common stock trades on the NASDAQ Global Select Market under the symbol "MAKO."

10. Defendant Maurice R. Ferré ("Ferré") is, and was at all times relevant hereto, the Company's President, Chief Executive Officer and Chairman.

11. Defendant Fritz L. LaPorte ("LaPorte") is, and was at all times relevant hereto, the Company's Senior Vice President of Finance and Administration, Chief Financial Officer and Treasurer.

12. Defendants Ferré and LaPorte are collectively referred to herein as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of MAKO's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had

the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading.

### **CLASS ACTION ALLEGATIONS**

13. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired MAKO common stock during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which defendants have or had a controlling interest.

14. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of April 30, 2012, MAKO had more than 42 million shares of stock outstanding, owned by hundreds, if not thousands, of persons.

15. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) whether defendants violated the Exchange Act;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of MAKO common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

16. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

17. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

### **SUBSTANTIVE ALLEGATIONS**

19. On January 9, 2012, MAKO issued a press release announcing selected operating results for the fourth quarter and full-year 2011, including, among other things, figures for the RIO systems sold, MAKOplasty procedures performed, 2012 annual guidance, and stating in part:

“We are pleased with our strong RIO system sales and the interest in our hip application during the fourth quarter. In addition, we believe the increased MAKOplasty procedure volume and utilization trends continue to demonstrate the clinical value of our technology” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “2011 was a positive year for MAKO and we look forward to continuing to drive the adoption of MAKOplasty in 2012.”

#### **2012 Annual Guidance**

MAKO anticipates that it will sell 56 to 62 RIO systems and that its customers will perform 11,000 to 13,000 MAKOplasty procedures in 2012.

20. Following this news, the price of MAKO common stock rose \$2.29 per share, to a closing price of \$31.07 per share on January 9, 2012.

21. On March 6, 2012, the Company announced MAKO's 2011 fourth-quarter and full-year financial results, in a press release which stated in part:

"We are pleased with our strong operating results for the fourth quarter and the full year 2011, particularly our 91% growth in revenue from the prior year. In addition, we believe the increased level of RIO system sales, initial interest in our hip application, increased MAKOpasty procedure volume and utilization trends point to the clinical value of our technology" said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. "We anticipate that our positive results in 2011 will carry forward into 2012 as we continue to drive the adoption of MAKOpasty."

22. On March 8, 2012, the Company filed with the SEC on Form 10-K its annual report for the year ended December 31, 2011. The Form 10-K repeated the financial results announced in the March 6, 2012 press release.

23. The true facts, which defendants knew or recklessly disregarded and concealed from the investing public during the Class Period, were as follows: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis.

24. Then, on May 7, 2012, MAKO issued a press release announcing disappointing financial results for the first quarter ended March 31, 2012. The press release stated in part:

RIO Systems – Six RIO systems were sold during the first quarter, of which five were sold to domestic customers and one was sold to our distributor in Japan, for use in securing regulatory approvals and to demonstrate MAKOpasty to build interest in that market. These six RIO systems bring MAKO's worldwide

commercial installed base of RIO systems to 118 systems and domestic commercial installed base to 116 systems as of March 31, 2012. The revenue associated with the sale of the international system was deferred due to a contingent obligation to reimburse the distributor for the costs it incurs in the regulatory process should the agreement be terminated prior to obtaining regulatory approval. The revenue associated with this sale will be recognized upon obtaining regulatory approval.

MAKOplasty Procedure Volume – During the first quarter, 2,297 MAKOplasty procedures were performed, of which 2,219 were performed at domestic sites. Of the 2,219 domestic procedures, 211 were Total Hip Arthroplasty (THA) procedures. The 2,297 MAKOplasty procedures performed represent a 2% increase over the procedures performed in the fourth quarter of 2011 and a 76% increase over the procedures performed in the first quarter of 2011. The average monthly utilization per system was 6.6 procedures during the first quarter of 2012, a decrease from 7.2 procedures per system per month in the fourth quarter of 2011 and an increase from 6.2 procedures per system per month in the first quarter of 2011. Through March 31, 2012, over 15,000 procedures had been performed since the first procedure in June 2006.

\* \* \*

“While the first quarter is typically our slowest quarter of the year and system placements are very difficult to predict on a quarterly basis, our results this quarter were at the low end of our expectations,” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “On the positive side, we were encouraged by the continued interest shown in our hip application and the quality and quantity of clinical data that continues to be generated that supports the clinical and economic benefit of MAKOplasty. Additionally, we are pleased to have enhanced our working capital flexibility through a credit facility arrangement with Deerfield, an acknowledged leader in health care investing.”

#### 2012 First Quarter Financial Review

Revenue was \$19.6 million in the first quarter of 2012 compared to \$13.0 million in the first quarter of 2011, representing a 51% increase. Revenue in the first quarter of 2012 primarily consisted of \$11.6 million in revenue from the sale of implants and disposables used in the 2,297 MAKOplasty procedures performed in the quarter, \$5.9 million in revenue from the sale of five domestic RIO systems and nine MAKOplasty THA applications to existing customers, and \$2.2 million in revenue from service.

Gross profit for the first quarter of 2012 was \$14.2 million compared to a gross profit of \$8.9 million in the same period in 2011. Gross margin for the first

quarter of 2012 was 72%, consisting of a 77% margin on procedure revenue, a 58% margin on RIO system revenue and an 83% margin on service revenue.

Operating expenses were \$25.9 million in the first quarter of 2012 compared to \$20.0 million in the first quarter of 2011. The increase in operating expenses was primarily attributable to the following: an increase in sales and marketing activities for the continued expansion of the direct sales force and commercialization of the RIO system, MAKOpasty applications and RESTORIS implant systems; an increase in research and development activities associated with continuous improvement of the RIO system and MAKOpasty applications and the development of potential future products; and an increase in general and administrative costs as MAKO continued to build infrastructure to support growth.

Net loss for the three months ended March 31, 2012 was \$11.7 million, or \$(0.28) per basic and diluted share, based on average basic and diluted shares outstanding of 41.7 million. This compares to a net loss for the same period in 2011 of \$11.0 million, or \$(0.27) per basic and diluted share, based on average basic and diluted shares outstanding of 40.1 million.

Cash, cash equivalents and investments were \$46.8 million as of March 31, 2012 compared to \$58.7 million as of December 31, 2011.

#### Outlook

Based on the slower than expected start to the year, MAKO now anticipates selling 52 to 58 RIO systems in 2012, which compares to prior guidance of 56 to 62 RIO system sales. MAKOpasty procedure guidance remains unchanged at 11,000 to 13,000 expected procedures in 2012.

25. As a result of this disappointing news and the Company's downward-revised guidance, MAKO common stock plummeted almost \$15.13 per share – a one-day drop of nearly 37% on unusually heavy trading volume -- to a closing price of \$26.27 per share on May 8, 2012.

26. As reported that day in an article published by *Seeking Alpha*, the decline in utilization rates reported by MAKO “represents a slowdown at a time when orthopedic companies...have all talked about a stable, if not improving, orthopedic procedure market.” The *Seeking Alpha* article further noted, in relevant part:



### **Q1 Numbers Miss The Mark**

MAKO broadly disappointed the Street in terms of its top-line components, which is really the only thing many investors care about right now.

Revenue rose 51% from last year, but dropped about 40% from the fourth quarter and missed consensus by about 20%. Procedure volume rose 76% and procedure revenue increased 79%, but that volume number missed by about 5%. Similarly, system revenue rose just 9% and the company's six system placements missed the average analyst target of nine.

\* \* \*

### **So, What Went Wrong?**

Management claimed that a "few missed orders" played into the shortfall in robot sales, but then they also lowered full-year placement guidance by more units (four) than they missed by this quarter (three). I don't really know how to interrupt "missed orders" in this context, and it doesn't sound like they're coming back in this year.

I believe it would be a mistake to take this result and try to apply it to Intuitive Surgical (ISRG) or make sweeping comments about the hospital capital equipment market. The fact is that hospital budgets are still tight, but they're finding the money for the devices/equipment that they really want or believe they need. Yes, Stryker (SYK) and Hill-Rom (HRC) are seeing slowdowns again in the sale of equipment like beds, but Intuitive is going strong and big-ticket equipment vendors like General Electric (GE) have seen pretty solid order trends recently.

The utilization numbers trouble me a bit more. Utilization per machine dropped about 8% sequentially. Management mentioned that utilization was hurt by a back end-loaded fourth quarter, and the company did indeed place a lot of systems (18) in that quarter. Still, it represents a slowdown at a time when orthopedic companies like Stryker, Zimmer (ZMH), and Johnson & Johnson (JNJ) have all talked about a stable, if not improving, orthopedic procedure market.

27. Likewise, securities analysts reacted negatively to the Company's revised guidance. As reported that same day by *Reuters.com*:

Mako Surgical Corp (MAKO) lost a third of its market value on Tuesday after the orthopedic device maker posted disappointing quarterly results and lowered its sales forecast for a key product.

Mako now expects to sell 52 to 58 RIO systems -- a robotic-arm interactive system used for minimally invasive knee procedures -- during the full year. It had previously forecast sales of 56 to 62 RIO systems.

“While management reduced its guidance by a small amount, we are concerned that it remains too high and see a risk of further misses and/or guidance reductions,”

Mizuho Securities analyst Michael Matson wrote, downgrading the stock to “neutral” from “buy”.

Echoing Matson’s view, William Blair & Co analyst Matthew O’Brien said the revised outlook range requires a strong performance from Mako during the remainder of the year, which may prove challenging as the sales cycle appears to be showing only modest improvement.

Matson downgraded Mako shares to “market perform” from “outperform.”

Mako shares, which have gained 44 percent since the company gave an upbeat outlook for 2012 in January, fell 33 percent to \$27.89 on Tuesday on the Nasdaq.

### **SCIENTER ALLEGATIONS**

28. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding MAKO, their control over, and/or receipt and/or modification of MAKO’s allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning MAKO, participated in the fraudulent scheme alleged herein.

### **LOSS CAUSATION/ECONOMIC LOSS**

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

30. During the Class Period, Plaintiff and the Class purchased MAKO common stock at artificially inflated prices and were damaged thereby. The price of the Company's common stock significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE: (FRAUD-ON-THE-MARKET DOCTRINE)**

31. At all relevant times, the market for MAKO common stock was an efficient market for the following reasons, among others:

- (a) MAKO common stock met the requirements for listing and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, MAKO filed periodic public reports with the SEC and the NASDAQ;
- (c) MAKO regularly communicated with public investors *via* established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (d) MAKO was followed by several securities analysts employed by major

brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

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

#### **NO SAFE HARBOR**

33. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of MAKO who knew that the statement was false when made.

**COUNT I**

**VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT  
AND RULE 10b-5 PROMULGATED THEREUNDER  
AGAINST ALL DEFENDANTS**

34. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

35. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they misrepresented and/or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

36. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of MAKO common stock during the Class Period.

37. By virtue of the foregoing, MAKO and each of the Individual Defendants have violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

38. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the Class have suffered damages in connection with their respective purchases and sales of MAKO common stock during the Class Period because, in reliance on the integrity of the market, they paid artificially inflated prices for MAKO common stock and experienced losses

when the artificial inflation was released from MAKO common stock as a result of the revelation and stock price decline detailed herein. Plaintiff and the Class would not have purchased MAKO common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## **COUNT II**

### **VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS**

39. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

40. The Individual Defendants acted as controlling persons of MAKO within the meaning of §20(a) of the Exchange Act. By reason of their controlling positions with the Company, the Individual Defendants had the power and authority to cause MAKO to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act.

### **PRAYER FOR RELIEF**

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

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon interest;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: May 18, 2012

**SAXENA WHITE P.A.**

/s/ Joseph E. White, III

Joseph E. White III

Lester R. Hooker

2424 N. Federal Highway, Suite 257

Boca Raton, FL 33431

Telephone: 561-394-3399

Facsimile: 561-394-3082

**GLANCY BINKOW & GOLDBERG LLP**

Lionel Z. Glancy

Michael Goldberg

1801 Avenue of the Stars, Suite 311

Los Angeles, CA 90067

Telephone: 310-201-9150

Facsimile: 310-201-9160

**LAW OFFICES OF HOWARD G. SMITH**

Howard G. Smith

3070 Bristol Pike, Suite 112

Bensalem, PA 19020

Telephone: 215-638-4847

Facsimile: 215-638-4867

**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 18, 2012, I filed the foregoing with the Court's CM/ECF System, which will send a notice of filing to all registered users.

/s/ Joseph E. White, III  
Joseph E. White, III



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(FT. LAUDERDALE)**

BRIAN PARKER, Individually and on Behalf of All Others Similarly Situated,  Plaintiff,  v.  MAKO SURGICAL CORPORATION, MAURICE R. FERRÉ, and FRITZ L. LAPORTE,  Defendants.	Case No.  <b>CLASS ACTION</b>  <b>COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS</b>  <b>DEMAND FOR JURY TRIAL</b>
--	--

Plaintiff, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief is based upon, among other things, his counsel's investigation, which includes without limitation: (a) review and analysis of regulatory filings made by MAKO Surgical Corporation ("MAKO" or the "Company") with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and media reports issued by and disseminated by MAKO; and (c) review of other publicly available information concerning MAKO.

**SUMMARY OF THE ACTION**

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of MAKO Surgical Corporation ("MAKO" or the "Company") common stock between January 9, 2012 and May 7, 2012, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 ("Exchange Act").

2. MAKO is a medical device company that offers its robotic arm solution and orthopedic implants for minimally invasive orthopedic procedures in the United States and internationally. The Company's RIO Robotic Arm Interactive Orthopedic ("RIO") system and MAKOplasty applications (collectively, the "RIO system") enable orthopedic surgeons to treat patient-specific osteoarthritic disease.

3. During the Class Period, defendants issued materially false and misleading statements concerning the Company's financial performance and future prospects. Specifically, defendants misrepresented and/or failed to disclose that: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis. As a result of these misrepresentations and omissions, MAKO common stock traded at artificially inflated prices during the Class Period. When defendants revealed the Company's true financial condition and future prospects, MAKO common plummeted more than 40% from its Class Period high, thereby damaging investors.

### **JURISDICTION AND VENUE**

4. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

6. Venue is proper in this Judicial District pursuant to §28 U.S.C. §1391(b) and §27

of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District.

7. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

8. Plaintiff purchased MAKO common stock as described in the attached Certification and was damaged as set forth herein.

9. Defendant MAKO is a Delaware corporation with headquarters situated at 2555 Davie Road, Fort Lauderdale, Florida. The Company's common stock trades on the NASDAQ Global Select Market under the symbol "MAKO."

10. Defendant Maurice R. Ferré ("Ferré") is, and was at all times relevant hereto, the Company's President, Chief Executive Officer and Chairman.

11. Defendant Fritz L. LaPorte ("LaPorte") is, and was at all times relevant hereto, the Company's Senior Vice President of Finance and Administration, Chief Financial Officer and Treasurer.

12. Defendants Ferré and LaPorte are collectively referred to herein as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of MAKO's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had

the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading.

### **CLASS ACTION ALLEGATIONS**

13. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired MAKO common stock during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which defendants have or had a controlling interest.

14. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of April 30, 2012, MAKO had more than 42 million shares of stock outstanding, owned by hundreds, if not thousands, of persons.

15. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) whether defendants violated the Exchange Act;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of MAKO common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

16. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

17. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

### **SUBSTANTIVE ALLEGATIONS**

19. On January 9, 2012, MAKO issued a press release announcing selected operating results for the fourth quarter and full-year 2011, including, among other things, figures for the RIO systems sold, MAKOplasty procedures performed, 2012 annual guidance, and stating in part:

“We are pleased with our strong RIO system sales and the interest in our hip application during the fourth quarter. In addition, we believe the increased MAKOplasty procedure volume and utilization trends continue to demonstrate the clinical value of our technology” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “2011 was a positive year for MAKO and we look forward to continuing to drive the adoption of MAKOplasty in 2012.”

#### **2012 Annual Guidance**

MAKO anticipates that it will sell 56 to 62 RIO systems and that its customers will perform 11,000 to 13,000 MAKOplasty procedures in 2012.

20. Following this news, the price of MAKO common stock rose \$2.29 per share, to a closing price of \$31.07 per share on January 9, 2012.

21. On March 6, 2012, the Company announced MAKO's 2011 fourth-quarter and full-year financial results, in a press release which stated in part:

"We are pleased with our strong operating results for the fourth quarter and the full year 2011, particularly our 91% growth in revenue from the prior year. In addition, we believe the increased level of RIO system sales, initial interest in our hip application, increased MAKOpasty procedure volume and utilization trends point to the clinical value of our technology" said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. "We anticipate that our positive results in 2011 will carry forward into 2012 as we continue to drive the adoption of MAKOpasty."

22. On March 8, 2012, the Company filed with the SEC on Form 10-K its annual report for the year ended December 31, 2011. The Form 10-K repeated the financial results announced in the March 6, 2012 press release.

23. The true facts, which defendants knew or recklessly disregarded and concealed from the investing public during the Class Period, were as follows: (a) the Company was poised to suffer a larger first-quarter loss due to higher costs and slower sales of its RIO systems; (b) utilization rates for the Company's RIO systems were declining; (c) the Company's 2012 outlook, provided at the start of the Class Period, lacked a reasonable basis when made; and (d), based on the foregoing, defendants' positive statements about the Company or its outlook lacked a reasonable basis.

24. Then, on May 7, 2012, MAKO issued a press release announcing disappointing financial results for the first quarter ended March 31, 2012. The press release stated in part:

RIO Systems – Six RIO systems were sold during the first quarter, of which five were sold to domestic customers and one was sold to our distributor in Japan, for use in securing regulatory approvals and to demonstrate MAKOpasty to build interest in that market. These six RIO systems bring MAKO's worldwide

commercial installed base of RIO systems to 118 systems and domestic commercial installed base to 116 systems as of March 31, 2012. The revenue associated with the sale of the international system was deferred due to a contingent obligation to reimburse the distributor for the costs it incurs in the regulatory process should the agreement be terminated prior to obtaining regulatory approval. The revenue associated with this sale will be recognized upon obtaining regulatory approval.

MAKOplasty Procedure Volume – During the first quarter, 2,297 MAKOplasty procedures were performed, of which 2,219 were performed at domestic sites. Of the 2,219 domestic procedures, 211 were Total Hip Arthroplasty (THA) procedures. The 2,297 MAKOplasty procedures performed represent a 2% increase over the procedures performed in the fourth quarter of 2011 and a 76% increase over the procedures performed in the first quarter of 2011. The average monthly utilization per system was 6.6 procedures during the first quarter of 2012, a decrease from 7.2 procedures per system per month in the fourth quarter of 2011 and an increase from 6.2 procedures per system per month in the first quarter of 2011. Through March 31, 2012, over 15,000 procedures had been performed since the first procedure in June 2006.

\* \* \*

“While the first quarter is typically our slowest quarter of the year and system placements are very difficult to predict on a quarterly basis, our results this quarter were at the low end of our expectations,” said Maurice R. Ferré, M.D., President and Chief Executive Officer of MAKO. “On the positive side, we were encouraged by the continued interest shown in our hip application and the quality and quantity of clinical data that continues to be generated that supports the clinical and economic benefit of MAKOplasty. Additionally, we are pleased to have enhanced our working capital flexibility through a credit facility arrangement with Deerfield, an acknowledged leader in health care investing.”

#### 2012 First Quarter Financial Review

Revenue was \$19.6 million in the first quarter of 2012 compared to \$13.0 million in the first quarter of 2011, representing a 51% increase. Revenue in the first quarter of 2012 primarily consisted of \$11.6 million in revenue from the sale of implants and disposables used in the 2,297 MAKOplasty procedures performed in the quarter, \$5.9 million in revenue from the sale of five domestic RIO systems and nine MAKOplasty THA applications to existing customers, and \$2.2 million in revenue from service.

Gross profit for the first quarter of 2012 was \$14.2 million compared to a gross profit of \$8.9 million in the same period in 2011. Gross margin for the first

quarter of 2012 was 72%, consisting of a 77% margin on procedure revenue, a 58% margin on RIO system revenue and an 83% margin on service revenue.

Operating expenses were \$25.9 million in the first quarter of 2012 compared to \$20.0 million in the first quarter of 2011. The increase in operating expenses was primarily attributable to the following: an increase in sales and marketing activities for the continued expansion of the direct sales force and commercialization of the RIO system, MAKOpasty applications and RESTORIS implant systems; an increase in research and development activities associated with continuous improvement of the RIO system and MAKOpasty applications and the development of potential future products; and an increase in general and administrative costs as MAKO continued to build infrastructure to support growth.

Net loss for the three months ended March 31, 2012 was \$11.7 million, or \$(0.28) per basic and diluted share, based on average basic and diluted shares outstanding of 41.7 million. This compares to a net loss for the same period in 2011 of \$11.0 million, or \$(0.27) per basic and diluted share, based on average basic and diluted shares outstanding of 40.1 million.

Cash, cash equivalents and investments were \$46.8 million as of March 31, 2012 compared to \$58.7 million as of December 31, 2011.

#### Outlook

Based on the slower than expected start to the year, MAKO now anticipates selling 52 to 58 RIO systems in 2012, which compares to prior guidance of 56 to 62 RIO system sales. MAKOpasty procedure guidance remains unchanged at 11,000 to 13,000 expected procedures in 2012.

25. As a result of this disappointing news and the Company's downward-revised guidance, MAKO common stock plummeted almost \$15.13 per share – a one-day drop of nearly 37% on unusually heavy trading volume -- to a closing price of \$26.27 per share on May 8, 2012.

26. As reported that day in an article published by *Seeking Alpha*, the decline in utilization rates reported by MAKO “represents a slowdown at a time when orthopedic companies...have all talked about a stable, if not improving, orthopedic procedure market.” The *Seeking Alpha* article further noted, in relevant part:



### **Q1 Numbers Miss The Mark**

MAKO broadly disappointed the Street in terms of its top-line components, which is really the only thing many investors care about right now.

Revenue rose 51% from last year, but dropped about 40% from the fourth quarter and missed consensus by about 20%. Procedure volume rose 76% and procedure revenue increased 79%, but that volume number missed by about 5%. Similarly, system revenue rose just 9% and the company's six system placements missed the average analyst target of nine.

\* \* \*

### **So, What Went Wrong?**

Management claimed that a "few missed orders" played into the shortfall in robot sales, but then they also lowered full-year placement guidance by more units (four) than they missed by this quarter (three). I don't really know how to interrupt "missed orders" in this context, and it doesn't sound like they're coming back in this year.

I believe it would be a mistake to take this result and try to apply it to Intuitive Surgical (ISRG) or make sweeping comments about the hospital capital equipment market. The fact is that hospital budgets are still tight, but they're finding the money for the devices/equipment that they really want or believe they need. Yes, Stryker (SYK) and Hill-Rom (HRC) are seeing slowdowns again in the sale of equipment like beds, but Intuitive is going strong and big-ticket equipment vendors like General Electric (GE) have seen pretty solid order trends recently.

The utilization numbers trouble me a bit more. Utilization per machine dropped about 8% sequentially. Management mentioned that utilization was hurt by a back end-loaded fourth quarter, and the company did indeed place a lot of systems (18) in that quarter. Still, it represents a slowdown at a time when orthopedic companies like Stryker, Zimmer (ZMH), and Johnson & Johnson (JNJ) have all talked about a stable, if not improving, orthopedic procedure market.

27. Likewise, securities analysts reacted negatively to the Company's revised guidance. As reported that same day by *Reuters.com*:

Mako Surgical Corp (MAKO) lost a third of its market value on Tuesday after the orthopedic device maker posted disappointing quarterly results and lowered its sales forecast for a key product.

Mako now expects to sell 52 to 58 RIO systems -- a robotic-arm interactive system used for minimally invasive knee procedures -- during the full year. It had previously forecast sales of 56 to 62 RIO systems.

“While management reduced its guidance by a small amount, we are concerned that it remains too high and see a risk of further misses and/or guidance reductions,”

Mizuho Securities analyst Michael Matson wrote, downgrading the stock to “neutral” from “buy”.

Echoing Matson’s view, William Blair & Co analyst Matthew O’Brien said the revised outlook range requires a strong performance from Mako during the remainder of the year, which may prove challenging as the sales cycle appears to be showing only modest improvement.

Matson downgraded Mako shares to “market perform” from “outperform.”

Mako shares, which have gained 44 percent since the company gave an upbeat outlook for 2012 in January, fell 33 percent to \$27.89 on Tuesday on the Nasdaq.

### **SCIENTER ALLEGATIONS**

28. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding MAKO, their control over, and/or receipt and/or modification of MAKO’s allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning MAKO, participated in the fraudulent scheme alleged herein.

### **LOSS CAUSATION/ECONOMIC LOSS**

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

30. During the Class Period, Plaintiff and the Class purchased MAKO common stock at artificially inflated prices and were damaged thereby. The price of the Company's common stock significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE: (FRAUD-ON-THE-MARKET DOCTRINE)**

31. At all relevant times, the market for MAKO common stock was an efficient market for the following reasons, among others:

- (a) MAKO common stock met the requirements for listing and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, MAKO filed periodic public reports with the SEC and the NASDAQ;
- (c) MAKO regularly communicated with public investors *via* established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (d) MAKO was followed by several securities analysts employed by major

brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

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

#### **NO SAFE HARBOR**

33. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of MAKO who knew that the statement was false when made.

**COUNT I**

**VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT  
AND RULE 10b-5 PROMULGATED THEREUNDER  
AGAINST ALL DEFENDANTS**

34. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

35. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they misrepresented and/or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

36. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of MAKO common stock during the Class Period.

37. By virtue of the foregoing, MAKO and each of the Individual Defendants have violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

38. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the Class have suffered damages in connection with their respective purchases and sales of MAKO common stock during the Class Period because, in reliance on the integrity of the market, they paid artificially inflated prices for MAKO common stock and experienced losses

when the artificial inflation was released from MAKO common stock as a result of the revelation and stock price decline detailed herein. Plaintiff and the Class would not have purchased MAKO common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## **COUNT II**

### **VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS**

39. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

40. The Individual Defendants acted as controlling persons of MAKO within the meaning of §20(a) of the Exchange Act. By reason of their controlling positions with the Company, the Individual Defendants had the power and authority to cause MAKO to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act.

### **PRAYER FOR RELIEF**

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

- A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon interest;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: May 18, 2012

**SAXENA WHITE P.A.**

/s/ Joseph E. White, III

Joseph E. White III

Lester R. Hooker

2424 N. Federal Highway, Suite 257

Boca Raton, FL 33431

Telephone: 561-394-3399

Facsimile: 561-394-3082

**GLANCY BINKOW & GOLDBERG LLP**

Lionel Z. Glancy

Michael Goldberg

1801 Avenue of the Stars, Suite 311

Los Angeles, CA 90067

Telephone: 310-201-9150

Facsimile: 310-201-9160

**LAW OFFICES OF HOWARD G. SMITH**

Howard G. Smith

3070 Bristol Pike, Suite 112

Bensalem, PA 19020

Telephone: 215-638-4847

Facsimile: 215-638-4867

**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 18, 2012, I filed the foregoing with the Court's CM/ECF System, which will send a notice of filing to all registered users.

/s/ Joseph E. White, III  
Joseph E. White, III