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 10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **OAKLAND DIVISION**

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 14 IN RE: WAGeworks, INC. SECURITIES  
 LITIGATION

CASE NO.: 4:18-CV-01523-JSW

**DIRECTOR DEFENDANTS’ NOTICE  
 OF JOINDER AND JOINDER IN  
 WAGeworks, INC.’S AND JOSEPH L.  
 JACKSON’S MOTIONS TO DISMISS  
 PLAINTIFFS’ CONSOLIDATED  
 AMENDED CLASS ACTION  
 COMPLAINT**

Hearing  
 Date: November 22, 2019  
 Time: 9:00 a.m.  
 Courtroom: Courtroom 5, 2nd Floor  
 Judge: The Honorable Jeffrey S. White

**NOTICE OF JOINDER AND JOINDER IN WAGeworks, INC.'S AND  
JOSEPH L. JACKSON'S MOTIONS TO DISMISS  
PLAINTIFFS' CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**

PLEASE TAKE NOTICE that Defendants Mariann Byerwalter, Thomas A. Bevilacqua, Bruce G. Bodaken, Jerome D. Gramaglia, John W. Larson, and Robert L. Metzger (together, "Director Defendants") hereby join the portions of Defendant WageWorks, Inc.'s ("WageWorks") and Defendant Joseph L. Jackson's ("Jackson") motions to dismiss Plaintiffs' Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws ("CAC") that relate to Counts III and V of the CAC. Director Defendants likewise join in all pertinent notices, memoranda, and evidentiary submissions filed by Defendants WageWorks and Mr. Jackson, and oral argument, in support of those portions of their motions to dismiss.

Plaintiff Public Employees' Retirement Association of New Mexico ("PERA") asserts claims under Section 11 and Section 15 of the Securities Act of 1933 against the Director Defendants in connection with WageWorks' June 19, 2017 public offering. (CAC at ¶¶ 282, 303.) For the same reasons stated in Defendants WageWorks' and Jackson's motions to dismiss, PERA's Section 11 claim should be dismissed against the Director Defendants for lack of standing due to PERA's failure to adequately plead that it purchased WageWorks shares traceable to the June 19, 2017 public offering. *See* WageWorks Motion to Dismiss at 18-20; Jackson Motion to Dismiss at 14; *see also In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1107-10 (9th Cir. 2013) (holding that conclusory allegations that shares are "traceable to the secondary offering" do not establish statutory standing); *The Hemmer Grp. v. Sw. Water Co.*, 663 F. App'x 496, 497-98 (9th Cir. 2016) (affirming lower court's decision that plaintiff lacked standing to pursue its Section 11 claim where plaintiff could not demonstrate that its shares originated from the relevant registration statement); *Thomas v. Magnachip Semiconductor Corp.*, 167 F. Supp. 3d 1029, 1055-56 (N.D. Cal. 2016) (holding that allegation that plaintiff acquired "stock pursuant and/or traceable to the Registration Statement" was insufficient to plead Section 11 statutory standing (citation omitted)); *Welgus v. TriNet Grp., Inc.*, No. 15-CV-03625-BLF, 2017 WL 167708, at \*15 (N.D. Cal. Jan. 17, 2017) (holding that allegation that plaintiffs purchased stock

1 “pursuant to and traceable to the Second Offering” was insufficient to plead Section 11 statutory  
2 standing (citation omitted)).

3 Furthermore, as demonstrated in Defendants WageWorks’ and Jackson’s motions to  
4 dismiss, because PERA has failed to plead a Section 11 claim, PERA’s Section 15 “control person”  
5 claim must also fail as a matter of law. See Jackson Motion to Dismiss at 14-15; WageWorks  
6 Motion to Dismiss at 4; see also *In re Rigel Pharms., Inc. Sec. Litig.*, 697 F.3d 869, 886 (9th Cir.  
7 2012) (“Because Plaintiff here has failed to adequately plead a violation of the federal securities  
8 laws, it follows that Plaintiff also has failed to adequately plead [a] violation[] of . . . section 15.”).

9 Accordingly, the Director Defendants join and adopt by reference the arguments and  
10 authorities set forth in Defendant WageWorks’ Motion to Dismiss and Defendant Jackson’s  
11 Motion to Dismiss as they relate to PERA’s Section 11 and Section 15 claims, and such other  
12 evidence or argument as may be presented to the Court. In addition, the Director Defendants  
13 respectfully request that the Court dismiss Plaintiffs’ CAC.

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15 DATED: July 26, 2019

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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By: \_\_\_\_\_ /s/Amy S. Park

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Amy S. Park

Attorneys for Defendants

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